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[HISTORY: Adopted by the Town of Wellfleet 4-23-2018 ATM by Art. 30, approved at 4-29-2019 Annual Town Election. Amendments noted where applicable.]

PREAMBLE

We, the people of the Town of Wellfleet, Massachusetts, in order to reaffirm the customary and traditional liberties of the people with respect to the conduct of local government and to take the fullest advantages inherent in the home rule amendments to the *Constitution of the Commonwealth of Massachusetts*, do hereby adopt the following home rule charter for this Town.

1. Editor's Note: The Town's Home Rule Charter was originally adopted 4-29-1985 and amended 5-2-1988, 5-1-1989, 5-4-1992, 4-29-1996, 5-1-2000, 5-2-2005, 5-5-2008, 5-5-2014 and 5-4-2015.

CHAPTER 1

TOWN INCORPORATION, FORM OF GOVERNMENT, AND POWERS**Section 1-1. Incorporation**

1-1-1 The present Town of Wellfleet, within its territorial limits as now or as may hereafter be established by law, is hereby reincorporated and continued as a body corporate and politic with perpetual succession under the name-Town of Wellfleet.

Section 1-2. Form of Government

1-2-1 This document provides for an open town meeting-selectboard-town administrator form of municipal government, and it shall be known by the title: *Wellfleet Home Rule Charter*.

Section 1-3. Scope and Construction of Town Powers

1-3-1 The Town shall possess, exercise, and enjoy all powers possible under the constitution and statutes of the Commonwealth of Massachusetts as completely and fully as though they were expressly enumerated herein.

1-3-2 The powers of the Town under this Charter shall be construed liberally in its favor, and no specific charter grant of particular powers shall limit in any measure the general grant of power under Section 1-3-1.

Section 1-4. Intergovernmental Relations

1-4-1 Consistent with applicable constitutional or statutory provisions, the Town may exercise any of its powers, or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one or more other municipalities, civil divisions, or agencies, of any state or the United States government.

Section 1-5. Continuation of Existing Laws

1-5-1 Massachusetts General Laws (MGL), special acts of the General Court, bylaws, votes, rules, and regulations of, or pertaining to the Town, which are in force when this Charter takes effect and which are not inconsistent with the provision of this Charter, shall continue in full force and effect until amended or rescinded by due course of law or expire by their own limitation.

Section 1-6. Amendment

1-6-1 This Charter may be replaced, revised or amended in accordance with the procedures set forth in the *Home Rule Procedures Act*, MGL Chapter 43B.

Section 1-7. Definitions

1-7-1 Unless another meaning is clearly apparent from the manner in which the word is used, the following words in this Charter shall have the following meanings:

- (a) *Bylaws.* The word "bylaws" shall mean bylaws adopted by the Town.
- (b) *Charter.* The word "Charter" shall mean this charter and any amendments to it made through any of the methods set forth in MGL.
- (c) *Committee.* The word "committee" shall, where the context permits, mean any board, commission or committee, or other multiple-member body of the Town consisting of two or more persons, whether appointed or elected.
- (d) *Day.* In computing time under this Charter, every calendar day shall be counted.
- (e) *Majority Vote.* The words "majority vote" shall mean a majority of those present and voting provided that a quorum of the body is present.
- (f) *Town.* The word "Town" shall mean the Town of Wellfleet.
- (g) *Town agency.* The words "Town agency" shall mean any board, commission, committee, department, agency or office of the Town government.
- (h) *Voters.* The word "voters" shall mean registered voters of the Town of Wellfleet.

**CHAPTER 2
TOWN MEETING**

Section 2-1. Composition, Quorum, and Adjournment

- 2-1-1 The legislative powers of the Town shall be exercised by a town meeting open to all voters of the Town.
- 2-1-2 Inhabitants of the Town and other persons who are not voters shall be admitted to a specially designated section of the auditorium. The Moderator may grant such persons the power to speak on any article.
- 2-1-3 The quorum necessary for the conduct of town meeting business shall be six percent of the currently registered voters of the Town for all sessions of town meeting.
- 2-1-4 At the beginning of each session of each town meeting, the Moderator shall announce the minimum number of voters needed to constitute a quorum.
- 2-1-5 When the number of voters in attendance at a town meeting is determined by the Moderator to be less than the established quorum, the Moderator shall adjourn the meeting to a stated date, time, and place.

Section 2-2. Presiding Officer

- 2-2-1 A Moderator, elected in accordance with Section 4-2, shall preside at all sessions of the Town Meeting.

2-2-2 The Moderator shall enforce procedural rules in accordance with this Charter, MGL, bylaws, and the current edition of *Town Meeting Time*.

2-2-3 The Moderator shall appoint:

- (a) the members and alternate members of the Finance Committee; and
- (b) such members of the Cape Cod Regional Technical High School Committee as may be prescribed.

2-2-4 When the Moderator is unable to preside at a legally called town meeting, the Town Clerk or a member of the Selectboard shall preside for the election of an acting moderator to serve with all the powers of a moderator until the Moderator resumes the duties of the office.

Section 2-3. Special Town Meetings

2-3-1 The Selectboard may call a special town meeting at any time and shall call a special town meeting upon request in writing of two hundred voters of the Town. A special town meeting shall not be held earlier than forty-five days after the date on which the Selectboard votes to schedule the meeting.

2-3-2 A special town meeting shall not be held earlier than fourteen days after the date on which a constable has certified that copies of the Warrant have been posted in two or more public places in the Town, including the Wellfleet Post Office and the South Wellfleet Post Office, and has deposited with the Town Administrator for distribution printed copies of the Warrant, of a number not less than the number of voters of the Town.

Section 2-4. Initiative

2-4-1 Any ten voters of the Town may secure the inclusion of an article in the Warrant of an annual town meeting by submitting a written petition to the Selectboard and filing it with the Town Clerk. At least one hundred voters may secure the same for a special town meeting.

2-4-2 The written petitions submitted under Section 2-4-1 shall be submitted at least sixty days prior to the date of an annual town meeting, and at least thirty-five days prior to the announced date of a special town meeting.

Section 2-5. Powers and Responsibilities

2-5-1 The Town Meeting shall consider and act upon, with or without amendments, all proposed bylaws.

2-5-2 The Town Meeting shall consider and act upon, with or without amendments, all proposed operating, enterprise and capital budgets, bond issues, and other financial proposals of the Town.

2-5-3 The Town Meeting may, through the Selectboard or a duly constituted special committee, investigate the affairs of any Town department, committee, officer, or function.

2-5-4 The Town Meeting shall consider all articles on the Warrant.

Section 2-6. Annual Town Meeting

2-6-1 The Annual Town Meeting shall convene annually on the fourth Monday in April in each year, unless otherwise provided by bylaw or by action of the Selectboard, to act upon annual operating, enterprise and capital budgets, other financial matters, and to consider and act upon such other business as may properly come before the meeting.

2-6-2 All proposed operating expenditures shall be included in a single article and shall be placed first in the Warrant.

2-6-2a A single article shall also be used to present all proposed capital expenditures which do not require a super majority or a capital or debt exclusion vote.

2-6-2b Each enterprise fund budget shall be included in a separate article.

2-6-3 The Warrant for each town meeting incorporating therein the appropriate recommendations, shall be prepared by the Selectboard and made available to residents of the Town at least fourteen days prior to the scheduled date of said town meeting.

2-6-4 The Annual Town Meeting shall not be held earlier than fourteen days after the date on which a constable certifies that copies of the Warrant have been posted in two or more public places in the Town including the Wellfleet Post Office and the South Wellfleet Post Office, and have deposited with the Town Administrator printed copies of the Warrant of a number not less than the number of voters of the Town.

Section 2-7. Procedures

2-7-1 The Selectboard shall include in the Warrant the recommendations of all committees received by the Selectboard in time for inclusion.

2-7-2 Deleted <4-29-2019>.

2-7-3 Deleted <4-29-2019>.

2-7-4 The order of consideration of the articles as printed in the Warrant may be changed only by a two-thirds vote of the Town Meeting.

2-7-5 Town officers, members of committees and department heads, or their duly designated representatives shall attend any town meeting for the purpose of furnishing information, when proposals affecting their particular office, committee, or department are included in the Warrant.

2-7-6 In all procedural matters, the Town Meeting shall follow rules of order as provided by this Charter, MGL, bylaws, and the current edition of *Town Meeting Time*.

Section 2-7

CHARTER

Section 3-2

2-7-7 Rules of parliamentary procedure in simplified form shall be prepared by the Town Clerk in consultation with the Moderator, and shall be made available for distribution to all those requesting them, and to those in attendance at all town meetings.

2-7-8 No person shall speak more than twice on the same question unless authorized to do so by the Moderator.

2-7-9 A motion to reconsider shall only be in order if made within one hour following the vote and at the same session. Such a motion may be made by any voter.

Section 2-8. Town Meeting Committees

2-8-1 All ad hoc committees created by a town meeting shall be appointed by the Moderator, unless the motion establishing such committee shall name the members, provide for their election, or provide for a different appointing authority.

2-8-2 All ad hoc committees created by a town meeting shall make a verbal report at the next town meeting that occurs at least six months after a quorum of the committee is appointed. Such a report shall serve to discharge such committee, unless the Town Meeting shall vote to prolong its existence for a period not exceeding one year. Written copies of such reports shall be submitted to the Town Clerk and to the Town Administrator, and shall be published in the next *Annual Town Report*.

2-8-3 Deleted <4-29-2019>.

2-8-4 Moved to Section 2-8-2 <4-29-2019>.

CHAPTER 3 SELECTBOARD

Section 3-1. The Selectboard

3-1-1 A Selectboard of five members shall be elected for three-year overlapping terms.

3-1-2 Members of the Selectboard shall receive such compensation as may be authorized and appropriated by the Town Meeting.

3-1-3 Vacancies on the Selectboard shall be filled by special election in accordance with the provisions of MGL.

3-1-4 Deleted <4-29-2019>.

Section 3-2. Policy Leadership Responsibilities

3-2-1 Except as otherwise provided by this Charter, all executive powers of the Town shall be vested in the Selectboard. The Selectboard shall have all of the powers and duties given to boards of selectmen under the state constitution and MGL, and such additional powers and duties as may be authorized by this Charter, by bylaw, or by a vote of town meeting.

Section 3-2 WELLFLEET BYLAWS AND REGULATIONS Section 3-5

3-2-2 The Selectboard shall cause the laws for the governance of the Town to be enforced.

3-2-3 The Selectboard shall cause an up-to-date record of all its official acts to be kept.

3-2-4 The Selectboard shall serve as the goal-setting and policy-making agency of the Town. As such, the Board shall regularly direct the Town Administrator in carrying out its goals and policies.

Section 3-3. General Powers, Duties, and Responsibilities

3-3-1 The Selectboard shall have the power to enact rules and regulations and adopt policies for matters not otherwise governed by statute, this Charter, or bylaws, provided, however, that whenever an appropriation shall be necessary to implement such action, the vote of the Board shall be effective only if such appropriation has been authorized by the Town Meeting.

Section 3-4. Powers of Investigation

3-4-1 The Selectboard may conduct investigations and may authorize the Town Administrator or other agent to investigate the affairs of the Town or the conduct of any Town agency, including any doubtful claims against the Town, and for this purpose the Board may subpoena witnesses, administer oaths, take testimony and require the production of evidence. The report of such investigation shall be placed on file in the office of the Town Clerk, and a report summarizing such investigation shall be printed in the next *Annual Town Report*.

Section 3-5. Specific Powers, Duties, and Responsibilities

3-5-1 The Selectboard shall act as the licensing authority of the Town and shall have the power and responsibility required to issue licenses, to make all necessary rules and regulations regarding the issuance of such licenses, and to attach conditions and impose such restrictions as it considers to be in the public interest, and further to enforce, or cause to be enforced the laws, rules, and regulations relating to all business for which it issues licenses.

3-5-2 The Selectboard shall establish a police department and shall appoint a Chief of Police in accordance with MGL Chapter 41, Section 97A.

3-5-3 The Selectboard shall establish a fire department and shall appoint a Fire Chief in accordance with MGL Chapter 48, Sections 42, 43 and 44.

3-5-4 The Selectboard shall be recognized as head of the Town government for all ceremonial purposes.

3-5-5 The Selectboard shall conduct all public hearings between the hours of 5 PM and 11 PM.

Section 3-6. Powers of Appointment

3-6-1 The Selectboard shall have the power to appoint:

- (a) a Town Administrator as provided in Chapter Five of this Charter;
- (b) a Town Counsel;
- (c) a Police Chief;
- (d) a Shellfish Constable; and
- (e) a Fire Chief.
- (f) moved to section 5-4-2 <4-29-2019>
- (g) moved to section 5-4-2 <4-29-2019>
- (h) moved to section 5-4-2 <4-29-2019>
- (i) moved to section 5-4-2 <4-29-2019>
- (j) moved to section 5-4-2 <4-29-2019>

3-6-2 The Selectboard shall also have the power to appoint:

- (a) three members of a four member Board of Registrars of Voters for three-year overlapping terms; the fourth member shall be the Town Clerk by virtue of the office; and
- (b) election officers in accordance with MGL.

3-6-3 The Selectboard shall have the power to appoint:

- (a) five members and four alternate members of a Zoning Board of Appeals;
- (b) five members of a Board of Health, one of whom shall be professionally qualified for the duties of the office, and two alternate members;
- (c) seven members and two alternate members of a Planning Board;
- (d) three members of a Board of Assessors, one of whom shall devote full working time to the duties of the office and shall be professionally qualified for the duties of the office as required by MGL
- (e) seven members and two alternate members of a Conservation Commission;
- (f) four members of a five member Personnel Board;
- (g) five members of a Recreation Committee;
- (h) five members and two alternate members of a Board of Water Commissioners; and
- (i) members of a Local Comprehensive Planning Committee, the number and qualifications for membership of which shall be established by a vote of the Selectboard.

3-6-4 Where no other appointing authority is provided by this Charter, law or vote of the Town Meeting, the Selectboard shall be the appointing authority. The Selectboard shall appoint such other committees as may be in existence on the effective date of this Charter and such other committees as may be hereafter established by this Charter, bylaws or vote of the Town Meeting.

3-6-5 The committees enumerated in Section 3-6-3 and Section 3-6-4 shall be responsible to the Selectboard.

Section 3-7. Prohibitions

3-7-1 Except for the purpose of investigation authorized by this Charter, the Selectboard or its members shall not communicate directly with Town officers or employees who are subject to the direction and supervision of the Town Administrator without the express consent of the Town Administrator and only upon matters so approved. Neither the Selectboard nor its members shall give orders, expressed or implied, to any such officer or employee, either publicly or privately.

3-7-2 Members of the Selectboard shall be ineligible to serve on appointed committees to which the Selectboard is the appointing authority, except as authorized by the vote of the Annual Town Meeting.

CHAPTER 4

OTHER ELECTED TOWN BOARDS AND OFFICERS

Section 4-1. Elected Town Boards

4-1-1 Beginning with the first annual election held after the adoption of this Charter, Town committees to be elected by vote of the Town shall be:

- (a) a Selectboard;
- (b) a School Committee of five members;
- (c) a Board of Library Trustees of six members;
- (d) a Cemetery Commission of three members,

4-1-2 During the term for which a member is elected, and for one year following expiration of such term, no member of any elected committee under this Charter shall be eligible to accept any paid position under such committee or in the same department.

4-1-3 Vacancies on committees, established under Chapter 4 of this Charter and appointed by the Selectboard, except the Selectboard, shall be filled in accordance with the provisions of MGL Chapter 41, Section 11.

Section 4-2. Elected Officers

4-2-1 The following Town officers shall be elected by vote of the Town:

- (a) A Moderator, for a one-year term.
- (b) Two Constables for three-year terms.
- (c) A representative to the Nauset Regional School Committee, for a three-year term.

4-2-2 Vacancies shall be filled in accordance with the provisions of MGL.

Section 4-3. Duties of Elected Boards and Officers

4-3-1 In addition to the powers and duties prescribed by MGL, this Charter and bylaws, Town officers designated in Section 4-2-1, and committees designated in Section 4-1-1, which have independent authority to make appointments to paid positions shall:

- (a) cause to be written, approve, sign, and file with the Town Administrator, job descriptions of all paid positions under their direction; and
- (b) provide all information requested by the Town Administrator and Finance Committee relating to the preparation of the annual operating budgets, the capital budget and the capital improvement plan.
- (c) Deleted <4-29-2019>.

CHAPTER 5

THE TOWN ADMINISTRATOR

Section 5-1. Appointment

5-1-1 The Selectboard, by an affirmative vote of at least four members, shall appoint a Town Administrator for an indefinite term to serve at its pleasure. The Selectboard shall, by majority vote, set contract terms and a compensation package for the Town Administrator.

5-1-2 In the event of vacancies on the Selectboard, the absence, or the inability to act, of not more than two members thereof, the remaining three members shall, by majority vote, make an interim Town Administrator appointment for a period not to exceed ninety days. Any person so appointed shall be eligible to be considered for appointment as Town Administrator.

5-1-3 In selecting a Town Administrator, the Selectboard shall search for candidates by placing an advertisement in the International City Management Association Newsletter or similar professional publication and in at least two newspapers having statewide or regional circulation.

Section 5-2. Qualifications

5-2-1 The Town Administrator and interim Town Administrator shall be appointed on the basis of educational, executive and administrative qualifications and experience. The

educational qualifications shall consist of at least a Bachelor's Degree, preferably in Public Administration, granted by an accredited, degree-granting college or university.

The professional experience shall include at least five years of prior, full-time, compensated, executive service in public or business administration. Alternatively, two years or more of professional experience and a Master's Degree in an appropriate discipline shall qualify any applicant.

Section 5-3. Duties

5-3-1 The Town Administrator shall be the chief administrative officer of the Town and shall be responsible for the direction and supervision of all employees, activities and departments placed by MGL, this Charter or bylaws under the control of the Selectboard.

5-3-2 The Town Administrator shall devote full working time to the duties of the office; shall not become a candidate for, or hold, any elected office while employed by the Town; and shall not engage in any business activity, except with the written consent of the Selectboard. The Town Administrator shall:

- (a) attend all meetings of the Selectboard, except when excused, and shall have the right to speak but not to vote;
- (b) assemble, prepare and present to the Selectboard and the Finance Committee all annual operating, enterprise and capital budgets of the Town and be responsible for the development and annual revision of the Capital Improvement Plan;
- (c) be responsible for seeing that the budget is administered as adopted by the Town Meeting and in accordance with MGL, this Charter, and bylaws;
- (d) keep the Selectboard fully informed regarding all departmental operations, fiscal affairs, general problems, and administrative actions, and to this end shall submit periodic reports to the Selectboard;
- (e) keep the Selectboard informed regarding the availability of federal, state and county funds and how such funds might relate to unmet long-range needs;
- (f) prepare applications for grants;
- (g) be responsible for the day-to-day administration of the Town's personnel system, in accordance with the Personnel Bylaw;
- (h) act as the chief procurement officer for the Town and be responsible for the purchasing for all Town functions and departments, except those for the School Department;
- (i) inform the Selectboard regarding vacancies in Town offices and committees to be filled by the Selectboard and inform the Selectboard when there are vacancies in departments under the supervision and control of the Town Administrator;
- (j) coordinate the activities among committees concerned with municipal planning, including the physical, economic, and environmental development of the Town;

- (k) develop, keep, and annually update a full and complete inventory of all property of the Town, both real and personal;
- (l) cause copies of the Warrant incorporating the recommendations thereto for all Town Meetings to be mailed to each voter's postal address at least fourteen days prior to each Town Meeting and to cause copies of the Warrant incorporating the recommendations thereto to be made available in at least two public places in the Town of Wellfleet, including the Wellfleet Post Office and the South Wellfleet Post Office at least fourteen days prior to Town Meeting; and
- (m) Deleted <4-29-2019>
- (n) perform such other duties as may be required by this Charter, bylaws, or vote of the Selectboard.
- (o) consult with the Board of Water Commissioners and implement when necessary any of their decisions concerning the Department of Public Works' function in relation to the Town's Municipal Water System.

Section 5-4. Responsibilities for Appointments

5-4-1 The Town Administrator shall appoint and, except as may otherwise be provided by MOL, this Charter, the Personnel Bylaw, or collective bargaining agreements, may suspend or remove any full-time, part-time or seasonal employees and inspectors, except those subject to Section 5-4-2 and those of the Library Trustees, Police Department, Fire Department and the School Committee.

5-4-2 Subject to disapproval by the Selectboard within fourteen days of notice of the proposed appointment by the Town Administrator, the Town Administrator shall also have the power to appoint and, except as may otherwise be provided by MOL, this Charter, the Personnel Bylaw, contract or collective bargaining agreement, may suspend or remove:

- (a) directors and department heads;
- (b) the Town Accountant;
- (c) the Harbormaster;
- (d) the Herring Warden;
- (e) the Assistant Town Administrator;
- (f) the Town Clerk;
- (g) the Town Treasurer; and
- (h) the Town Collector.

5-4-3 Notwithstanding any provision of this Charter, MGL, or bylaws to the contrary, one person may be appointed to serve as both Town Treasurer and Town Collector, and in such instance this shall be deemed to be a single position.

Section 5-5. Responsibilities for Personnel Administration

5-5-1 The Town Administrator shall administer and enforce the Personnel Bylaw, Selectboard policies, collective bargaining agreements and bylaws.

5-5-2 The Town Administrator shall cause to be written, approve, sign, and maintain in an up-to-date file the job description of all appointed positions under the direction of the Selectboard or Town Administrator. The Town Administrator shall maintain in said file an up-to-date listing of approved job descriptions of all appointed positions under the direction of other elected officers and committees.

Section 5-6. Responsibilities for Administrative Reorganization

5-6-1 The Town Administrator may, with the approval of the Selectboard, establish, reorganize, consolidate, or abolish any positions under the Town Administrator's direction and supervision, except as otherwise provided by MGL and this Charter.

Section 5-7. Department of Public Works

5-7-1 Deleted <4-29-2019>

Section 5-8. Removal

5-8-1 The Selectboard may initiate the removal of the Town Administrator by adopting a resolution to that effect, stating the reasons therefor, provided that no such resolution shall be adopted within sixty days following any Town election that has resulted in a change in the incumbents on the Board.

5-8-2 The adoption of said resolution shall serve to suspend the Town Administrator for a period of not more than forty-five days, during which the salary shall continue to be paid. A copy of the resolution shall be delivered forthwith to the Town Administrator in person, or sent by registered mail to the Town Administrator's place of residence.

5-8-3 Within ten days following the adoption of such resolution, the Town Administrator may file a written request for a hearing. If such a hearing is requested, the Selectboard shall schedule it within three weeks of such filing. The Selectboard shall advertise the hearing in a newspaper of local or regional circulation and shall cause notices citing the purpose, location, time, and date to be posted in the Town Hall and in two or more public places in the Town including the Wellfleet Post Office and the South Wellfleet Post Office.

5-8-3-1 The Moderator, or a person designated by the Moderator, shall preside at any such hearing.

5-8-3-2 At any such hearing, the reasons for the removal shall first be read aloud. The Town Administrator shall then have the right to respond, either personally or through counsel. The Selectboard and the Town Administrator shall have the right to call witnesses and to subpoena any and all Town records.

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5-8-4 Final removal of any Town Administrator shall be effected by the affirmative vote of at least three members of the Selectboard at an open public meeting of the Selectboard held within seven days of the Town Administrator's requested public hearing, pursuant to Section 5-8-3. If no hearing has been requested, final removal may be effected by an affirmative vote of at least three members of the Selectboard held not earlier than fourteen days after the vote initiating the removal. The salary of the Town Administrator shall continue to be paid for a period of thirty days after the vote effecting removal from office, unless otherwise provided for by contract.

5-8-5 The Town Administrator shall provide the Selectboard with at least ninety days notice of an intended resignation, provided, however, that the Selectboard may, at its discretion, shorten or waive such requirement.

Section 5-9. Filling Vacancy

5-9-1 When a vacancy arises in the office of the Town Administrator, the Selectboard shall begin the search process for a replacement within fourteen days and proceed to fill the vacancy as soon as possible.

Section 5-10. Acting Town Administrator

5-10-1 The Selectboard may designate a Town employee or other person to exercise the rights and perform the duties of the Town Administrator during any vacancy caused by temporary absence, suspension, removal, resignation or death. The appointment shall be for a period not to exceed ninety days, and it may be renewed, for additional periods not to exceed ninety days each.

CHAPTER 6

ELECTION AND RECALL

Section 6-1. Town Elections

6-1-1 The regular election for all Town officers shall be by official ballot held on the first Monday after the fourth Monday in April each year.

6-1-2 All MGL provisions with regard to Town elections shall apply, except as may herein be provided by this Charter.

Section 6-2. Town Elections Nonpartisan

6-2-1 All Town elections shall be nonpartisan, and election ballots shall be printed without any party mark, emblem, vignette, or designation whatsoever.

Section 6-3. Eligibility of Town Voters

6-3-1 Any voter of the Town shall be eligible for election to any elected office or committee of the Town, provided however that no person shall be a candidate for or hold, concurrently, more than one paid elected Town office.

Section 6-4. Time of Taking Office

6-4-1 Any person duly elected to any office or committee shall take up the duties of office immediately following certification and having been sworn to the faithful performance of the duties of the office by the Town Clerk.

Section 6-5. Recall of Elected Officers

6-5-1 Any holder of an elected office may be recalled by the voters as herein provided.

6-5-2 Any twenty-five voters may file with the Town Clerk an affidavit containing the name of the officer sought to be recalled and a statement of the grounds for recall. The Town Clerk shall thereupon issue to said voters copies of petition blanks demanding such recall. The blanks shall be issued with the Town Clerk's signature and official seal attached. They shall be dated, and shall contain the names of the persons to whom they are issued, the name of the person whose recall is sought, the grounds for recall as stated in the affidavit, and shall demand the election of a successor to the said office.

6-5-2a The recall petition shall be returned to the Town Clerk within twenty days after the date on the petition blanks, signed by at least twenty percent of the voters, who shall add to their signatures the addresses of their residences.

6-5-3 A copy of the petition shall be entered in the Town records.

6-5-4 The Town Clerk shall, within twenty-four hours of receipt, submit the petition to the Registrars of Voters of the Town who shall forthwith certify thereon the number of signatures which are names of voters.

6-5-5 If the petition is found to be sufficient, the Town Clerk shall issue a certificate so stating and shall submit the certificate to the Selectboard. The Selectboard shall forthwith give written notice of the receipt of the certificate to the officer sought to be recalled. If the officer does not resign within five days thereafter, the Selectboard shall order an election to be held on a date fixed by them not less than sixty-four nor more than eighty days after the date on the Town Clerk's certificate that a sufficient petition has been filed. However, if any other Town election is to occur within ninety days after the date of the certificate, the Selectboard shall postpone the holding of the recall election to the date of such other election.

6-5-6 Any officer whose recall is sought may not be a candidate to succeed to the same office. The nomination of candidates, the publication of the Warrant for the recall election, and the conduct of the same, shall all be in accordance with the provisions of MGL relating to elections, and the election to replace the officer sought to be removed shall be held on the same day as the recall election.

6-5-7 The incumbent shall continue to perform the duties of office until the recall election. If not recalled, the incumbent shall continue in office for the remainder of the unexpired term, and shall not again be subject to recall during that term of office. If recalled, the incumbent shall be deemed removed upon the qualification of a successor who shall hold office during the unexpired term. If a successor fails to be sworn in within five days after receiving notification of election, the incumbent shall thereupon be deemed removed and the office vacant.

6-5-8 The form of the question to be voted upon shall be substantially as follows: "Shall [here insert the name and title of the elected officer whose recall is sought] be recalled?" The action of the voters to recall shall require a majority vote, but shall not be effective unless the total of those voting for and against recall shall exceed thirty percent of the voters of the Town.

6-5-9 No person having been recalled or having resigned from office while recall proceedings were pending shall be appointed to any Town office within two years following said recall or resignation.

CHAPTER 7

FINANCIAL PROVISIONS AND PROCEDURES

Section 7-1. Finance Committee

7-1-1 A Finance Committee of nine members and two alternates shall be appointed by the Moderator for three-year overlapping terms with the approval by vote of the Town Meeting.

7-1-2 Any person duly appointed to the Finance Committee shall take up the duties of the office upon final adjournment of the Annual Town Meeting, after having been sworn to the faithful performance of the duties of the office by the Town Clerk.

7-1-3 Vacancies on the Finance Committee shall be filled by the Moderator within thirty days on an interim basis. Such appointments shall be approved by vote of the next Special or Annual Town Meeting. Any person appointed to fill out an unexpired term shall take up the duties immediately after being sworn to the faithful performance of the duties of the office by the Town Clerk.

7-1-4 No member of the Finance Committee shall hold any other Town office, except that of a member of the Personnel Board, unless appointment to another Town office is specifically authorized by the Moderator.

Section 7-2. Submission of Budget and Budget Message

7-2-1 On or before the thirty-first of October of each year, the Selectboard shall prepare and issue a policy statement relating to the budget for the ensuing fiscal year. The statement shall recommend the outer limits of possible budget growth for all municipal departments. The policy statement shall be sent to all officials responsible for preparing budget requests. A copy of the statement shall be filed with the Town Clerk.

7-2-2 On or before the thirty-first of October of each year, the Selectboard and the Finance Committee shall set a date by which the Town Administrator shall submit to them the comprehensive budget for all Town functions for the ensuing fiscal year and an accompanying budget message, unless otherwise provided by MGL or bylaws.

7-2-3 The message shall explain the budget both in fiscal terms and in terms of work programs and shall be filed with the Town Clerk when issued. It shall:

- (a) outline the proposed financial policies of the Town for the ensuing fiscal year;
- (b) describe the important features of the budget;
- (c) indicate any major changes from the current year in financial policies; expenditures, and revenues, together with the reasons for such changes;
- (d) summarize the Town's debt position; and
- (e) include such other material as may be deemed appropriate.

7-2-4 The budget shall provide a complete financial plan for all Town funds and activities and shall be in such form as the Finance Committee may require. It shall indicate proposed expenditures for both current operations and capital projects during the ensuing year, detailed by departments, offices, committees, and purposes.

Section 7-3. Action on Proposed Budget - Repealed 4/30/13

Section 7-4. Budget Adoption

7-4-1 The Town Meeting shall adopt the budget, with or without amendments, prior to the beginning of the fiscal year.

Section 7-5. Capital Improvement Plan

7-5-1 The Town Administrator shall, after consultation with members of the Finance Committee, prepare a five year *Capital Improvement Plan* in a form approved by the Finance Committee, consistent with standards established by the Finance Committee. The Plan shall include:

- (a) a clear summary of its contents;
- (b) a list of all capital improvements proposed to be undertaken during the next five fiscal years, together with supporting data;
- (c) cost estimates, methods of financing, and recommended time schedules; and
- (d) the estimated annual cost of operating and maintaining the facilities to be constructed or acquired. The information may be revised and shall be extended each year with regard to capital improvement spending or in the process of construction or acquisition.

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7-5-2 The *Capital Improvement Plan* shall be submitted to the Finance Committee and the Selectboard not later than the first of October. Within sixty days the Finance Committee shall prepare and submit a report and its recommendations on the *Capital Improvement Plan* to the Town Administrator and the Selectboard. A copy of the report shall be filed with the Town Clerk.

7-5-3 The Finance Committee shall publish, in one or more newspapers of general circulation in the Town, a general summary of the *Capital Improvement Plan* and a notice stating:

- (a) the times and places where copies of the *Capital Improvement Plan* are available for inspection; and
- (b) the date, time, and place, not less than seven days following such publication, when the Committee shall conduct a public hearing on said plan.

Section 7-6. Deleted content moved to 7-5-3 <4-29-2019>

Section 7-7. Annual Audit

7-7-1 At least thirty days before the end of each fiscal year, the Selectboard shall retain a certified public accountant or an accounting firm to make an audit of all accounts, books, records, and financial transactions of every department and committee, including the School Department.

7-7-2 A copy of every auditor's report shall be filed with the Town Clerk and shall be a public record. A summary thereof shall be published in the next *Annual Town Report*.

Section 7-8. Limit on Spending

(subsection 7-8-1 deleted as of 4/29/96)

CHAPTER 8

TOWN COMMITTEES APPOINTED BY THE SELECTBOARD

Section 8-1. Board of Health

8-1-1 Moved to Section 3-6-3(b) <4-29-2019>

8-1-2 The Board of Health shall exercise such public health functions as may be prescribed by MGL, this Charter, and bylaws.

Section 8-2. Personnel Board

8-2-1 A Personnel Board of five members shall be appointed for three-year overlapping terms. Four members shall be appointed by the Selectboard and one member shall be appointed by the Finance Committee from its own membership. It shall consult from time to time with the Town Administrator on matters of personnel policy, practices and bylaws. It shall annually review the existing Personnel Bylaw and recommend to the

Section 8-2 WELLFLEET BYLAWS AND REGULATIONS Section 8-6A

Town Meeting such changes as it deems advisable in accordance with MGL, this Charter and bylaws.

Section 8-3. Board of Assessors

8-3-1 Moved to Section 3-6-3(d) <4-29-2019>.

8-3-2 The Board of Assessors shall exercise such powers and duties as are prescribed by MGL, this Charter, and bylaws.

Section 8-4. Zoning Board of Appeals

8-4-1 Moved to Section 3-6-3(d) <4-29-2019>.

8-4-2 The Zoning Board of Appeals shall exercise such powers and duties as are prescribed by MGL, this Charter, and bylaws.

Section 8-5. Recreation Committee

8-5-1 Moved to Section 3-6-3(g) <4-29-2019>.

8-5-2 The Recreation Committee shall be responsible for advising the Recreation Director about the planning and managing of recreational programs and the physical facilities used by them.

Section 8-6. Planning Board

8-6-1 Moved to Section 3-6-3(c) <4-29-2019>.

8-6-2 The Planning Board shall make recommendations to the Town Meeting and to the Town Administrator on all matters concerning the physical, economic, and environmental development of the Town.

8-6-2a The Planning Board shall exercise such powers and duties as are prescribed by MGL, this Charter, and bylaws.

8-6-3 Deleted <4-29-2019>

8-6-5 The Town Administrator may appoint one or more members of a planning staff, provided that funds have been appropriated for that purpose. Any staff so appointed shall be professionally qualified by reason of education, training, and experience.

8-6-5 Any staff, if appointed, shall provide services to the Planning Board but shall be under the day-to-day supervision of the Town Administrator.

Section 8-6A. Local Comprehensive Planning Committee

8-6A-1 The Local Comprehensive Planning Committee shall be responsible for the development and periodic updating of the Local Comprehensive Plan which shall also

serve as the master plan. A summary of said plan shall be submitted to the Town Meeting, which shall vote to adopt the summary, with or without amendments. After the summary has been acted on by the Town Meeting, the Planning Board shall consider the plan in making recommendations to the Town. The Committee shall report annually to the Town on the status of the master plan.

Section 8-7. Conservation Commission

8-7-1 Moved to Section 3-6-3(e) <4-29-2019>

8-7-2 The Conservation Commission shall exercise such powers and duties as prescribed by MGL, this Charter, and bylaws.

Section 8-8. Board of Water Commissioners

8-8-1 Moved to Section 3-6-3(h) <4-29-2019>

8-8-2 The Board of Water Commissioners shall have charge and control of all Wellfleet Municipal Water System subject to bylaws and requirements approved by a vote of the Town Meeting. The Board of Water Commissioners shall have all the powers, responsibilities and authority of boards of selectmen acting as water commissioners or to an elected board of water commissioners, granted by MGL except that the Board of Water Commissioners shall not have the powers of eminent domain nor be able to enter into contracts.

8-8-3 The Board of Water Commissioners shall establish, maintain and enforce the *Wellfleet Municipal Water System Rules and Regulations*

8-8-4 The Board of Water Commissioners, after consultation with the Town Administrator, shall choose and direct a well-qualified, licensed agent to monitor and implement the Municipal Water System. Any function related to the Municipal Water Systems to be performed by the Department of Public Works shall be assigned only through the Town Administrator.

8-8-5 Notwithstanding the provisions of Section 5-3-2(h) of this Charter, except under emergency conditions, no contract relating to the Town's Municipal Water System shall be executed without prior approval of the Board of Water Commissioners.

8-8-6 The Board of Water Commissioners shall:

- (a) correspond with federal, state or county agencies relating to the Town's Municipal Water System unless prohibited by contractual or statutory provisions;
- (b) review all other correspondence with federal, state or county agencies relating to the Town's Municipal Water System; and
- (c) receive copies of all correspondence from these agencies relating to the Town's Municipal Water System as soon as they are received by any Town official or committee.

Correspondence from the Board of Health is exempt from these provisions.

8-8-7 The Board of Water Commissioners shall be responsible for long-range planning for the provision of municipal water services. The Board shall prepare any long-range plans or management plans for the Municipal Water System required by the Massachusetts Department of Environmental Protection. The Board of Water Commissioners shall consult with the Selectboard, the Board of Health, the Conservation Commission, the Planning Board and the Town Administrator in the preparation of any long-range plans. Any long-range plan shall be filed with the Town Clerk. Any costs relating to the preparation of these plans may be included in the operating costs of the Wellfleet Municipal Water System or the Board may request an appropriation from the Town Meeting.

Section 8-9. Other Town Boards

8-9-1 Deleted <4-29-2019>

CHAPTER 8A TOWN COMMITTEES, GENERAL PROVISIONS

Section 8A-1. General Provisions

- 8A-1-1 All committees of the Town shall organize annually and elect a presiding officer and other necessary officers.
- 8A-1-2 All committees shall conduct their meetings in accordance with the provisions of this Charter, bylaws and MGL.
- 8A-1-3 During the term for which a member is appointed and for one year following expiration of such term, no member of any appointed committee, with the exception of a member of the Board of Assessors pursuant to Section 3-6-3(d), shall be eligible to accept any paid position under such committee or in the same department.
- 8A-1-4 Any person duly appointed to any office or committee shall take up the duties of the office immediately after having been sworn to the faithful performance of the duties of the office by the Town Clerk.
- 8A-1-5 The absence of a member from four consecutive meetings of a committee shall serve to vacate the office, provided, however, that this provision shall not apply where said consecutive meetings occur within the same thirty day period. When such a vacancy has been created, the chairperson shall advise the appointing authority forthwith.
- 8A-1-6 Appointed regulatory committees shall conduct all public hearings between the hours of 5 p.m. and 11 p.m.
- 8A-1-7 No person shall serve simultaneously as a member of more than one of the following committees: Conservation Commission, Board of Health, Planning Board, Zoning Board of Appeals or the Board of Water Commissioners.
- 8A-1-8 When a committee as established by this Charter, by MGL or any other provision, includes alternate members, the chair of said committee may designate any alternate member to sit on the committee in the case of absence, inability to act, conflict of

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interest on the part of any member thereof, or in the event of a vacancy, until said vacancy is filled.

8A-1-9 Alternates may serve on working groups established by a committee for any legal purpose.

CHAPTER 9
TRANSITIONAL PROVISIONS

Deleted 4-23-2019

DIVISION 1

BYLAWS

PART I

**ADMINISTRATIVE
LEGISLATION**

Chapter 1
GENERAL PROVISIONS

ARTICLE I
Penalties and Enforcement

§ 1-1. Noncriminal enforcement of bylaws and regulations.

ARTICLE II
Bylaws

§ 1-2. Repeal or amendment at Town Meeting.

§ 1-3. Repeal of prior bylaws.

§ 1-4. Codification.

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

ARTICLE I
Penalties and Enforcement
[Adopted as Art. IX of the General Bylaws]

§ 1-1. Noncriminal enforcement of bylaws and regulations.

- A. Non-criminal disposition to be an alternative method of enforcement.
- B. Any bylaw of the Town of Wellfleet, or rule or regulation of its boards, committees and commissions, the violation of which is subject to a specific penalty, may, in the discretion of the Town Official who is the appropriate enforcing person, be enforced in the method provided in MGL c. 40, § 21D. "Enforcing person," as used in this chapter of the MGL, shall include but not necessarily be limited to any Police Officer, the Fire Chief, the Building Inspector, the Shellfish Constable, or Assistant Shellfish Constable, the Harbormaster or Assistant Harbormaster, the Health/Conservation Agent and any other officials the Selectboard may from time to time designate, with respect to the enforcement of said bylaws or otherwise designated by law. If more than one official has jurisdiction in a given case, any official having said jurisdiction may be the enforcing person.

ARTICLE II
Bylaws
[Adopted as Art. VIII of the General Bylaws]

§ 1-2. Repeal or amendment at Town Meeting.

Any of the foregoing bylaws may be repealed or amended ONLY at a Town Meeting under an article in the Warrant for this purpose.¹

1. Editor's Note: Former Sec. 2 of the original bylaw, which immediately followed this section, was repealed.

§ 1-3. Repeal of prior bylaws.

All bylaws or parts of bylaws inconsistent herewith are hereby repealed, including all bylaws accepted and adopted at the Annual Town Meeting of February 13, 1935, upon the approval of the bylaws adopted herewith.

§ 1-4. Codification. [Added 4-28-2015 ATM by Art. 30]

The Town Clerk shall hereby be authorized to assign appropriate numbers to bylaw sections, subsections, paragraphs and subparagraphs, where none are approved by Town Meeting, and, if such are approved by Town Meeting, after consultation with the Town Administrator, to make non-substantive, editorial revisions to ensure consistent and appropriate sequencing and numbering, provided that such editorial revisions shall be identified by a footnote or other convention.

Chapter 7

ADMINISTRATION OF GOVERNMENT

§ 7-1. Signature authority.

§ 7-4. Policies and plans requiring regional or state certification.

§ 7-2. Town Seal.

§ 7-3. Annual reports.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. III, Secs. 1, 2, 4 and 14, of the General Bylaws. Amendments noted where applicable.]

§ 7-1. Signature authority.

All deeds, conveyances, leases, discharges or mortgages, bonds, agreements, contracts or other instruments which shall be given by the Town and which to be valid in law are required to be signed, sealed and acknowledged shall, unless other provision is or may be made by law or special vote of a Town Meeting, be signed and acknowledged by the Selectboard on behalf of the Town and shall be sealed by the Town Clerk with the common seal of the Town.

§ 7-2. Town Seal.

The seal of the Town shall be circular in form in the margin the words: "Town of Wellfleet, Incorporated 1763". The device shall represent the first visit of the Pilgrims to Wellfleet Bay; in the foreground are seen the natives and grampus on the beach; approaching from the left the shallop of the Pilgrims and in the background the wooded hills and the date "1620".

§ 7-3. Annual reports.

- A. The Selectboard shall annually, not less than two weeks before the Annual Town Meeting, cause to be printed and distributed among the taxpayers and voters of the Town a detailed report of the receipts and expenditures from the books of the Town Treasurer during the preceding year with such other information and recommendations as they may deem proper, with detailed estimates of the amounts of money which will be required for the current financial year, combined with reports of all various Town offices, and when practicable the reports of all committees appointed by the Town, together with the Warrant for said Town Meetings held during the previous Town year.
- B. All officers and committees of the Town shall file with the Selectboard not later than January 5 their annual reports.

§ 7-4. Policies and plans requiring regional or state certification.

No Policy or Management Plan for the Town shall be submitted for regional or state certification without:

- A. The review and approval of the Town Board or committee designated by Town Meeting, if any; and
- B. Approval by a 2/3 vote of Town Meeting.

Chapter 13

BOARDS, COMMISSIONS AND COMMITTEES

**ARTICLE I
General Provisions**

**ARTICLE II
Council on Aging Advisory Board**

§ 13-1. Notification of election or appointment.

§ 13-2. Name and composition.

§ 13-3. Responsibilities.

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

ARTICLE I

General Provisions

[Adopted as Art. III, Sec. 6, of the General Bylaws]

§ 13-1. Notification of election or appointment.

All persons, committees, boards, and officers who are elected at a Town Meeting or the annual Town Election, or appointed by Town authority, shall be notified by the Town Clerk, and sworn in before assuming the duties of their offices.

ARTICLE II

Council on Aging Advisory Board

[Adopted as part of the General Bylaws]

§ 13-2. Name and composition.

There shall be a board known as the "Council on Aging Advisory Board" consisting of 11 residents of the Town of Wellfleet appointed by the Selectboard. Appointments shall be for a term of three years, except that initial appointments shall be for shorter terms to insure that the terms of 1/3 of the Board members expire each year thereafter.

§ 13-3. Responsibilities.

The Board shall, in consultation with the Director of Community Services:

- A. Identify the over sixty-year-old population of the Town of Wellfleet that are eligible for services;
- B. Ascertain the needs of this segment of the population;
- C. Educate the community about these needs;
- D. Enlist the support and participation of all citizens in programs to meet these needs;

- E. Assist the Wellfleet Director of Community Services to design, develop and implement services to fill those needs and/or enhance existing services; and
- F. Support and advocate for Council on Aging programs and budget with the Town administration and Selectboard.

Chapter 19
CLIMATE POLICY

**§ 19-1. Policy and intent;
implementation.**

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet 9-12-2020 ATM by Art. 35 (Art. VII, Sec. 39, of the General Bylaws). Amendments noted where applicable.]

§ 19-1. Policy and intent; implementation.

The Town of Wellfleet recognizes that the climate emergency, driven by human activity including energy consumption and land use practices and leading to global warming, rising seas, deadly storms, dangerous heat waves, acidifying oceans, and melting ice sheets, poses an imminent threat to the health, safety, and economic security of the residents of the Town. The Town of Wellfleet therefore adopts as its policy the objective of reducing net greenhouse gas emissions from human activity within and by the Town to zero at the earliest technically and economically feasible time, but no later than 2050, and directs that all officers, departments, committees, and representatives of the Town take such measures within the scope of their respective responsibilities and authority as may be necessary and prudent to facilitate such policy and objective.

Chapter 25
FINANCES

ARTICLE I
General Provisions

- § 25-1. Financial year.
- § 25-2. Warrant required for payments.
- § 25-3. Designate of appropriations.
- § 25-4. Bond required for financial officers.
- § 25-5. Payment of fees to treasury.
- § 25-6. Town Collector.

ARTICLE II
Tax Title Payment Plans

- § 25-7. Authority to enter into agreements; terms.
- § 25-8. Applicability.
- § 25-9. Conditions.
- § 25-10. Agreement requirements.
- § 25-11. Credits.

§ 25-12. Foreclosure deferred.

ARTICLE III
Affordable Housing Trust

- § 25-13. Purposes.
- § 25-14. Tenure of Trustees and appointment.
- § 25-15. Meetings of the Trust.
- § 25-16. Powers of Trustees.
- § 25-17. Acts of Trustees.
- § 25-18. Status of Trust and Board of Trustees.
- § 25-19. Custodian of funds.
- § 25-20. Funds paid to the Trust.
- § 25-21. Taxes.
- § 25-22. Duration of the Trust.
- § 25-23. Compensation of Trustees.
- § 25-24. Annual report.

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

ARTICLE I
General Provisions

[Adopted as Art. III, Secs. 3, 5, 9 through 11 and 13, of the General Bylaws]

§ 25-1. Financial year.

The financial year of the Town shall begin on the first day of July in each year and end with the last day of June following.

§ 25-2. Warrant required for payments. [Amended 4-23-2018 ATM by Art. 32]

No money shall be paid from the Town Treasury without a warrant or order therefor directed to the Treasurer. Such warrant or order shall be signed by a majority of the Selectboard or by a member designated by the Selectboard pursuant to MGL c. 41, § 56. No money granted for special purpose shall be applied to any other use, unless by a vote of the Town, and no orders shall be drawn upon the Treasurer for any purpose not authorized by a vote of the Town or

by the statutes of the Commonwealth. The orders drawn against any appropriation shall not exceed the same.

§ 25-3. Designate of appropriations.

Every order for payment of money shall designate the appropriation against which the same is drawn.

§ 25-4. Bond required for financial officers.

All persons collecting monies for the Town of Wellfleet of having Town money in their care shall be bonded and the Town shall bear the cost of all surety bonds.

§ 25-5. Payment of fees to treasury.

All fees that the Town Clerk and Tax Collector are lawfully authorized to collect by virtue of their offices shall be collected and paid into the Town Treasury within 30 days of receipt.

§ 25-6. Town Collector.

- A. Pursuant to MGL c. 41, § 38A, the Tax Collector shall be designated as the Town Collector with the duty, in addition to those as Tax Collector, under the title of Town Collector to collect all accounts due the Town as provided by said statute.
- B. The Town Collector shall, in the collection of such accounts, have all the remedies provided by MGL c. 60, §§ 35, 36 and 93 for the collection of taxes on personal estate.
- C. All bills for accounts due the Town shall state that all checks, drafts or money orders shall be made payable to or to the order of the Town and not to or to the order of any officer, board or commission.
- D. This section shall not apply to the collection of interest on investments of sinking or trust funds.

ARTICLE II

**Tax Title Payment Plans
[Adopted as part of the General Bylaws]**

§ 25-7. Authority to enter into agreements; terms.

Pursuant to the provisions of MGL c. 60, § 62A, the Treasurer shall have the authority to enter into written payment agreements with every person entitled to redeem ownership of parcels in tax title which have been taken by the Town as a result of nonpayment of real estate taxes. The payment agreement shall be executed on such terms and conditions for payment of the delinquent taxes, interest and any other costs, fees or charges associated with same, in accordance with MGL c. 60, § 62A and this bylaw. The Treasurer shall not refuse to enter into agreements with eligible taxpayers.

§ 25-8. Applicability.

This bylaw shall apply to all taxpayers with parcels in the following assessment categories of real property in the Town:

- A. Commercial property;
- B. Residential property;
- C. Industrial; and
- D. Open space.

§ 25-9. Conditions.

The following conditions must be met prior to the Town entering into all payment agreements:

- A. The Town has not filed a petition to foreclose the rights of redemption with the Land Court, and the recording date of the Instrument of Taking recorded in the Barnstable Registry of Deeds must be no more than 10 years from the date of the proposed agreement; and
- B. All real estate taxes due for the current fiscal year assessed against the parcel must be paid to date.

§ 25-10. Agreement requirements.

All payment agreements shall comply with the following minimum requirements:

- A. The payment agreement shall have a maximum term of no more than five years;
- B. The payment agreement may include a waiver of up to 50% of the interest that has accrued in the tax title account, but only if the taxpayer complies with the terms of the agreement (no taxes or collection costs may be waived); and
- C. The payment agreement must state the amount of the payment due from the taxpayer at the time of execution of the agreement, which must be at least 25% of the amount needed to redeem the parcel at the inception of the agreement. The taxpayer must then agree to pay the remaining balance due to the Town in equal monthly installments.

§ 25-11. Credits.

After the Town has received 75% of the total amount due, the taxpayer shall be entitled to a credit equal to 25% of the accrued interest on the tax title account. This credit shall be applied against the final installment payment(s) due under the payment agreement.

§ 25-12. Foreclosure deferred.

During the term of the agreement, the Treasurer may not bring an action to foreclose the tax title unless payments are not made in accordance with the schedule set out in the payment

agreement or timely payments are not made on other amounts due to the Town that constitute a lien on the same parcel.

ARTICLE III

Affordable Housing Trust

[Adopted 6-26-2021 ATM by Art. 44]

§ 25-13. Purposes.

The purpose of the Affordable Housing Trust shall be to provide for the creation, preservation, and support of affordable housing in the Town of Wellfleet (the "Town") for the benefit of low- and moderate-income households and for the funding and support of community housing as defined in and in accordance with the provisions of Massachusetts General Laws Chapter 44B ("Chapter 44B"), and, in furtherance of this purpose, to acquire by gift, purchase, or otherwise, real estate and personal property, both tangible and intangible, of every sort and description; to use such property, both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose; provided, however, that all property comprising this Trust and the net earnings thereof shall be used only in the Town exclusively for the benefit of all of the inhabitants of the Town for the creation and preservation of affordable housing therein. The Trust is authorized to provide for, fund and support low- and moderate-income households earning up to 120% of the Area Median Income.

§ 25-14. Tenure of Trustees and appointment.

- A. The Trustees hereunder shall be appointed by the Selectboard. One of the Trustees shall be a member of the Selectboard. Trustees shall serve for a term not to exceed two years. Trustees may be reappointed at the discretion of the Selectboard, with no limit on the number of terms that a Trustee can serve. To the extent possible, the Selectboard shall appoint as Trustees individuals with backgrounds or interests in affordable housing, and specifically those with financial, legal or development expertise, or experience and perspective on housing preservation. A majority of the Trustees shall be residents of the Town of Wellfleet.
- B. There shall be no less than five and no more than seven Trustees of the Trust.
- C. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk and recorded with the Registry of Deeds and filed with the Land Registration Office.
- D. If a Trustee shall die, resign, be removed or suspended, or for any other reason cease to be a Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Selectboard to fill such vacancy, provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk and recorded with the Registry of Deeds and filed with the Land Registration Office. Upon the appointment of any succeeding Trustee and the filing of such appointment the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees.

- E. Trustees may be removed by the Selectboard at any time for cause following an opportunity for a hearing. For purposes of this bylaw, the term "cause" shall include, but not be limited to, violation of any local, state or federal law; incapacity to perform the duties of a Trustee; and acts of a Trustee that, in the opinion of the Selectboard, are negligent or detrimental to the Town of Wellfleet or the Trust.
- F. Reference to the "Trustee" shall mean the Trustee or Trustees for the time being hereunder.

§ 25-15. Meetings of the Trust. [Amended 6-11-2022 ATM by Art. 36¹]

There shall be quarterly meetings of the Trust at such time and at such place as the Trustees shall determine. A written notice stating the place, day, hour, and agenda of each meeting of the Trust shall be posted at Town Hall at least 48 hours before the date of such meeting in accordance with MGL c. 30A, §§ 18-25. A quorum at any meeting shall be a majority of the Trustees. Special meetings may be called by the Chair or by any two Trustees.

§ 25-16. Powers of Trustees.

- A. The power and duties of the Trustees shall include the following, all of which shall be carried out in furtherance of the purposes and in compliance with the terms set forth in MGL c. 44, § 55C and this bylaw:
- (1) To accept and receive real property, personal property or money, by gift, grant, contribution, devise or transfer from any person, firm, corporation or other public or private entity, including but not limited to money, grants of funds or other property tendered to the Trust in connection with any bylaw or any general or special law or any other source, including money from Chapter 44B; provided, however, that any such money received from Chapter 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations and limitations of that chapter when expended by the Trust, and such funds shall be accounted for separately by the Trust; and provided, further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received from said Chapter 44B are reported to the Community Preservation Committee for inclusion in the community preservation initiatives report, Form CP-3, to the Department of Revenue;
 - (2) To purchase and retain real or personal property, including, without restriction, investments that yield a high rate of income or no income;
 - (3) To sell, lease, exchange, transfer or convey any personal, mixed, or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertaking relative to Trust property as the Trustees deem advisable, notwithstanding the length of any such lease or contract;

1. Editor's Note: Attorney General approval pending.

- (4) To execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements, including those for Community Preservation Act funds and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;
- (5) To employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;
- (6) To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable;
- (7) To apportion receipts and charges between income and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose, and to create reserves for depreciation depletion or otherwise;
- (8) To participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any corporation and any other corporation or person;
- (9) To deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, such portion of expenses and compensation of such committee as the Trustees may deem necessary and appropriate;
- (10) To carry property for accounting purposes other than acquisition date values;
- (11) To borrow money on such terms and conditions and from such sources as the Trustees deem advisable, to mortgage and pledge trust assets as collateral;
- (12) To make distributions or divisions of principal in kind;
- (13) To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor of or against the Trust, including claims for taxes, and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation, and subject to the provisions of MGL c. 44, § 55C, to continue to hold the same for such period of time as the Trustees may deem appropriate;
- (14) To manage or improve real property; and to abandon any property which the Trustees has determined not to be worth retaining;
- (15) To hold all or part of the Trust property uninvested for such purposes and for such time as the Trustees may deem appropriate;
- (16) To extend the time for payment of any obligation to the Trust; and
- (17) To provide funds for the benefit of low- and moderate-income households to assist in the acquisition, creation, preservation, rehabilitation and support of housing affordable for such families.

- B. The Trustees shall have these and all powers set forth in MGL c. 44, § 55C, and shall refrain from exercising any powers in such manner as to violate the provisions of said statute.

§ 25-17. Acts of Trustees.

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. The Trustees may, by instrument executed by all the Trustees, delegate to any attorney, agent, or employee such other powers and duties as they deem advisable, including power to execute, acknowledge or deliver instruments as fully as the Trustees might themselves and to sign and endorse checks for the account of the Trustees of the Trust. The Trustees shall not delegate the authority to amend the Trust and no such delegation shall be effective. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust estate. No one dealing with the Trustees need inquire concerning the validity of anything the Trustees purport to do or see to the application of anything paid to or upon the order of the Trustees. No Trustee shall be liable for the acts, negligence or defaults of any other Trustee or any employee, agent, or representative of the Trustees selected with reasonable care, nor for errors in judgment, nor mistakes of law or fact made in good faith nor in reliance in good faith on advice of counsel nor for other acts or omissions in good faith.

§ 25-18. Status of Trust and Board of Trustees. [Amended 6-11-2022 ATM by Art. 36²]

The Trust is a public employer, and the Trustees are public employees for purposes of MGL c. 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of MGL c. 268A. The Trust is a governmental body for purposes of MGL c. 30A, §§ 18-25, the Open Meeting Law. The Trust is also a board of the Town for purposes of MGL c. 30B, the Uniform Procurement Act, and MGL c. 40, § 15A; provided, however, that agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the Town shall be exempted from MGL c. 30B. Notwithstanding the foregoing, neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town.

§ 25-19. Custodian of funds.

The Town of Wellfleet Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices. Costs associated with the independent audit shall be borne by the Trust. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Selectboard.

2. Editor's Note: Attorney General approval pending.

§ 25-20. Funds paid to the Trust.

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

§ 25-21. Taxes.

The Trust is exempt from General Laws Chapters 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereof.

§ 25-22. Duration of the Trust.

This Trust shall continue until terminated by a vote of the Wellfleet Town Meeting. Upon termination of the Trust, the Trustees, with the approval of the Selectboard, may sell all or any portion of the Trust property, both real and personal, and, following the payment of all obligations and liabilities of the Trust and the Trustees, shall transfer to the Town the net assets of the Trust, which shall be held by the Selectboard for affordable housing purposes.

§ 25-23. Compensation of Trustees.

Trustees shall not receive a salary, stipend, bonus or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Wellfleet. Trustees may be compensated for reasonable out-of-pocket expenses for travel and other Trust-related expenses. All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.

§ 25-24. Annual report.

The Trustees shall prepare an annual report describing the activities of the Trust on a calendar-year basis. The annual report shall be submitted to the Wellfleet Selectboard by January 31 of each year and will be included in the Town's Annual Report. The Annual Report shall list all financial transactions conducted by the Trust, including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and/or managed by the Trust, and any other pertinent information related to the business of the Trust.

Chapter 48

PERSONNEL BYLAW

- § 48-1. Purposes and authorization.
- § 48-2. Application.
- § 48-3. Personnel system.
- § 48-4. Amendment of bylaws.
- § 48-5. Adoption and amendment of personnel policies.
- § 48-6. Severability.
- § 48-7. Effective date.
- § 48-8. Personnel Board advice and recommendations.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet. Amendments noted where applicable.]

§ 48-1. Purposes and authorization.

- A. The purpose of the Town of Wellfleet Personnel Bylaw is to establish a fair system of personnel management that ensures uniform and efficient administration of personnel policies for Town employees. The role of the Personnel Board, in part, shall be to review and consider changes and amendments to the Personnel Bylaw as may be necessary and/or appropriate from time to time. Any such Personnel Board recommendations shall be made by the Personnel Board to the Town Meeting. The Personnel Board, in conjunction with the Town Administrator, shall, additionally, periodically review and consider changes to the Employee Personnel Manual.
- B. This Personnel Bylaw is adopted pursuant to the authority granted by MGL c. 41, §§ 108A and 108C.
- C. This Personnel Bylaw shall supersede in their entirety Personnel Bylaw 1 and Personnel Bylaw 2 and any amendments and agreements directly related to the aforementioned Personnel Bylaws.

§ 48-2. Application.

All Town departments and employee positions shall be subject to the provisions of this Personnel Bylaw, except for elected officers and officials and employees of the School Department and except as otherwise provided by the Town Charter or Massachusetts laws. To the extent that any Town employee may be a union member and/or is subject to a collective bargaining agreement or written personal employment contract, in the event of a conflict between said agreement or contract and this bylaw then said agreement or contract shall govern the terms and conditions of that employee's work.

§ 48-3. Personnel system.

- A. The Personnel Board shall be responsible for the establishment and maintenance of a personnel system, classification plan, an annual job evaluation procedure and

compensation plan, the administration of a grievance and disciplinary process, and the development of personnel policies pursuant to § 48-5 of this bylaw.

- (1) Methods of administration. The Personnel Board, in conjunction with the Town Administrator or his designee, shall establish a system of administration which assigns specific responsibility for all elements of the personnel system, including, but not necessarily limited to: employee record keeping housed in the office of the Town Administrator; uniform recruitment, selection and hiring practices; maintaining the classification and compensation plans; monitoring the application of personnel policies, job evaluation procedures and periodic reviews; and evaluating the personnel system.
- (2) Classification plan. A position Classification Plan for all Town employees subject to this bylaw shall be established, based upon similarity of duties performed and responsibilities undertaken so that the same qualifications may be reasonably required for and the same schedule of pay may be applied to all positions in the same class. No Town employee may be appointed to a position not contained within the Classification Plan. Pursuant to the Town of Wellfleet Charter Chapter 5, Section 5-6-1, "The creation of any new position shall require the approval of the Personnel Board."
- (3) Compensation plan. A Compensation Plan for all positions subject to the bylaw shall consist of a schedule of pay grades with any applicable rates and an official Town list detailing the assignment of each Town position to a specific pay grade. In its annual report to Town Meeting, the Personnel Board, with the assistance of the Finance Committee and the Town Administrator or his designee, shall summarize the Compensation Plan and attempt to detail the total annual costs to the Town for the services of its employees, including, but not necessarily limited to, salary, benefits, and any projected but then unfunded costs as may be allocated on an annual basis and accrue to the taxpayers.
- (4) Uniform recruitment, selection and hiring practices. The Personnel Board, in conjunction with the Town Administrator or his designee, shall attempt to create uniform policies and practices for the recruitment, selection and hiring of Town employees, including the use of standard written hiring agreements as deemed applicable. Such standard written hiring agreements shall not affect the status of the employee as an employee at will unless specifically stated therein.
- (5) Personnel policies. Personnel policies shall be established and distributed to all Town employees in the form of an Employee Personnel Manual which shall detail certain of the terms and conditions of employment. Every Town employee will sign a form acknowledging receipt thereof, and agreement thereto.
- (6) Performance evaluations. The Town has the right to evaluate an employee's performance at any time, and where practicable, the evaluation should be done at least annually at the time of or as close as practicable to his or her anniversary of employment. In the event that an employee has had an evaluation at the end of his or her probationary period, then all subsequent evaluations should occur annually thereafter. At the time of the evaluation, the job description shall be updated as agreed upon by the supervisor and the Town Administrator, who shall provide the employee with an opportunity to provide input. All new employees,

who shall include employees promoted to a new position, shall be on probation for a period determined by the Town Administrator, which period shall not exceed one year. The Personnel Board, in conjunction with the Town Administrator or his designee, shall develop, monitor and periodically review a job evaluation process. Copies of all evaluations shall be kept in each employee's personnel file.

- (7) Disciplinary and grievance process. With the advice and consent of the Town Administrator, a disciplinary policy shall be established, including, but not necessarily limited to, a method of addressing grievances arising from a claim of improper application of this bylaw, personnel policies, the Employee Personnel Manual, or the disciplinary process. This list is not meant to be exhaustive. The grievance process cannot be used to infringe upon or supersede an Appointing Authority's authority to hire, discipline, and/or terminate an employee as provided in the Town Charter or other applicable Massachusetts laws.
 - (8) Personnel records. A centralized record keeping system to maintain essential employee records and protect confidential employment information shall be established, maintained and periodically monitored. All such records shall be kept by the Town Administrator or his designee. The Personnel Board shall develop a procedure and checklist for who may be authorized and how such records may be accessed.
 - (9) Other elements. Any such other elements of a personnel system as may be deemed necessary, advisable or required by law may be established.
- B. The Personnel Board shall maintain in writing the Classification Plan and the Compensation Plan described above. Neither of these Plans shall apply to those Town employees subject to a collective bargaining agreement or those Town employees with a written personal employment contract. The Personnel Board shall review annually each of the two Plans described in Subsection A(2) and (3) hereof, and prepare a written summary to be presented to Town Meeting.

§ 48-4. Amendment of bylaws.

The Personnel Board shall annually review the existing Personnel Bylaws and propose to Town Meeting such changes and amendments as it deems advisable in accordance with the General Law, the Town Charter and bylaws. Such changes and amendments are subject to adoption by Town Meeting.

§ 48-5. Adoption and amendment of personnel policies.

The Personnel Board, in conjunction with the Town Administrator or his designee, shall promulgate personnel policies in the form of an Employee Personnel Manual, which defines the rights, benefits and obligations of all Town employees subject to this bylaw. Further policies shall be adopted or amended as follows:

- A. Preparation of policies. The Personnel Board, in conjunction with the Town Administrator or his designee, shall prepare employment policies or amendments to such policies. Any person may propose a new employment policy or amendments to an

existing employment policy. No proposal which has been considered in the previous 12 months needs to be considered again. The Personnel Board shall be responsible for determining if a proposal is new or falls outside of the twelve-month time limit. Any proposal must be submitted in writing to the Personnel Board by delivering seven copies thereof to the office of the Town Administrator. The written proposal must contain the substance of the proposal as well as a statement describing the rationale for its acceptance. The Personnel Board shall schedule and hold a public hearing on all proposals in March annually, or if action is required sooner, at any time after public notice. Copies of all proposals to be considered by the Personnel Board shall be made available to the representatives of each employee collective bargaining unit and on the Town website.

- B. Public hearing. The Personnel Board and the Town Administrator or his designee shall present the proposed policies or amendments at a public hearing held after the Town employee work day concludes. Any person may attend the hearing, speak to or against the proposals or amendments and present information related thereto. Within 20 days after the public hearing, the Personnel Board shall state its decision and the effective date of any newly adopted proposals and/or amendments.
- C. Posting of new policies and amendments. The Personnel Board and the Town Administrator or his designee shall post the text of any newly adopted or amended policy in prominent Town employee work locations and on the Town website. Efforts will be made to distribute copies individually to all Town employees.
- D. Computation of time. In computing the time period in days under the bylaw only business days shall be counted.

§ 48-6. Severability.

The provisions of the bylaw and any policies and regulations adopted pursuant to the bylaw are severable. If any portion of the bylaw, personnel policies, Employee Personnel Manual, or regulations is found to be invalid, the remaining provisions of the bylaw, personnel policies, Employee Personnel Manual and regulations shall remain in full force and effect.

§ 48-7. Effective date.

The bylaw shall take effect as provided by Massachusetts law.

§ 48-8. Personnel Board advice and recommendations.

The Personnel Board was formed to provide the Town with the benefit of particular knowledge, experience and expertise in employment matters, and will provide the Selectboard with advice and recommendations regarding all such matters upon their request, or as the Personnel Board deems necessary and/or advisable.

Chapter 59

SALARIES AND COMPENSATION

ARTICLE I
Finance Committee

§ 59-1. Service without pay;
reimbursement of expenses.

ARTICLE II
Reimbursement of Transportation
Expenses

§ 59-2. Elected officials.
§ 59-3. Officers and board members.
§ 59-4. Year-round employees.

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

ARTICLE I
Finance Committee
[Adopted as Art. VI of the General Bylaws]

§ 59-1. Service without pay; reimbursement of expenses.

The members of the Finance Committee shall serve without pay for their services; but may be reimbursed for actual expenses incurred in the discharge of their duties thereunder.

ARTICLE II
Reimbursement of Transportation Expenses
[Adopted as Art. V of the General Bylaws]

§ 59-2. Elected officials.

No elected official, except the Tax Collector and Clerk/Treasurer while engaged in the duties and responsibilities of their office, in the Town of Wellfleet shall receive any compensation or remuneration for transportation within the Town limits or otherwise engage same at the Town's expense.

§ 59-3. Officers and board members. [Amended 4-23-2018 ATM by Art. 33]

When any officer or member of any board, paid or unpaid is called upon to go to any point outside the Town of Wellfleet on official business connected with the duties of his/her office, he/she shall be entitled to receive pay for transportation on the following basis: a sum per mile for travel for said fiscal year as set annually by the IRS within the state, and reimbursement for actual costs for travel outside of the state.

§ 59-4. Year-round employees.

When any year-round employee is called upon to go from his/her office during the normally scheduled working hours or is called to duty beyond normally scheduled working hours, to any point within the Town of Wellfleet on official business connected with the duties of his/her office, he/she shall be entitled to receive compensation for transportation at the rate per mile for travel for said fiscal year as the Selectboard shall annually determine and set prior to October 1st of the preceding fiscal year, upon presentation to the Town Accountant of an itemized bill within 30 days.

Chapter 66
TOWN MEETINGS

§ 66-1. Start times.

§ 66-2. Presentation of reports.

§ 66-3. Motions.

§ 66-4. Adjournments.

§ 66-5. Open standing votes.

§ 66-6. Compensation for ad hoc committees.

§ 66-7. Matters requiring two-thirds vote.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. I and Art. II of the General Bylaws. Amendments noted where applicable.]

§ 66-1. Start times. [Amended 9-12-2020 ATM by Art. 24]

Annual Town Meetings shall be opened at 6:00 o'clock in the evening, unless otherwise determined by the Selectboard. Special Town Meetings may be opened at 6:00 o'clock in the evening, unless otherwise determined by the Selectboard.

§ 66-2. Presentation of reports.

Reports of the Committees and any legal matter not covered by an article in the Warrant may be brought before a Town Meeting under a final article inserted in the Warrant to cover such matter.

§ 66-3. Motions.

Motions shall be submitted in writing when the Moderator shall so require. A motion may be withdrawn by the mover. No motion to dissolve a Town Meeting shall be in order until every article in the Warrant has been duly acted upon at the meeting.¹

§ 66-4. Adjournments.

Any Town Meeting which shall be adjourned for more than 24 hours shall cause the Town Clerk to effect notices to be posted in two or more public places in Wellfleet.

§ 66-5. Open standing votes.

Any decision by the Moderator which may be doubted and/or challenged by any legal voter in attendance shall constitute a call for an open standing vote; tellers appointed by the Moderator shall count those in the affirmative and those in the negative.

1. Editor's Note: Original Sec. 3 of Art. II of the General Bylaws, which immediately followed this section, was repealed 4-27-2009.

§ 66-6. Compensation for ad hoc committees.

Compensation and expenses attendant to the activities of ad hoc committees duly created by any Town Meeting shall be appropriated by said Town Meeting. Lacking such appropriation the Selectboard shall be restrained from causing the Town Treasurer to effect any such compensation.

§ 66-7. Matters requiring two-thirds vote.

On matters requiring a two-thirds vote by statute, a count need not be taken unless the vote so declared is immediately questioned by one or more voters as provided in MGL c. 39, § 15 or as otherwise provided by these bylaws.

Chapter 70

TOWN PROPERTY

§ 70-1. Disposal of real property.

§ 70-3. Disposal of personal property.

§ 70-2. Exception for disposal of property under court jurisdiction or to be used for affordable housing.

§ 70-4. Statutory requirements.

§ 70-5. Annual submission of inventory.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. III, Secs. 7 and 8, of the General Bylaws. Amendments noted where applicable.]

§ 70-1. Disposal of real property.

No Town real property shall be disposed of except as particularly and individually authorized by the voters at Town Meeting. The Open Space Committee shall hold an advertised public hearing on any proposed article to dispose of a parcel or parcels to Town real property and shall report its recommendation or recommendations to the Town Meeting prior to the vote on such article. Any Town real property shall be disposed of by the Selectboard only by exchange authorized by a Town Meeting vote or by sale by open bidding at public auction, subject to a minimum bid established by the Board of Assessors. Not less than 14 days prior to such auction, notice of such auction shall be posted in at least three conspicuous places within the Town and shall be published in at least two newspapers of general circulation in the Town. No Town real property or interest therein shall be transferred or conveyed except as particularly and individually authorized by the voters at Town Meeting. This section shall also apply to licenses for an indefinite term or for a term of more than five years.

§ 70-2. Exception for disposal of property under court jurisdiction or to be used for affordable housing.

Notwithstanding anything contained herein, any Town real property, the title, restrictions, or boundaries of which is or are under adjudication by any court, may be disposed of in any manner recommended in writing by the Town Counsel and a majority of the Selectboard and approved by a two-thirds vote of the Town Meeting. Further, notwithstanding anything contained herein to the contrary, any transfer of real property to the Wellfleet Housing Authority for the exclusive purpose of providing rental housing to low- and moderate-income residents of all ages eligible to receive state, county or federal subsidies, provided said rental housing shall be made available to Wellfleet residents under a local preference program to the extent permissible by law, shall be exempt from this bylaw, if said transfer is approved by a 2/3 vote of the Town Meeting and a majority vote of the Housing Authority. Further, notwithstanding anything contained therein to the contrary, any transfer of real property to a duly organized nonprofit corporation for the purpose of providing affordable housing exclusively to low- or moderate-income residents of the Town of Wellfleet shall be exempt from this bylaw, provided said transfer is approved by a 2/3 vote of Town Meeting.

§ 70-3. Disposal of personal property.

Any Town personal property which the Town Administrator determines to have no market value shall be transferred to the Department of Public Works for disposal. Any other Town personal property valued by the Town Administrator at less than \$1,500 may be disposed of by the Town Administrator only by sale or exchange. All other Town personal property may be disposed of only by sale or exchange and as particularly and individually authorized by the voters at a Town Meeting. Such Town personal property or properties shall be sold or exchanged by the Selectboard, only by sealed bid, subject to a minimum bid established by the Town Administrator. Not less than 14 days prior to the opening of bids for any such sale or exchange, an invitation for bids for said sale or exchange shall be posted in at least three conspicuous places within the Town and shall be published in at least two newspapers of general circulation in the Town. Notwithstanding anything contained herein to the contrary, a transfer of personal property which was received by the Town as a gift, to the original donor or her-his heir shall be exempt from the provisions of this bylaw, if approved by a majority vote of the Town Meeting.

§ 70-4. Statutory requirements.

Requirements of this bylaw are in addition to the requirement for the disposal of Town property set forth in the General Laws.

§ 70-5. Annual submission of inventory.

Each officer and committee of the Town shall annually within 10 days after the close of the financial year file with the Selectboard and Finance Committee an inventory of all property of the Town in their possession.

PART II

**GENERAL
LEGISLATION**

Chapter 103

ALARMS

ARTICLE I Mechanical Protection Devices

- § 103-1. Direct connection to Police or Fire Department prohibited.
- § 103-2. Definitions.
- § 103-3. Violations and penalties.
- § 103-4. Enforcement.

ARTICLE II Alarm Systems

- § 103-5. Fire alarms.
- § 103-6. Intrusion alarms.
- § 103-7. Limitations of liability.
- § 103-8. Administrative rules.
- § 103-9. Exemptions.
- § 103-10. Permit and key box required for fire and medical alarm systems.

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

ARTICLE I Mechanical Protection Devices [Adopted as Art. VII, Sec. 32, of the General Bylaws]

§ 103-1. Direct connection to Police or Fire Department prohibited.

It shall be unlawful to install, maintain or use a mechanical protection device that is automatically keyed to and/or activates the telephone (numbers) lines controlled by and/or listed to the Wellfleet Fire Department and/or Police Department. All such devices now installed shall be removed within 60 days of the effective date of this bylaw.

§ 103-2. Definitions.

For the purpose of this section:

MECHANICAL PROTECTION DEVICES — Shall be defined as: an electrically operated instrument composed of sensory apparatus and related hardware which automatically sends over regular telephone lines, by direct connection or otherwise, pre-recorded voice alarm upon receipt of a stimulus from the sensory apparatus that has detected a physical force or unauthorized intrusion, or condition inherently characteristic of a fire.

§ 103-3. Violations and penalties.

Violation of this section shall be punished by a fine of \$50 for the first offense and \$200 each subsequent offense.

§ 103-4. Enforcement.

The Town of Wellfleet Police Department (including special officers) and any other official whom the Selectboard may from time to time designate shall have authority to enforce this section.

ARTICLE II

Alarm Systems**[Adopted as Art. XI of the General Bylaws]****§ 103-5. Fire alarms.**

- A. Any person maintaining, or permitting to be maintained, any mechanical or electronic fire alarm device which transmits an alarm stimulus indicating that it has detected a fire or a condition inherently characteristic of a fire in order to summons the Fire Department to the property, shall maintain the device, or cause the device to be maintained, in good operating condition.
- B. Any false report of a fire made to the Fire Department as a result of the transmission of an alarm stimulus shall be reported to the occupant of the premises by the Fire Department. Notice to the person maintaining or permitting the device to be maintained shall be deemed delivered by the leaving of a written notification by Fire Department personnel at the premises where the mechanical or electronic fire alarm device is located.
- C. Any person who maintains, or permits to be maintained, any mechanical or electronic fire alarm device which transmits more than three false reports of fire (excluding line-trouble signals) within any consecutive twelve-month period, after written notification by the Fire Department, shall be punished by a fine of \$50 for the fourth offense, \$75 for the fifth, \$100 for the sixth and \$25 progressively for each additional offense. In no event, however, shall the fine exceed \$300 for any one occurrence. The Fire Chief or his designee and any other official whom the Selectboard may from time to time designate shall have authority to enforce this section.

§ 103-6. Intrusion alarms.

- A. Any person maintaining, or permitting to be maintained, any mechanical or electronic device which transmits an alarm stimulus indicating that it has detected an intrusion or a condition inherently characteristic of an intrusion to summon the Police Department to the property, shall maintain the device, or cause the device to be maintained, in good operating condition. Prior to installation of any such device the property owner shall provide the Police Department with the following information:
 - (1) Type, method of operation of the alarm device.
 - (2) Floor plan, building design, utilities shut off.
 - (3) Update owner/caretaker list or employee list for alarm response.

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- (4) Description of current owner/caretaker or employee's motor vehicle, i.e., make, model, color, and plate number.
- B. Any false report of an intrusion made to the Police Department as a result of the transmission of an alarm stimulus shall be reported to the owner/caretaker or employee listed to be advised of an alarm response. Notice to the person maintaining or permitting the device to be maintained shall be deemed delivered by the mailing of a written notification by the Police Department to the property owner.
- C. Any person who maintains or permits to be maintained any mechanical or electronic intrusion alarm device which transmits more than three false reports of an intrusion (excluding line-trouble signals) within any consecutive twelve-month period, after written notification by the Police Department, shall be punished by a fine of \$50 for the fourth offense, \$75 for the fifth offense, \$100 for the sixth offense and \$25 progressively for each additional offense. In no event, however, shall the fine exceed \$300 for any one occurrence. The Town of Wellfleet Police Department (including special officers) and any official whom the Selectboard may from time to time designate shall have authority to enforce this section.

§ 103-7. Limitations of liability.

Neither the Town of Wellfleet nor any of its officers shall be under any obligation or duty to an alarm user, or to any other person hereunder, by reason of this article. The Town of Wellfleet specifically disclaims liability for any damages which may be caused by failure to respond to an alarm.

§ 103-8. Administrative rules.

The Chief of the Police Department and the Chief of the Fire Department may promulgate such rules as may be necessary for the implementation of this article.

§ 103-9. Exemptions.

The provisions of this article shall not apply to alarm devices owned or controlled by the Town of Wellfleet.

§ 103-10. Permit and key box required for fire and medical alarm systems.

- A. The owner of a building which has a fire alarm system, fire protection system, or medical alarms, which transmits an alarm off-premises, shall be required to:
- (1) Obtain a permit to install or alter the system.
 - (2) Provide a secure key box installed in a location accessible to the Fire Department in case of emergency. The key box shall contain keys to the door(s), fire alarm control panel and other keys necessary to operate or service fire protection or medical systems. The key box shall be a type approved by the Chief of the

Wellfleet Fire Department and shall be located and installed as approved by the Chief.

- B. The owner of a building which has an existing fire alarm system shall be required to bring said system into compliance with Subsection A within six months from the adoption of this section.
- C. The owner of a building who fails to comply with the provisions of Subsection A, after 10 days' written notice from the Fire Department of such non-compliance, shall be subject to a fine in the amount of \$100. Each day of non-compliance shall be deemed to be a separate offense. The Fire Chief or his designee and any other officials whom the Selectboard may from time to time designate shall have authority to enforce this section.

Chapter 107

ALCOHOLIC BEVERAGES

§ 107-1. Public consumption prohibited. § 107-3. Penalties and enforcement.

§ 107-2. Underage consumption or possession in public prohibited.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Secs. 19, 20 and 37, of the General Bylaws. Amendments noted where applicable.]

§ 107-1. Public consumption prohibited.

It shall be unlawful for any person to consume alcoholic beverages on public highways or in public parking places, including vehicles thereon, including all Town-owned property, within the Town of Wellfleet. However, the Selectboard may make exceptions to this bylaw in the case of special events and are authorized to issue special permits to private vendors to serve beer and wine exclusively in accordance with general law, and bylaws governing the issuance of temporary liquor licenses.

§ 107-2. Underage consumption or possession in public prohibited.

It shall be unlawful for any person who has not attained the age of 21 years to consume or have in his or her possession alcoholic beverages in public places within the Town of Wellfleet.

§ 107-3. Penalties and enforcement.

A. Any person who violates the following sections of this chapter shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 107-1	\$50	\$100
§ 107-2	\$50	\$100

B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

Chapter 111

ANIMALS

ARTICLE I
Animal Control

- § 111-1. Purpose.
- § 111-2. Administration.
- § 111-3. Definitions.
- § 111-4. Dogs must be leashed.
- § 111-5. Dog waste removal.
- § 111-6. Barking and other noise caused by dogs.
- § 111-7. Animals in parked vehicles.
- § 111-8. Licensing and regulation of dangerous dogs.

- § 111-9. Control of dangerous dogs.
- § 111-10. Kennel licenses, inspection and regulation.
- § 111-11. Fines and penalties.

ARTICLE II
Dogs at Large

- § 111-12. Dogs in cemeteries.
- § 111-13. Restraint requirements.
- § 111-14. Violations and penalties.

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

ARTICLE I
Animal Control

[Adopted 6-26-2021 ATM by Art. 47 (Art. XV of the General Bylaws)]

§ 111-1. Purpose.

The purpose of these bylaws is the control of animals to prevent injury to property, persons and animals.

§ 111-2. Administration.

The Selectboard shall appoint an Animal Control Officer who, in addition to any other authorized enforcement officers, shall be responsible for the enforcement of these bylaws.

§ 111-3. Definitions.

For the purposes of this bylaw, the following terms shall have the following definitions:

ADEQUATE SHELTER — Means a structure that is large enough for the animal to stand naturally, turn around and lie down inside of the structure without being exposed to the elements of weather. The roof and walls of the structure are waterproof and windproof. Bedding must be kept dry and changed regularly to preserve insulating qualities. Insulation and an inner wall must be included in shelter for dogs with short fur (example: Pointers, Staffordshire Terriers, Boxers, Labrador Retrievers) to provide adequate protection from cold.

During cold weather a moveable flap must be placed over the entrance to a shelter to preserve the animal's body heat. Adequate shelter from sun may be provided by a tarp placed in a manner to provide deep shade and allow air to pass through for ventilation.

BEACH — The zone above the water line at a shore of a body of water, marked by an accumulation of sand, stone, or gravel that has been deposited by the tide or waves.

DOMESTICATED ANIMAL — Any of various animals that have been tamed and made fit for a human environment.

KEEPER — Any person, other than the owner, possessing, harboring, keeping, or having control or custody of a dog either permanently or on a temporary basis. If a person under the age of 18 owns or keeps a dog, that person's custodial parent(s) or legal guardian(s) shall be responsible for complying with the requirements of these bylaws.

KENNEL, COMMERCIAL — A kennel maintained as a business where four or more dogs three months of age or older are kept for the breeding, boarding, sale, in-residence training, grooming or other business purposes, and including any shop where dogs are on sale or a kennel of 10 or more dogs regardless of the purpose for which the kennel is maintained.

KENNEL, RESIDENTIAL — Means a collection of four up to and including nine dogs, three months of age or older, owned or kept on a single premises, maintained for any non-commercial purpose except for the sale of one litter per year; provided, however, that a veterinary hospital shall not be considered a kennel unless it contains an area for the selling or boarding of dogs for other than medical purposes.

DANGEROUS DOG — Any dog that attacks, bites or injures any human or domesticated animal without provocation or which, because of its temperament, conditioning or training, has a propensity to attack, bite or injure humans or domesticated animals.

LICENSING PERIOD — The licensing period means the time between January 1st and the following December 31st of each year, both dates inclusive.

§ 111-4. Dogs must be leashed.

All dogs within the territorial limits of the Town of Wellfleet shall be restrained by a leash unless confined to the property of their owners. Any dog found running at large will be removed and impounded. The owner of any dog so removed is also liable for boarding expenses at the pound at the established rate. The Town of Wellfleet Police Department (including special officers), the Animal Control Officer, and any other officials whom the Selectboard may from time to time designate shall have the authority to enforce this section.

§ 111-5. Dog waste removal.

- A. All dog owners, keepers or persons having control of a dog are responsible for immediately removing and disposing of all solid wastes produced by said dog on any property (other than the property of the dog owner) in a sanitary manner and where it will not cause pollution, either directly or indirectly.
- B. No written warning shall be given.

C. Penalties shall be imposed as per § 111-11B(2).

§ 111-6. Barking and other noise caused by dogs.

No person owning, keeping or otherwise responsible for a dog shall allow said animal to annoy another person's reasonable right to peace or privacy by making loud or other continuing noise, where such noise is plainly audible at a distance of 100 feet from the building, premises, vehicle, or other means of conveyance or housing of said dog, or where such noise is continuing for 15 minutes. The fact that such noise is plainly audible at said distance or continuing in excess of 15 minutes on a daily basis shall be prima facie evidence of a violation.

§ 111-7. Animals in parked vehicles.

No animal may be left unattended in a parked vehicle at any time of year.

§ 111-8. Licensing and regulation of dangerous dogs.

- A. Determination of a dog being dangerous. The Animal Control Officer shall investigate all complaints made to the Animal Control Officer, the Town of Wellfleet Police Department, the Selectboard, or the Town Administrator that any dog owned or kept within the Town of Wellfleet has attacked, bitten, or injured any person or domesticated animal, or which by its temperament, conditioning or training has a propensity to attack, bite or injure persons or domesticated animals.
- B. The Animal Control Officer is authorized to make whatever inquiry is deemed necessary to determine the accuracy of said complaint, and if the Animal Control Officer determines that the complaint is accurate, the Officer may find that the dog is dangerous and may make such orders as he or she deems necessary to ensure compliance with the provisions of this bylaw and to promote public safety.
- C. Upon determination by the Animal Control Officer that a dog is dangerous, the Animal Control Officer shall issue a written order to the owner or keeper of said dog concerning the restraint or disposal of such dog as they may deem necessary. At a minimum, said order shall state that the dog has been determined to be dangerous and shall require the owner or keeper of such dog to comply with the requirements of this bylaw.
- D. Without limiting the generality of the foregoing, the Animal Control Officer may order that said dog be humanely euthanized in accordance with the provisions of MGL c. 140, § 151A, or that said dog be confined in accordance with such limitations as the Animal Control Officer deems appropriate. If an order to euthanize is issued, a certificate must be provided to the Animal Control Officer confirming the action was carried out. If the Animal Control Officer determines that the dog is to be permanently given or sold to new owner, removed, the new owner or keeper shall provide the Animal Control Officer with the name, address, and telephone number of the new owner or keeper of the dog.

- E. The owner or keeper of any dog determined to be dangerous by the Animal Control Officer may request a hearing before the Selectboard. Said request shall be in writing and received by the Selectboard within five business days of the owner's or keeper's receipt of the Animal Control Officer's order. A copy of the hearing request shall also be delivered to the Animal Control Officer. The hearing request shall include an explanation of the measures that the owner or keeper intends to take to protect public safety pending disposition of the matter by the Selectboard. If the Selectboard determines that the measures described are inadequate, it may order that said dog be impounded, at the owner's or keeper's expense, until such time as the Selectboard rules otherwise.
- F. After a hearing, at which those testifying shall be sworn under oath, the Selectboard may affirm the order, reverse or nullify the order, or issue any such order as it deems necessary to ensure compliance with the provisions of these bylaws and the protection of public safety. The determination of the Selectboard after a hearing shall be final.
- G. Nothing in this bylaw is intended to limit or restrict the authority of the Selectboard to act in accordance with MGL c. 140, § 157.

§ 111-9. Control of dangerous dogs.

- A. The Animal Control Officer shall notify the Town Clerk of all dogs determined to be dangerous, pursuant to the terms of this bylaw.
- B. The owner or keeper of any dog determined to be dangerous in accordance with this bylaw, which has not been ordered euthanized, shall re-license said dog as "dangerous" within 30 days of such determination. A unique licensing number shall be assigned to such a dog by the Town Clerk. That number shall be noted in the Town licensing files.
- C. No dangerous dog shall be licensed by the Town of Wellfleet for any licensing period unless the owner or keeper of such vicious dog displays a sign not to exceed one square foot on his or her premises warning that there is a dangerous dog on the premises. The sign shall be visible and capable of being read from the public or private roadway.
- D. All dangerous dogs shall be confined in an enclosure approved in writing by the Animal Control Officer. It shall be unlawful for any owner or keeper to maintain a dangerous dog upon any premises which does not have a locked enclosure or for any owner or keeper to allow any such dog to be outside of the dwelling of the owner or outside of the enclosure, unless it is necessary for the owner or keeper to obtain veterinary care for the vicious dog, or to sell or give away the vicious dog or to comply with the orders or directions of the Animal Control Officer and/or the Selectboard with respect to the vicious dog, or to comply with the provisions of these bylaws. In such event, the dangerous dog shall be securely muzzled and restrained with a chain having a minimum tensile strength of 300 pounds and not exceeding three feet in length, and shall be under the direct control and supervision of the owner or keeper of the vicious dog. Dangerous dogs shall not be permitted to run loose on any public or private way or any area within the Town of Wellfleet that is open to the general public, including but not limited to parks and beaches.

- E. License revocation. If the Animal Control Officer determines that a dangerous dog is being kept in the Town in violation of these bylaws or any order issued by the Animal Control Officer, or the Selectboard, or of any court, the Animal Control Officer shall so notify the Selectboard. After giving notice to the owner or keeper of the hearing, the Selectboard shall hold a public hearing on whether to revoke the license of said dog or to take further action, including euthanizing the dog. If the Selectboard revokes the license of said dog and does not order it to be euthanized, they shall notify the owner or keeper of the dog and the Town Clerk within 10 days that said dog will be impounded and euthanized if it is found within the Town after the succeeding seven days. The Animal Control Officer or any Town of Wellfleet police officer shall seize and impound any dangerous dog found outside of its enclosure in violation of this bylaw or any order issued by the Animal Control Officer, Selectboard or any court.

§ 111-10. Kennel licenses, inspection and regulation.

- A. Requirement for kennel license. Any owner or keeper of four up to and including nine dogs, three months of age or older, being maintained at a premises, shall secure a Residential Kennel License. The Town Clerk shall not issue a Residential Kennel License unless the owner or keeper provides the Town Clerk with a veterinarian's certificate verifying that each dog three months of age or older is currently vaccinated against rabies. Any owner or keeper of 10 or more dogs, three months of age or older, or of a premises maintained as a commercial kennel, shall obtain a Commercial Kennel License.
- B. Application and issuance of kennel license and fees.
- (1) A Residential or Commercial Kennel License shall be issued annually by the Town Clerk upon written application by an owner or keeper of dogs and after inspection of the kennel and a determination, made by the Animal Control Officer, that the basic standards of cleanliness, proper care, confinement and adequate shelter of said dogs exist on the premises. The name and address of the owner or keeper of each dog kept in any kennel, if other than the person maintaining the kennel, and a veterinarian's certificate verifying that each dog, three months of age or older, is currently vaccinated against rabies and kennel cough, shall be kept on file on the premises and available for inspection by the Animal Control Officer or any authorized persons. Such license shall be in the form prescribed by the Town Clerk.
 - (2) The Residential Kennel License fee shall be \$50. The Commercial Kennel License fee shall be \$150. The Town Clerk shall, upon application, issue without charge a Commercial Kennel License to any domestic charitable corporation, incorporated exclusively for the purpose of protecting animals from cruelty, neglect or abuse, and for the relief of suffering among animals. The holder of a license for a kennel shall cause each dog kept therein to wear, while it is at large, a collar or harness of leather or other suitable material, to which shall be securely attached a tag upon which shall appear the current dog license information of the town where the dog resides. A veterinary hospital shall not be considered a kennel unless it contains an area for the selling or boarding of dogs for other than medical purposes, in which case it shall apply for a Commercial Kennel License.

The license period for a kennel license shall be from January 1 to December 31, inclusive. Kennel licenses are non-transferrable.

- C. Inspection. The Animal Control Officer, Animal Health Inspector, or any agent authorized by the Town may at any reasonable time inspect any kennel or premises for which a Residential or Commercial Kennel License has been issued.
- D. Loss of kennel license. If the Animal Control Officer, Animal Health Inspector, or other authorized agent, after inspection, determines that the kennel or premises that are the subject of a kennel license are not kept in a sanitary or humane condition, or if records are not kept as required by law, the inspecting officer shall notify the Selectboard of that determination and the facts upon which it is based. The Selectboard may, by order after a hearing, revoke or suspend such license. If a license has been revoked or suspended, the license may be reinstated after inspection and a reinstatement order by the Selectboard after a new hearing.
- E. Procedure for complaint to the Selectboard. Upon written petition of any person or persons, filed with the Selectboard, setting forth that they are aggrieved or annoyed to an unreasonable extent by one or more dogs at a kennel because of excessive barking or dangerous disposition of said dogs, or other conditions connected with such kennel constituting a public nuisance, said Selectboard, within seven days after the filing of such a petition, shall give notice to the owner or keeper of the kennel, the petitioner(s), and any other person the Selectboard determine should be given notice, of a public hearing to be held within 14 days after the date of such notice. Said notice shall also be posted on a Town bulletin board. Within seven days after such public hearing, said Selectboard shall make an order either revoking or suspending such kennel license, or otherwise regulating said kennel or premises, or dismissing said petition.
- F. Petition for relief to court. The holder of a kennel license or other person who is the subject of an order under Subsection E may petition the District Court for relief in accordance with MGL c. 140, § 137C.

§ 111-11. Fines and penalties.

- A. Criminal disposition. In addition to any other legal remedies that may be available, the Animal Control Officer, or other designated enforcing person, may enforce this bylaw by non-criminal disposition. If a non-criminal disposition process, as provided in MGL c. 40, § 21D and the Town's Non-Criminal Disposition Bylaw is elected,¹ then any person who violates the provisions of Chapter 111, Article I, of the Town's General Bylaws shall be subject to the following enforcement fines and penalties.
 - (1) The enforcing officer may give a written warning for the first offense or shall impose the following fines:
 - (a) First offense \$50.
 - (b) Second offense \$100.
 - (c) Third offense \$300.

1. Editor's Note: See Ch. 1, Art. I.

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- (d) Fourth and subsequent offenses \$500.
- (2) Each day or portion thereof shall constitute a separate offense. If more than one, each provision violated shall constitute a separate offense.
- B. These penalties shall apply to all violations of Wellfleet's General Bylaws, Chapter 111, Article I, except that:
- (1) Section 111-4, Dogs must be leashed, and § 111-6, Barking and other noise caused by dogs. Owners or keepers of dogs found in violation shall be fined \$50 for each offense;
- (2) Section 111-5, Dog waste removal. Owners or keepers of dogs found to be in violation shall be fined immediately as a first offense and subsequently as listed for the third, fourth and subsequent offenses, with no written warning;
- (3) Section 111-10, Kennel licenses, inspection and regulation. Kennel owners shall be subject to a penalty in the amount of \$50 per day for each day of violation. Each day or portion thereof shall constitute a separate offense. If more than one, each provision violated shall constitute a separate offense.

ARTICLE II

Dogs at Large**[Adopted as Art. VII, Sec. 25, of the General Bylaws]****§ 111-12. Dogs in cemeteries.**

No person shall permit a dog to enter within the boundaries of any cemetery in the Town of Wellfleet.

§ 111-13. Restraint requirements.

All dogs within the territorial limits of the Town of Wellfleet shall be restrained by a leash unless confined to property of their owners.

§ 111-14. Violations and penalties.

Any dog found running at large will be removed and impounded. If it is the first offense subject to this article committed by a person within a calendar year, the charge shall be dismissed without the payment of any fine; if it is the second offense so committed in the calendar year, the payment of a fine of \$25 shall operate as final disposition of the case; if it is the third offense so committed in a calendar year payment of a fine of \$30 shall operate as final disposition of the case; if it is the fourth or subsequent offense so committed the payment of a fine of \$50 shall operated as a final disposition of the case. The owner of any dog so removed is also liable for boarding expenses at the pound at the established rate. The Town of Wellfleet Police Department (including special officers), the Dog Officer, and any other officials whom the Selectboard may from time to time designate shall have the authority to enforce this article.

Chapter 116

BEACHES, PARKS AND RECREATION AREAS

ARTICLE I
Operation of Vehicles on Beaches

§ 116-2. Violations and penalties.

§ 116-1. Operation prohibited;
exceptions.

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

ARTICLE I
Operation of Vehicles on Beaches
[Adopted as Art. VII, Sec. 24, of the General Bylaws]

§ 116-1. Operation prohibited; exceptions.

No person shall operate a motorized vehicle on any tidal beach or flat or other land below mean high water except:

- A. In an emergency for the purpose of protecting endangered persons, animals or property;
- B. A Town, county, state or federal official or employee on official business;
- C. For the purpose of launching or retrieving a boat not exceeding 20 feet in overall length at a launching point designated by the Selectboard;
- D. For the purpose of work duly authorized and conditioned by the Conservation Commission and other appropriate authorities;
- E. For the purpose of setting or retrieving a mooring, entering and leaving the beach at a point designated by the Selectboard;
- F. A person legally engaged in or working in commercial shellfishing or holding a grant.

§ 116-2. Violations and penalties.

Whoever violates this bylaw shall be fined in an amount of \$200 for each offense. The Town of Wellfleet Police Department (including special officers), the Harbormaster, the Assistant Harbormaster, the Shellfish Constable, the Deputy Shellfish Constable, the Assistant Shellfish Constable, the Health and Conservation Officer, and any other official whom the Selectboard may from time to time designate shall have authority to enforce this section.

Chapter 120
BOATS AND BOATING

ARTICLE I
Internal Combustion Engines

- § 120-1. Operation on freshwater ponds prohibited.
- § 120-2. Penalties and enforcement.

ARTICLE II
Overnight Accommodations

- § 120-3. Sanitation devices or holding tanks required.

- § 120-4. Violations and penalties.
- § 120-5. Enforcement.

ARTICLE III
Personal Watercraft

- § 120-6. Purpose and intent.
- § 120-7. Definition of terms.
- § 120-8. Operating restrictions.
- § 120-9. Violations and penalties.

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

ARTICLE I
Internal Combustion Engines
[Adopted as Art. VII, Secs. 22 and 37, of the General Bylaws]

§ 120-1. Operation on freshwater ponds prohibited.

No one shall operate or permit to be operated an internal combustion engine on any fresh water pond in the Town of Wellfleet except under the direction of any law enforcement officer, fire or rescue officer, or other authorized official for the expressed purpose of aiding in rescue or other emergency situations.

§ 120-2. Penalties and enforcement.

- A. Any person who violates the following sections of this article shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 120-1	\$200	\$200

- B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

ARTICLE II

Overnight Accommodations**[Adopted as Art. VII, Sec. 34, of the General Bylaws]****§ 120-3. Sanitation devices or holding tanks required.**

Within the marine waters of the Town of Wellfleet, no person shall remain overnight aboard a boat without a Coast Guard approved marine sanitation device or holding tank.

§ 120-4. Violations and penalties.

Any person who violates this article shall be fined \$100 for the first offense and \$200 for each subsequent offense.

§ 120-5. Enforcement.

The Town of Wellfleet Police (including special officers), the Harbormaster, the Assistant Harbormaster, the Shellfish Constable, the Assistant Shellfish Constable, the Health-Conservation Agent, and any other official whom the Selectboard may from time to time designate shall have authority to enforce this article, which enforcement shall include without limitation the noncriminal disposition procedure provided for in MGL c. 40, § 21D.

ARTICLE III

Personal Watercraft**[Adopted as Art. VII, Sec. 42, of the General Bylaws]****§ 120-6. Purpose and intent.**

The purpose of this bylaw is to protect the public safety by establishing rules of conduct governing the operation of personal watercraft, by promoting voluntary compliance with the rules and, when necessary, by deterring, through fines and penalties, non-compliance with the bylaw. The Town of Wellfleet intends to improve, through this bylaw, the safe and appropriate use of personal watercraft.

§ 120-7. Definition of terms.

For the purpose of the bylaw:

PERSONAL WATERCRAFT — Shall mean a small vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by persons sitting, standing or kneeling on the vessel. The term includes, but is not limited to, jet-skis, wet-bikes or surf-jets, so-called.

§ 120-8. Operating restrictions.

- A. The use of personal watercraft is prohibited within 150 feet of swimmers. (Per Director of Mass. Environmental Police May 12, 2000) **[Amended 4-26-1999 ATM]**

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BOATS AND BOATING

§ 120-9

- B. The use of personal watercraft is prohibited in Wellfleet Harbor from the groin at Mayo Beach westerly to the Herring River and northerly and entirely to the terminus of the river. Operators of personal watercraft shall not enter any marked shellfish grant license areas in Wellfleet Harbor.
- C. Personal watercraft shall be launched only at the municipal ramp at the Wellfleet Marina.
- D. Personal watercraft are prohibited in any Town-owned beach parking lots or on any Town-owned beaches.

§ 120-9. Violations and penalties.

- A. Criminal complaint. Any violation of this bylaw shall be punishable by a fine of not more than \$50 for each offense. Each day on which a violation occurs or continues shall be deemed a separate offense, subject to the penalties stated herein.
- B. Non-criminal disposition. As an alternative to initiating criminal proceeding pursuant to Subsection A above, the enforcing agent may dispose of a violation pursuant to the following procedures. Whoever violates any provision of this bylaw may, in the discretion of the Police Officers, Beach Administrator, Beach Guard Captain, Head Lifeguard, Harbormaster, Assistant Harbormaster, Board of Health, Conservation Agent, Shellfish Constable, Deputy Shellfish Constables, Dog Officer or Selectboard, be penalized by a non-criminal complaint pursuant to the provision of MGL c. 40, § 21D. Whoever violates any provision of this bylaw shall be subject to a fine of \$25 for each offense.
- C. Each day on which a violation occurs or continues shall be deemed a separate offense, subject to the penalties stated herein.

Chapter 124

BUILDING CONSTRUCTION

ARTICLE I
Numbering of Buildings

§ 124-1. Violations and penalties for failure to comply.

- § 124-3. Purpose.**
- § 124-4. Applicability.**
- § 124-5. Authority.**
- § 124-6. Incorporation of Stretch Code.**
- § 124-7. Enforcement.**

ARTICLE II
Stretch Energy Code

§ 124-2. Definitions.

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

ARTICLE I
Numbering of Buildings
[Adopted as Art. VII, Sec. 43, of the General Bylaws]

§ 124-1. Violations and penalties for failure to comply.

An owner or occupant who fails to post on his premises the street number assigned thereto within six months after being given notice as hereafter provided of the number which has been assigned or receiving actual notice thereof, whichever occurs earlier, or any owner or occupant who fails to keep said number posted or maintained in a legible condition or any person who unlawfully removes, defaces or conceals said number shall be subject to a fine of \$50 for each offense. Each case of a failure to post, keep posted or maintained in a legible condition shall constitute a separate offense.

ARTICLE II
Stretch Energy Code
[Adopted as Art. XVI of the General Bylaws]

§ 124-2. Definitions.

INTERNATIONAL ENERGY CONSERVATION CODE (IECC) — The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three-year cycle. Since July 1, 2010, the baseline energy conservation requirements of the MA State Building Code defaulted to the latest published edition, currently the IECC 2012, with Massachusetts amendments as approved by the Board of Building Regulations and Standards.

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

§ 124-3. Purpose.

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

§ 124-4. Applicability.

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

§ 124-5. Authority.

A municipality seeking to ensure that building construction within its boundaries is designed and built above the energy efficiency requirements of 780 CMR may mandate adherence to this appendix. 780 CMR 115.AA may be adopted or rescinded by any municipality in the commonwealth in the manner prescribed by law.

§ 124-6. Incorporation of Stretch Code.

The Stretch Code, as codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments or modifications, is herein incorporated by reference into the Town of Wellfleet General Bylaws, Chapter 124, Article II.

§ 124-7. Enforcement.

The Stretch Code is enforceable by the Town of Wellfleet Building Inspector.

Chapter 129

CAMPING

§ 129-1. Permission required.

§ 129-2. Penalties and enforcement.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Secs. 23 and 37, of the General Bylaws. Amendments noted where applicable.]

§ 129-1. Permission required.

No person shall set up between the hours of 8:00 p.m. and 8:00 a.m. on any property, public or private, without permission of the owner thereof, a camp, tent, or sleep in the open on any property, public or private, without the permission of the property owner within the territory limits of the Town of Wellfleet.

§ 129-2. Penalties and enforcement.

- A. Any person who violates the following sections of this chapter shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 129-1	\$25	\$100

- B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

Chapter 135
DRAINAGE CONTROL

§ 135-1. Construction restrictions.

§ 135-2. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Sec. 30, of the General Bylaws. Amendments noted where applicable.]

§ 135-1. Construction restrictions.

In order to protect the quality of the waters of the harbor and other wetlands within the Town limits, no road or other surface shall be re-graded, constructed, or maintained in such a manner as to divert or direct the flow of runoff, defined as including stormwater or any other surface waters, excepting natural preexisting watercourses, into any wetland, as defined in MGL c. 131, § 40. Uncontaminated runoff shall be directed in such a way as to recharge the groundwater within the lot where it originates and in such a manner as not to alter natural runoff into any wetland, nor to cause erosion, pollution or siltation into or towards any wetland.

§ 135-2. Violations and penalties.

Any owner of property on which a violation of this chapter occurs or is occurring shall be warned by the Town of Wellfleet Police Department (including special officers), the Building Inspector, the Health and Conservation Officer, the Shellfish Constable, the Deputy Shellfish Constable, the Assistant Shellfish Constable, the Harbormaster, the Assistant Harbormaster, or any other officer whom the Selectboard may from time to time designate. If the violation continues for a period of more than 90 days beyond the date of such warning, the owner in violation shall be fined \$100 for each day or fraction of a day of continued violation. The above said officials shall have authority to enforce this chapter.

Chapter 141

ENVIRONMENTAL PROTECTION

- | | |
|----------------------------------------------------------------|------------------------------------|
| § 141-1. Purpose and scope. | § 141-5. Action by Commission. |
| § 141-2. Definitions. | § 141-6. Emergencies. |
| § 141-3. Notification and approval of work in protected areas. | § 141-7. Bond. |
| § 141-4. Time frames for action; appeals. | § 141-8. Violations and penalties. |
| | § 141-9. Regulations. |
| | § 141-10. Severability. |

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as part of the General Bylaws. Amendments noted where applicable.]

§ 141-1. Purpose and scope.

The purpose of this bylaw is to protect the natural resources and wetlands existing in the Town of Wellfleet by controlling activities deemed to have a significant or cumulative adverse effect upon environmental values, including but not limited to the following:

- A. Public or private water supply.
- B. Groundwater supply and quality.
- C. Prevention of pollution.
- D. Flood control.
- E. Fisheries.
- F. Land containing shellfish.
- G. Storm damage prevention.
- H. Erosion control.
- I. Wildlife habitat.

§ 141-2. Definitions.

As used in this bylaw:

PERSON — Shall include any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the Commonwealth or political subdivision thereof, including the Town of Wellfleet, administrative agency, public or quasi-public corporation of body, or any other legal entity or its representative, agent or assigns.

§ 141-3. Notification and approval of work in protected areas.

- A. No person shall remove, fill, dredge or alter any fresh water wetland, coastal wetland, bank, beach, dune, flat, marsh, wet meadow, bog, swamp or any estuary, creek, river, stream, pond, lake or any land within 100 feet of the foregoing areas or any land under the ocean, land subject to tidal action or coastal storm flowage; or land subject to flooding (bordering or isolated); or land in an Area of Critical Environmental Concern* with the exception of privately owned upland areas in the Bound Brook and Griffin Island areas which are not within the jurisdiction of the Massachusetts Wetland Protection Act or the current jurisdiction of the Wellfleet Environmental Bylaw other than in the course of maintaining, repairing, or replacing (but not substantially changing or enlarging) an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter with the Conservation Commission of the Town of Wellfleet and without receiving and complying with an Order of Conditions as issued by said Commission. Such Notice of Intent shall be sent by certified mail or be hand-delivered to the Commission at the Town Offices and shall include such plans as may be necessary to describe and clearly delineate all proposed activity, its relation to, and its effect on the above-named wetland resources. The same notice, plans and specifications required to be filed by an applicant under MGL c. 131, § 40, plus the parcel number and the Assessor's map number as kept in the Town Offices in Wellfleet may be accepted as fulfilling the requirements of the bylaws. The Commission, in its discretion, may hear any oral presentation under this bylaw at the same public hearing required to be held under the provisions of said MGL c. 131, § 40. Upon the written request of any person, the Commission may make a Determination of Applicability of this bylaw to any work. Procedures in connection with such a Request for Determination shall be as provided in MGL c. 131, § 40 and Regulations thereunder as applicable and in effect on the date of the filing of such request. Definitions set forth in said chapter and section and the regulations in effect as of the date of this bylaw as issued by the Department of Environmental Quality Engineering thereunder, are hereby made a part of this bylaw.

*Areas of Critical Environmental Concern (ACECs) are places in Massachusetts that receive special recognition because of the quality, uniqueness and significance of their natural and cultural resources. These areas are identified and nominated at the community level and are reviewed and designated by the state's Secretary of Environmental Affairs. ACEC designation creates a framework for local and regional stewardship of critical resources and ecosystems.

- B. The Commission and its agent may enter upon the land upon application of a Notice of Intent for purposes of reviewing and monitoring projects which the proposed work is to be done in response to a request for a prior determination of applicability of this bylaw or for the purpose of carrying out its duties under this bylaw, and may make or cause to be made such examination or survey as deemed necessary.
- C. If any work subject to an Order of Conditions issued under this bylaw is not substantially completed within three years from the date of issuance of said Order of Conditions, a new Notice of Intent must be filed, public hearing(s) held and the work re-conditioned or denied by the Commission as seems appropriate under the circumstance at the time. In lieu of the applicant filing a new Notice of Intent, the

Commission, after a request in writing and a public hearing, may allow an original Order of Conditions to be extended for a period not to exceed two years.

§ 141-4. Time frames for action; appeals.

If the Conservation Commission has failed to hold a public hearing within 21 days of filing a Notice of Intent under this bylaw, or if the Commission, after closing such a hearing has failed within 21 days therefrom to issue an Order, or if the Commission, upon written request by any person to determine whether this bylaw is applicable to any work, fails within 21 days from the filing of such request with the Commission to make any determination, the project shall be deemed approved unless the applicant requests or agrees to an extension beyond the 21 days. Any person aggrieved by the Commission's Order, determination or failure to act may appeal to Superior Court, Barnstable County, pursuant to the provisions of MGL c. 249, § 4. Filing of a Notice of Intent or a Request for Determination may be accomplished in the same manner as provided in MGL c. 131, § 40 and regulations thereunder, as may be applicable and in effect on the date of such filing, and shall conform in all respects with any submission guidelines adopted by the Commission as part of its Regulations.

§ 141-5. Action by Commission.

The Conservation Commission is empowered to deny permission for any removal, dredging, filling, or altering within the areas subject to protection under this bylaw, regardless of any mitigation proposed, including creation of new wetlands, if, in its judgment, such denial is necessary to preserve environmental quality of resources and area defined in § 141-3 of this bylaw. The Commission may, as alternative to a denial, impose such conditions as it deems necessary to contribute to the protection and preservation of resources described in § 141-3 and the values as listed in § 141-1, in accordance with the purpose of this bylaw.

§ 141-6. Emergencies.

The Notice required by § 141-3 of the bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the citizens of the Town of Wellfleet and to be performed or ordered to be performed by an administrative agency of the Commonwealth or by the Town of Wellfleet. "Emergency projects" shall mean any projects certified to be an emergency by the Commissioner of the Department of Environmental Protection or by the Conservation Commission, or other authorized local officials. In no case shall any removal, filling, dredging, or alteration authorized by such emergency certification extend beyond the time necessary to abate the emergency. The Commission is empowered to hold a post-emergency hearing in order to set conditions for any further remedial measures necessary.

§ 141-7. Bond.

The Conservation Commission may require the posting of a bond with surety, running to the municipality, and sufficient as to form and surety, in the opinion of the Commission's Counsel, to secure faithful and satisfactory performance of the work required by any final Order of Conditions, in such sum and upon such conditions as the Commission may require. Other evidence of financial responsibility which is satisfactory to the Commission may be

accepted in lieu of bonding. Notwithstanding the above, the amount of such bond shall not exceed 150% of the estimated cost of the work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater.

§ 141-8. Violations and penalties.

Any person who violates any provision of the bylaw, or of any condition issued pursuant to it, shall be punished by a fine of not more than \$200. Each day or portion thereof during which a violation continues shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. This bylaw may be enforced pursuant to MGL c. 40, § 21D by the Conservation Commission through its agent. Upon request of the Conservation Commission, the Selectboard and Town Counsel shall take such legal action as may be necessary to enforce this bylaw and orders issued pursuant to it.

§ 141-9. Regulations.

The Conservation Commission is empowered thereunder to promulgate and to amend, from time to time, after public notice and hearing, such Regulations as are deemed necessary by it to implement the purpose of this bylaw, whether or not identical to the requirements of MGL c. 131, § 40. Such Regulations shall not be deemed to be invalid because they are not identical with MGL c. 131, § 40, and regulations thereunder, as long as no direct conflict with MGL c. 131, § 40 is thereby created.

§ 141-10. Severability.

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

Chapter 145

FARMING

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|------------------------------------------|---------------------------------------------------------------------|
| § 145-1. Legislative purpose and intent. | § 145-5. Resolution of disputes. |
| § 145-2. Definitions. | § 145-6. Severability. |
| § 145-3. Right to farm declaration. | § 145-7. Relationship to existing bylaws,
rules and regulations. |
| § 145-4. Disclosure notification. | |

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet 6-26-2021 ATM by Art. 40 (Art. VII, Sec. 50, of the General Bylaws). Amendments noted where applicable.]

§ 145-1. Legislative purpose and intent.

- A. The purpose and intent of this bylaw is to state with emphasis the right to farm accorded to all citizens of the Commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder, including but not limited to MGL c. 40A, § 3, paragraph 1; MGL c. 90, § 9, MGL c. 111, § 125A and MGL c. 128, § 1A. We the citizens of Wellfleet restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").
- B. This general bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Wellfleet by allowing permitted agriculture uses and related activities to function with minimal conflict with abutters and Town agencies. This bylaw shall apply to all jurisdictional areas within the Town.
- C. This bylaw encourages the pursuit of homesteading in order to promote self-sufficiency and food security. It further protects homestead farming within the Town of Wellfleet by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies. This bylaw shall apply to all jurisdictional areas within the Town.

§ 145-2. Definitions.

- A. The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.
- B. The word "homestead" shall include any parcel or contiguous parcels of land where a person and/or family cultivates the land and practices agriculture in order to become more self-sufficient.
- C. The words "farming," "agriculture," "homesteading" or their derivatives shall include, but not be limited to, the following:

§ 145-2

WELLFLEET BYLAWS AND REGULATIONS

§ 145-3

- (1) Farming of any kind, including the cultivation and tillage of the soil and aquaculture;
- (2) Dairying;
- (3) Production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- (4) Growing and harvesting of forest products upon forestland, and any other forestry or lumbering operations;
- (5) Raising of livestock, including horses;
- (6) Keeping of horses as a commercial enterprise; and
- (7) Keeping and raising of poultry, swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

D. "Farming" may encompass activities including, but not limited to, the following:

- (1) Transportation of slow-moving farm equipment over roads within the Town;
- (2) Control of pests, including, but not limited to, insects, weeds, predators and disease organism of plants and animals;
- (3) Application of manure and fertilizers;
- (4) Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- (5) Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage thereto;
- (6) Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- (7) On-farm relocation of earth and the clearing of ground for farming operations.

§ 145-3. Right to farm declaration.

The right to farm is hereby recognized to exist within the Town of Wellfleet. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this bylaw are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Bylaw shall be deemed as

acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

§ 145-4. Disclosure notification.

Copies of the disclosure notification shall be prepared by the Town and included on a one-time basis with the mail-out of Town real estate tax bills. Following the initial mail-out, copies of the disclosure notification will be included on a continuing basis with the mail-out of municipal lien certificates.

DISCLOSURE NOTIFICATION:

It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural and aquacultural resources for the production of food and other agricultural products and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause attendant incidental noise, dust and odors associated with normally accepted agricultural practices. Buyers or occupants are also informed that any property within the Town may be impacted by commercial agriculture, aquaculture, and other farming activities.

§ 145-5. Resolution of disputes.

- A. Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Selectboard, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time within which to pursue any other available remedies that the aggrieved may have. The Zoning Enforcement Officer or the Selectboard may forward a copy of the grievance to its agent, which shall review and facilitate the resolution of the grievance and report its recommendations to the referring Town authority within an agreed-upon time frame.
- B. The Board of Health, except in cases of imminent danger or public health risk, shall forward a copy of the grievance to its agent, which shall review and facilitate the resolution of the grievance involving all concerned parties, and report its recommendations to the Board of Health within an agreed-upon time.

§ 145-6. Severability.

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

§ 145-7. Relationship to existing bylaws, rules and regulations.

Notwithstanding anything contained herein to the contrary, nothing in this bylaw shall supersede any existing Town or National Seashore bylaw, zoning bylaw, rule or regulation, and all such existing bylaws, rules and regulations shall continue in full force and effect.

Chapter 147

FEES

**ARTICLE I
Solid Waste Disposal Fees**

§ 147-1. Established by Board of Health.

**ARTICLE II
Town Clerk Fees**

§ 147-2. Fees and amounts.

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

**ARTICLE I
Solid Waste Disposal Fees
[Adopted as Art. III, Sec. 12, of the General Bylaws]**

§ 147-1. Established by Board of Health.

- A. All fees charged by the Town of Wellfleet for disposal of solid waste at the municipal transfer station/landfill shall be set annually by the Board of Health after same have been approved by the Selectboard.
- B. Said fees shall be set by a vote of the Board of Health only after:
 - (1) A public hearing, notice of which shall be posted at Town Hall and published in a newspaper distributed in Wellfleet at least seven days prior to any such public hearing; and
 - (2) The Board of Health has received written notice from the Selectboard that they have voted to approve the proposed fee schedule.

**ARTICLE II
Town Clerk Fees
[Adopted 2005 ATM; amended 4-26-2010]**

§ 147-2. Fees and amounts.

The fees charged by the Town Clerk under MGL c. 262, § 34 are as follows:

MGL c. 262, § 34		
Subsection		
(11)	For entering amendment of a record of the birth of an illegitimate child subsequently legitimized	\$20
(12)	For correcting error in the record of birth	\$20

MGL c. 262, § 34		
Subsection		
(13)	For furnishing certificate of birth	\$10
(13A)	For furnishing an abstract copy or record of birth	\$10
(14)	For entering delayed record of birth	\$20
(20)	For filing certificate of a person conducting business under any title other than his real name	\$20
(21)	For filing by a person conducting business under any other title other than his real name or statement of change of his residence, or of his discontinuation, retirement or withdrawal from, or of a change of location of such business	\$15
(22)	For furnishing certified copy of certificate of person conducting business under any other title other than his real name or a statement by such person of his discontinuance, retirement or withdrawal from such business	\$5
(24)	For recording the name and address, the date and number of the certificate issued to a person registered for the practice of podiatry in the Commonwealth	\$20
(29)	For correcting errors in a record of death	\$10
(30)	For furnishing a certificate of death	\$10
(30A)	For furnishing an abstract copy of a record of death	\$10
(42)	For entering notice of intention of marriage and issuing certificate thereon	\$40
(43)	For entering certificate of marriage filed by persons married out of the Commonwealth	\$10
(44)	For issuing certificate of marriage	\$10
(44A)	For furnishing an abstract copy of a record of marriage	\$10
(45)	For correcting errors in a record of marriage	\$20
(54)	For recording power of attorney	\$20
(57)	For recording certificate of registration granted to a person to engage in the practice of optometry, or issuing a certified copy thereof	\$20
(58)	For recording the name and the owner of a certificate of registration as a physician or osteopath in the Commonwealth	\$20

MGL c. 262, § 34

Subsection		
(62)	For recording an order granting locations of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in the number of wires and cables or attachments under the provisions of MGL c. 166, § 22, additional fee for each street or way included in the order	
	Flat rate	\$25
	Additional fee	\$5
(66)	For examining records or papers relating to birth, marriage or death upon the application of any person	The actual expense thereof, but not less than \$10
(67)	For copying any manuscript or record pertaining to a birth, marriage, or death	\$5
(75)	For filing a copy of written instrument or declaration of trust by the trustees of an association or trust, or any amendment thereof as provided by MGL c. 182, § 2	\$20
(78)	For recording deed of lot or plot in a public burial place or cemetery	\$10
(79)	Recording any other documents	
	Per first page	\$10
	Each additional page	\$2

Chapter 156

HISTORIC PROPERTIES AND DISTRICTS

ARTICLE I Demolition Delay

- § 156-1. Purpose.
- § 156-2. Definitions.
- § 156-3. Review and decision procedure.
- § 156-4. Enforcement.
- § 156-5. Violations and penalties.
- § 156-6. Severability.
- § 156-7. Historic District Act.

ARTICLE II Special Assessment for Rehabilitation of Owner-Occupied Residential Property Listed on State Register of Historic Places

- § 156-8. Creation of special property tax assessment.
- § 156-9. Eligible properties.
- § 156-10. Application process.
- § 156-11. Effective date of special assessment.
- § 156-12. Time limits.
- § 156-13. Ongoing maintenance of property.
- § 156-14. Annual certifications.
- § 156-15. Termination of assessment.

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

ARTICLE I Demolition Delay [Adopted as Art. XIII of the General Bylaws]

§ 156-1. Purpose.

The purpose of this ordinance is to protect from demolition historically significant buildings which reflect the historical, cultural or architectural heritage of the Town of Wellfleet, and to encourage the owners of such buildings to explore and develop acceptable alternatives to demolition such as preservation, renovation, restoration or relocation.

§ 156-2. Definitions.

BOARD — The Historical Commission, established by vote of the Town pursuant to Article 54 of the 1980 Annual Town Meeting.

DEMOLITION — The act of pulling down, destroying, removing, or razing a building, in whole or in part (including the demolition of exterior walls or roof), or commencing such work with the intent of completing the same, all as determined by the Building Inspector; provided, however, that the term "demolition" shall not include the ordinary maintenance or repair of any building. In addition, the term "demolition" defined under this bylaw section

shall include the act of enclosing or encapsulating an existing building within new exterior walls or roofed areas.

HISTORICALLY SIGNIFICANT BUILDING — Any building which is either:

- A. Listed in the National Register of Historic Places.
- B. More than 75 years old.
- C. Designated by the Board after public hearing(s) as being historically or architecturally significant in terms of period, style, and method of construction or association with historic persons or events.

PREFERABLY PRESERVED — Any "historically significant" building, the preservation of which is in the public interest as determined by the Board.

§ 156-3. Review and decision procedure.

- A. The Board shall furnish the Building Inspector with a list of all "historically significant buildings."
- B. The Building Inspector shall, within five days of receipt of an application for a demolition permit for a "historically significant building," forward a copy of the application to the Board.
- C. The Board shall determine if the building is "preferably preserved." If the Board makes an initial determination that the building is "preferably preserved," then within 45 days of the receipt of the demolition permit application, the Board shall hold a public hearing to explore alternatives to demolition.
- D. Notice of the time, place and subject matter of hearings hereunder shall be given by publication in a newspaper of general circulation in the Town once a week for two successive weeks, the first notice to appear at least 14 days before the day of the hearing (including the day of publication and excluding the day of the hearing) and by mailing a notice of hearing to the owner or applicant, all abutters to the subject property, the Planning Board of the Town, the Historical District Commission, the Wellfleet Historical Society, the Conservation Commission, the Selectboard and such other persons as the Board may determine.
- E. If, after hearing, the Board determines that the proposed work would destroy or substantially diminish an historic value, it is empowered to impose a demolition delay of up to 18 months from the date of said hearing to afford an opportunity to develop alternatives to demolition.
- F. The Board shall with seven days of said hearing notify the owner or applicant and the Building Inspector of its decision.
- G. If at the end of a Board-mandated delay, no alternatives have been agreed to by the owner or applicant, the Board shall within seven days notify the Building Inspector, who may then issue the permit.

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HISTORIC PROPERTIES AND DISTRICTS

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- H. In addition to the provisions of Subsection G, the Building Inspector may issue a demolition permit upon written notice from the Board that the building is not "preferably preserved" or that there is no likelihood that either the owner or some other person or group is willing to purchase, preserve, restore or rehabilitate the building or that the applicant has agreed to accept a demolition permit on specified conditions.
- I. Nothing in this bylaw shall restrict the Building Inspector from issuing a demolition permit if in his opinion the condition of the building poses an imminent and substantial threat to public health or safety.

§ 156-4. Enforcement.

The Building Inspector shall be authorized to enforce the provisions of this bylaw.

§ 156-5. Violations and penalties.

- A. Anyone who undertakes demolition of any "historically significant" building without a demolition permit shall be subject to a fine of \$1,000. Each day such demolition continues shall constitute a separate offense.
- B. No building permit shall be issued or be valid for a period of up to two years after demolition of any "historically significant" building in violation of this bylaw.

§ 156-6. Severability.

If any provision of this bylaw is determined to be invalid or unconstitutional by any court of competent jurisdiction, said determination shall not affect the validity of any other section hereof.

§ 156-7. Historic District Act.

If any provisions of this bylaw conflict with Massachusetts General Laws Chapter 40C, the Historic District Act, that Act shall prevail.

ARTICLE II

**Special Assessment for Rehabilitation of Owner-Occupied Residential Property Listed
on State Register of Historic Places
[Adopted as part of the General Bylaws]**

§ 156-8. Creation of special property tax assessment.

- A. The purpose of this bylaw is to adopt a policy with respect to phased property tax assessments for substantial rehabilitation of owner-occupied residential property listed on the State Register of Historic Places as authorized by MGL c. 59, § 5J.
- B. A special property tax assessment is created for substantial rehabilitation of owner-occupied residential property listed on the State Register of Historic Places (State

Register). The increase in assessed value resulting from substantial rehabilitation of eligible properties shall be phased in one-fifth increments over a period of five years to the full assessed value of the property. The special assessment shall extend only to the building(s) or structure(s) that are rehabilitated.

§ 156-9. Eligible properties.

In order to be eligible for the special assessment, property must meet the following criteria:

- A. The property to be rehabilitated must be occupied by the owner exclusively for residential purposes and be listed on the State Register which is maintained by the Massachusetts Historical Commission (MHC) pursuant to MGL c. 9, § 26C, either individually or as a contributing element within an historic district.
- B. The cost of rehabilitation, as that term is defined in 950 CMR 72.04, must be no less than 25% of the assessed value of the property prior to rehabilitation. Not less than 10% of the cost of rehabilitation shall be dedicated to rehabilitation of the exterior of the historic building.
- C. The property owner must obtain a certificate from the MHC stating that the proposed rehabilitation meets the Secretary of the Interior's Standards.

§ 156-10. Application process.

- A. A property owner must submit an application, on a form provided by the Board of Assessors, which shall include the following information:
 - (1) Certification from the MHC that the rehabilitation as proposed meets the Secretary of the Interior's Standards;
 - (2) Proof of the applicant's ownership and occupancy of the subject property;
 - (3) The total cost of rehabilitation; and
 - (4) The property's assessed value prior to rehabilitation.
- B. Within 60 days of receipt of a completed application, the Board of Assessors shall determine whether the proposed rehabilitation meets the eligibility criteria set forth in § 156-9, and will notify the owner of its decision in writing. The Board of Assessors will grant final approval of the special assessment upon receipt of the certification described in Subsection C.
- C. After completion of the rehabilitation, the property owner shall provide to the Board of Assessor's a certification that the completed work conforms with the proposed rehabilitation and meets the Secretary of the Interior's Standards. The owner shall obtain such certification from the MHC, or from the appropriate local preservation commission if the property is in an historic district, or is a designated landmark, or is otherwise subject to a preservation restriction or bylaw.

§ 156-11. Effective date of special assessment.

The special assessment will take effect on the first day of the next fiscal year after the assessment is approved by the Board of Assessors.

§ 156-12. Time limits.

- A. An owner shall apply for the special assessment no later than two years after completion of the rehabilitation certified by the MHC.
- B. In order to be included in the total cost of rehabilitation as defined in 950 CMR 72.04, all expenditures contributing to the cost of rehabilitation work must be incurred within a three-year period.

§ 156-13. Ongoing maintenance of property.

An owner who applies for the special assessment shall agree in writing to maintain the subject property in accordance with the Secretary of the Interior's Standards for the duration of the special assessment. Failure to maintain the property in accordance with the Secretary of the Interior's Standards for the agreed period of time shall result in revocation of the special assessment. In the event that the local preservation commission informs the Board of Assessors that the owner has failed to maintain the subject property in accordance with the Secretary of the Interior's Standards, the Board of Assessors shall notify the owner in writing and the owner shall have 30 days in which to demonstrate that the property has been maintained in accordance with the Secretary of the Interior's Standards or, if not, to remedy such failure.

§ 156-14. Annual certifications.

An owner who receives the special assessment shall annually, for the duration of the special assessment, provide the Board of Assessors with written certification that he or she still owns and occupies the property which is the subject of the special assessment, and that the subject property is still listed on the State Register.

§ 156-15. Termination of assessment.

The date of any of the following occurrences shall be considered the date of the end of the special assessment:

- A. Written notice from the owner to the Board of Assessors requesting removal of the special assessment;
- B. Sale or transfer of ownership during the five-year period, except in the course of probate proceedings; or
- C. Removal of the property from the State Register.

Chapter 168
LICENSES AND PERMITS

ARTICLE I
**Denial or Revocation for Failure to Pay
Taxes or Fees**

- § 168-1. List of delinquent taxpayers.
- § 168-2. Authority to deny, revoke or suspend; conditions.
- § 168-3. Payment agreements.
- § 168-4. Waiver.

§ 168-5. Exceptions.

ARTICLE II
General Business Licenses

- § 168-6. Registration required; scope.
- § 168-7. List of businesses required to register.
- § 168-8. Violations and penalties.

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

ARTICLE I
Denial or Revocation for Failure to Pay Taxes or Fees
[Adopted as Art. X, Secs. 1 through 5, of the General Bylaws]

§ 168-1. List of delinquent taxpayers.

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

§ 168-2. Authority to deny, revoke or suspend; conditions.

The Licensing Authority may deny, revoke or suspend any license or permit, including renewals and transfers, of any party whose name appears on said list furnished to the Licensing Authority from the Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing to be held not earlier than 14 days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the Licensing Authority with respect to such license denial, revocation or suspension shall be made only for the 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 Licensing Authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate. Said certificate to be issued within 48 hours of payment of taxes, fees, assessments, betterments or other municipal charges, excluding Saturday, Sunday and holidays.

§ 168-3. Payment agreements.

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

§ 168-4. Waiver.

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

§ 168-5. Exceptions.

This section shall not apply to the following licenses and permits: open burning, MGL c. 48, § 13; bicycling permits, MGL c. 85, § 11A¹ sales of articles for charitable purposes, MGL c. 101, § 33; children work permits, MGL c. 149, § 69; clubs, associations dispensing food or beverage licenses, MGL c. 140, § 21E; dog licenses, MGL c. 140, § 137; fishing, hunting, trapping licenses, MGL c. 131, § 12; marriage licenses, MGL c. 201, § 28; and theatrical events, public exhibition permits, MGL c. 140, § 181.

ARTICLE II

General Business Licenses

[Adopted as Art. X, Sec. 6, of the General Bylaws]

§ 168-6. Registration required; scope.

Any person or entity operating a business as hereinafter defined shall register with the Selectboard and, if required to do so, shall obtain a "General Business License" prior to commencing said business. For the purposes of this section, a business shall be defined as the selling of commodities or services of any kind to the general public. Business shall not include any business otherwise licensed by the Selectboard pursuant to applicable provisions of the General Laws of the Commonwealth of Massachusetts.

¹ Editor's Note: MGL c. 85, § 11A, which addressed registration of bicycles, was repealed by St. 2008, c. 525, § 2, effective 4-15-2009.

§ 168-7. List of businesses required to register.

The Selectboard may determine from time to time, after a public hearing, notice of which shall be advertised at least seven days prior thereto in a newspaper in general circulation in the Town, which types of business shall be required to obtain General Business Licenses and the fee(s) required for said licenses. Procedures and requirements for the issuance of both the registration required by § 168-6 of this article and the General Business License shall be set forth in rules and regulations promulgated by the Selectboard pursuant to the authority conferred upon them in Section 3-5-1 of the Wellfleet Home Rule Charter.

§ 168-8. Violations and penalties.

Any person who operates an unlicensed business of a type for which the Selectboard has determined that a license shall be required, in accordance with § 168-7 of this article, or who operates a business as herein defined of which the license has been denied, revoked, or suspended in accordance with § 168-7 of this article, shall be fined \$100 for each day or fraction of a day of violation. The Wellfleet Police Department (including special officers), the Building Inspector, and any other official whom the Selectboard may from time to time designate shall have authority to enforce this article.

Chapter 173

MARIJUANA ESTABLISHMENTS

**§ 173-1. Limit on marijuana
dispensaries.**

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet 9-24-2018 STM by Art. 8 (Art. VII, Sec. 47, of the General Bylaws). Amendments noted where applicable.]

§ 173-1. Limit on marijuana dispensaries.

The number of licenses for registered, retail "Marijuana Establishments," as defined by MGL c. 94G, § 1, may be limited or granted at the discretion of the Selectboard, serving as the Licensing Board, provided that the minimum number of establishments licensed shall not be less than 20% of the number of liquor licenses presently issued within the Town for the retail sale of alcoholic beverages not to be drunk on the premises where sold (pursuant to MGL c. 138, § 15).

Chapter 179

NOISE

§ 179-1. Restrictions.

§ 179-3. Penalties and enforcement.

§ 179-2. Violations.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Secs. 26 and 37, of the General Bylaws. Amendments noted where applicable.]

§ 179-1. Restrictions.

It shall be unlawful for any person or persons occupying, having the charge of, or being present in or about any building, structure, premises, shelter, mobile or stationary vehicle, boat, or any conveyance, or any part thereof, in the Town, from 10:00 p.m. until 8:00 a.m., at any time to cause, suffer, allow, or countenance any unnecessarily loud, excessive or unusual noise, including any such noise in the operation of any radio, phonograph or other mechanical or electronic sound-making device or instrument, or reproducing device or instrument, or in the playing of any band, orchestra, musician or group of musicians, or in the use of any device to amplify the aforesaid; or the making of loud outcries, exclamations or other loud, boisterous noise, or loud or boisterous singing by any person or persons or the use of any device to amplify the aforesaid noise, where such noise is plainly audible at a distance of 150 feet from the building, structure, premises, shelter, mobile or stationary vehicle, boat, or any conveyance, or any part thereof in which and/or from which it is produced. The fact that the noise is plainly audible at said distance of 150 feet shall constitute prima facie evidence of a violation of this bylaw.

§ 179-2. Violations.

Except as authorized by the Selectboard, any person or persons shall be deemed in violation of this bylaw who shall make, aid and abet, or cause, suffer, allow, or countenance the making of such noise, and shall be subject to punishment by fine.

§ 179-3. Penalties and enforcement.

A. Any person who violates the following sections of this chapter shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 179-1	\$50	\$200

B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

Chapter 187

PLASTICS AND OTHER ENVIRONMENTAL HAZARDS

ARTICLE I Plastic Bags

- § 187-1. Purpose and intent.
- § 187-2. Definitions.
- § 187-3. Use regulations.
- § 187-4. Administration and enforcement.

ARTICLE II Polystyrene Containers

- § 187-5. Purpose and intent.
- § 187-6. Definitions.
- § 187-7. Use regulations.
- § 187-8. Administration and enforcement.
- § 187-9. Severability.

ARTICLE III Balloon Sales and Disposal

- § 187-10. Purpose and intent.
- § 187-11. Definitions.
- § 187-12. Applicability.
- § 187-13. Exemptions.
- § 187-14. Enforcement.
- § 187-15. Fines and penalties.

ARTICLE IV Single-Use Plastic Bottles

- § 187-16. Ban on sale.
- § 187-17. Definitions.
- § 187-18. Exemptions.
- § 187-19. Enforcement.

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

ARTICLE I Plastic Bags

[Adopted as Art. VII, Sec. 45, of the General Bylaws]

§ 187-1. Purpose and intent.

- A. The use and disposal of plastic shopping bags have significant impacts on the marine and terrestrial environment of all coastal communities, including, but not limited to:
 - (1) Marine and terrestrial animals through ingestion and entanglement;
 - (2) Pollution and degradation of the terrestrial and coastal environment;
 - (3) Storm drainage system overload; and
 - (4) Disposal burdens for solid waste collection and recycling facilities.
- B. Studies have shown that even alternative "compostable" or "biodegradable" bags require very specific and controlled environments in order to biodegrade, and have

potential negative environmental impact similar to conventional plastic bags. Such bags should therefore be subject to the same restrictions as conventional plastic bags.

- C. The goal of this bylaw is to protect the Town's unique natural beauty and irreplaceable natural resources by phasing out the use of certain plastic shopping bags by January 1, 2016.

§ 187-2. Definitions.

ESTABLISHMENT — Means any business in Wellfleet selling goods, food or services to the public, including, but not limited to, markets, restaurants, bars, take-out food purveyors, merchandise retailers, florists and galleries.

PLASTIC SHOPPING BAG —

- A. For the purposes of this bylaw is defined as a bag made of plastic, including but not limited to bags made of high-density polyethylene, low-density polyethylene, "biodegradable," "compostable" or "oxo-biodegradable" materials, with a thickness of less than 3.5 mils provided at the checkout stand, cash register, point of sale or other point of departure intended for the purpose of transporting food or merchandise out of the establishment.
- B. Permitted are plastic bags without handles used to:
- (1) Transport goods from a department within a store to the point of sale;
 - (2) Segregate food or merchandise that could damage or contaminate other food or merchandise when placed together in a point-of-sale bag; or
 - (3) Protect newspapers or other goods such as, but not limited to: maps, posters or artwork.

REUSABLE SHOPPING BAG — Defined as a bag that is specifically designed and manufactured for multiple reuse and is made of durable material such as cloth at least 3.5 mil thick.

§ 187-3. Use regulations.

- A. Plastic shopping bags shall no longer be distributed or sold at any establishment beginning January 1, 2016. Any stock remaining after that date shall be recycled or returned to the manufacturer by the establishment.
- B. Establishments may provide paper, reusable bags or boxes at no charge, or charge a fee which would be kept by the establishments, as they so desire.

§ 187-4. Administration and enforcement.

- A. This bylaw may be enforced by any Town Police Officer or agent of the Board of Health.

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- B. This bylaw may be enforced through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to MGL c. 40, § 21D and Chapter 1, Article I, Penalties and Enforcement, of the Town's General Bylaws.
- (1) If non-criminal disposition is elected, then any establishment which violates any provision of this bylaw shall be subject to the following penalties:
 - (a) First offense: \$50 fine.
 - (b) Second offense: \$100 fine.
 - (c) Third and subsequent offenses: \$200 fine for each offense.
 - (2) Offenses occurring within two years of the date of the first reported offense will be considered as subsequent offenses. Each day or portion thereof shall constitute a separate offense.

ARTICLE II

Polystyrene Containers

[Adopted 4-24-2017 ATM by Art. 36 (Art. VII, Sec. 46, of the General Bylaws)]

§ 187-5. Purpose and intent.

- A. The use and disposal of polystyrene has significant impacts on our Town and our environment, including, but not limited to:
- (1) Harm to marine and terrestrial animals through ingestion.
 - (2) Pollution and degradation of the terrestrial and coastal environment.
 - (3) Human exposure to styrene, which is derived from benzene and used in the manufacture of polystyrene. Occupational studies have shown risks for leukemia and lymphoma, and genetic damage to white blood cells. Styrene is "reasonably anticipated to be a human carcinogen" (US Department of Health and Human Services, 2016).
 - (4) Disposal burdens of difficult-to-recycle plastics for solid waste collection and recycling facilities.
- B. With the goal of protecting the health of its citizens and the unique natural beauty and irreplaceable natural resources of the Town of Wellfleet, and given that inexpensive, safe alternatives to polystyrene are easily obtained, the Town will phase out the use of certain polystyrene plastics by June 1, 2018.

§ 187-6. Definitions.

EXPANDED OR FOAM POLYSTYRENE AND POLYSTYRENE — Shall mean blown polystyrene (polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam) and expanded and extruded forms, which are thermoplastic petrochemical materials utilizing a styrene monomer and processed by any number of techniques, including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection

molding, form molding, and extrusion blown molding (extruded foam polystyrene), sometimes called Styrofoam, a Dow Chemical Co. trademarked form of polystyrene foam. It bears the recycling number 6.

FOOD ESTABLISHMENTS — Shall mean any operations, including, without limitation, food trucks, schools, farmers markets and other public venues that store, prepare, package, serve, vend or otherwise provide food for human consumption. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000 et seq., shall be considered food establishments for the purposes of this bylaw.

POLYSTYRENE DISPOSABLE FOOD SERVICE CONTAINERS AND CUTLERY —

Shall mean single-use disposable products for serving or transporting food or beverages, including, without limitation, take-out foods and/or leftovers from partially consumed meals prepared by a restaurant and/or retail food establishment. This includes, but is not limited to, plates, cups, bowls, trays, hinged or lidded containers, straws, cup lids, and cutlery. It shall also include single-use disposable packaging for uncooked foods prepared on the premises, as well as disposable catering trays.

PUBLIC VENUES — Shall mean operations including, but not limited to, meeting halls, churches, Town offices, the Senior Center, Recreation Department, Library, and the Wellfleet Elementary School.

RETAIL ESTABLISHMENTS — Shall mean any commercial business facility that sells goods directly to consumers, including, but not limited to, grocery stores, pharmacies, liquor stores, convenience stores, retail stores and vendors selling clothing, food, and personal items, dry cleaning services, theaters and all other food services establishments.

§ 187-7. Use regulations.

- A. Polystyrene disposable food service containers, cutlery, and new polystyrene packing peanuts shall not be used or sold by food establishments and/or retail establishments within the Town of Wellfleet on or after June 1, 2018. Any stock remaining after that date shall be accepted for disposal free of charge, through June 30, 2018, at the Wellfleet Transfer Station/Recycling Center.
- B. This bylaw shall not apply to:
 - (1) Polystyrene packing peanuts and foam packaging reused from shipments coming to Wellfleet.
 - (2) Prepackaged meat and produce trays, egg cartons, and other food or beverage products bought from a wholesaler or out-of-town supplier.
 - (3) Polystyrene foam freezer chests.

§ 187-8. Administration and enforcement.

- A. This bylaw may be enforced by any Town Police Officer or agent of the Board of Health through any lawful means in law or in equity, including, but not limited to, non-criminal disposition pursuant to MGL c. 40, § 21D and Chapter 1, Article I, Penalties and Enforcement, of the Town's General Bylaws. If non-criminal disposition is elected,

then any establishment which violates any provision of this bylaw shall be subject to the following penalties: **[Amended 4-23-2018 ATM by Art. 34]**

- (1) First offense: \$100 fine.
 - (2) Second offense: \$200 fine.
 - (3) Third offense and each subsequent: \$300 fine.
- B. Offenses occurring within two years of the date of first reported offense will be considered as subsequent offenses. Each day or portion thereof shall constitute a separate offense.
- C. The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this bylaw.

§ 187-9. Severability.

If any provision of this bylaw is declared invalid, or unenforceable, the other provisions shall not be affected thereby.

ARTICLE III

Balloon Sales and Disposal

[Adopted 4-22-2019 ATM by Art. 38 (Art. VII, Sec. 48, of the General Bylaws)]

§ 187-10. Purpose and intent.

The purpose of this bylaw is to address public concerns regarding the environmental hazards to wildlife and marine life in the Town of Wellfleet posed by the release and improper disposal of balloons.

§ 187-11. Definitions.

Plastic, latex, rubber, or Mylar balloon inflatable with liquid, air, or any other substance.

§ 187-12. Applicability.

Effective June 1, 2020, no person shall sell, or distribute to the public, any type of balloon (including, but not limited to, inflatable plastic, latex, rubber or Mylar balloons). With respect to disposal, no person shall throw, deposit, discard, or otherwise discharge balloons in any condition into any street, alley, waterway, park, beach, or other public or private venue in the Town of Wellfleet, except that deflated balloons may be disposed of in any appropriate trash receptacle.

§ 187-13. Exemptions.

Launching or operation of lighter-than-air aircraft, or the launching of balloons inflated with lighter-than-air gas by government agencies or scientific organizations is allowed.

§ 187-14. Enforcement.

This bylaw may be enforced by any Town of Wellfleet police officer or other designee/agent authorized by the Selectboard.

§ 187-15. Fines and penalties.

Any person or establishment violating this section shall be punished by a non-criminal fine of \$50 for each offense.

ARTICLE IV

Single-Use Plastic Bottles

[Adopted 9-12-2020 ATM by Art. 23 (Art. VII, Sec. 49, of the General Bylaws)]

§ 187-16. Ban on sale.

Effective on September 1, 2021, it shall be unlawful to sell non-carbonated, unflavored drinking water in single-use plastic bottles of less than one gallon in the Town of Wellfleet. Enforcement of this regulation will begin September 1, 2021.

§ 187-17. Definitions.

A single-use plastic bottle is a beverage container made from any type of plastic resin.

§ 187-18. Exemptions.

Sales or distribution of non-carbonated, unflavored drinking water in single-use plastic bottles occurring subsequent to a declaration of emergency (by the Emergency Management Director or other duly authorized Town, County, Commonwealth or Federal official) affecting the ability and/or quality of drinking water to residents of the Town shall be exempt from this bylaw until seven days after the declaration has ended.

§ 187-19. Enforcement.

- A. Enforcement of this article shall be the responsibility of the Town Administrator or his/her designee. The Town Administrator shall determine the inspection process to be followed, incorporating the process into other Town duties as appropriate.
- B. Any establishment conducting sales in violation of this article shall be subject to a non-criminal disposition fine as specified in MGL c. 40, § 21D.
 - (1) The following penalties apply:

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- (a) First violation: written warning.
 - (b) Second violation: \$150 fine.
 - (c) Third and subsequent violations: \$300 fine.
- (2) Each day a violation continues constitutes a separate violation, incurring additional fines. Any such fines collected shall be payable to the Town of Wellfleet.
- C. All businesses will be routinely inspected until the Town Administrator deems the inspection to no longer be required.

Chapter 193
RECYCLING

§ 193-1. Purpose.

§ 193-4. Recyclables.

§ 193-2. Implementation.

§ 193-5. Disposal of recyclables.

§ 193-3. Definitions of solid waste materials.

§ 193-6. Separation required.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. XII of the General Bylaws. Amendments noted where applicable.]

§ 193-1. Purpose.

The goal of the Town of Wellfleet is to dispose of solid waste material in an economically and environmentally responsible manner and to reduce the total amount of solid waste disposed of by the Town.

§ 193-2. Implementation.

The Selectboard shall have the authority to implement the provisions of § 193-5 of this article on a flexible schedule, pursuant to which recyclables in § 193-4 will become subject to the mandatory provisions of § 193-6. The implementation of the recycling schedule shall be determined by assessing the market conditions, the ability of the community to respond to environmental concerns, and the recommendations from the Recycling Commission and the Board of Health. The implementation schedule, as it may be amended from time to time, shall be established by the Selectboard only after a public hearing, notice of which has been given seven days prior to the hearing date.

§ 193-3. Definitions of solid waste materials.

Definitions of solid waste materials:

- A. Batteries: all lead acid storage batteries.
- B. Tires: vehicle.
- C. White goods: such items as refrigerators, clothes-washing drying machines, ranges, metal furniture.
- D. Motor oil: used motor oil.
- E. Scrap metal: miscellaneous metal objects.
- F. Glass: clear-white or colored.
- G. Aluminum: aluminum cans, trays, storm doors, screens.

- H. Tin cans: food or beverage cans made of steel/iron.
- I. Cardboard: heavy paperboard used in boxes, cartons.
- J. Office paper: stationery, copy and computer paper.
- K. Plastics: plastic containers such as milk bottles, water jugs, detergent bottles, styrofoam, plastic bags.
- L. Newsprint: newspaper, newspaper advertisements.
- M. Compostables: leaves, grass clippings.
- N. Demolition and building waste: materials and scrap from new and remodeling construction.
- O. Hazardous waste: as determined by the Board of Health.
- P. Garbage: animal, vegetable or other organic waste.

§ 193-4. Recyclables.

The following items shall be deemed to be recyclables:

- A. Batteries.
- B. Tires.
- C. White goods.
- D. Motor oil.
- E. Scrap metal.
- F. Glass.
- G. Aluminum.
- H. Tin cans.
- I. Cardboard.
- J. Office paper.
- K. Plastics.
- L. Newsprint.

§ 193-5. Disposal of recyclables.

When determined by the Selectboard under the provisions of § 193-2 above, it shall be mandatory and the responsibility of any person disposing of solid waste at the transfer station to separate the recyclable items from all other solid waste and dispose of same in accordance with applicable Board of Health regulations. The Board of Health shall promulgate

regulations which govern the conditions of all items to be recycled as well as the overall implementation of the Recycling Article.

§ 193-6. Separation required.

As recyclables become regulated, they shall be separated from all other solid waste and brought to the Transfer Station or left for a commercial hauler in the manner required by said hauler. If it is determined by a transfer station attendant that any bag contains regular recyclables, it shall be not be accepted for disposal until said regulated recyclables are separated by the person attempting to dispose of same.

Chapter 200
SCENIC ROADS

§ 200-1. Consent required for work; notice of hearing. **§ 200-2. Penalties and enforcement.**

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Secs. 37 and 44, of the General Bylaws. Amendments noted where applicable.]

§ 200-1. Consent required for work; notice of hearing.

Except under emergency conditions, defined as unforeseen events that prevent safe travel or effective emergency access, no forestry, repair, maintenance, reconstruction or paving work done with respect thereto shall involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within the layout of a Scenic Road except with prior written consent of the Planning Board after a public hearing held in accordance with MGL c. 40, § 15C. In addition to the notice requirements of the statute, notice of the public hearing shall be sent no less than 14 days prior to the hearing by first class mail to abutters within 300 feet of the site of the work, as determined by current Assessors' records.

§ 200-2. Penalties and enforcement.

A. Any person who violates the following sections of this chapter shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 200-1	\$100	\$200

B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

Chapter 204

STREETS, SIDEWALKS AND PUBLIC PLACES

- § 204-1. Interpretation.
- § 204-2. Excavations, construction and obstructions.
- § 204-3. Permits; barriers required.
- § 204-4. Solid or liquid waste deposits.
- § 204-5. Recreational activities restricted.
- § 204-6. Stones and missiles.
- § 204-7. Posting of advertisements and bills.
- § 204-8. Graffiti.
- § 204-9. Obscene language.
- § 204-10. Loitering and obstructing pedestrians.
- § 204-11. Disorderly conduct.
- § 204-12. Groups obstructing pedestrians.
- § 204-13. Noise.
- § 204-14. Firearms, weapons and explosives.
- § 204-15. Open burning.
- § 204-16. Unlawful peeping.
- § 204-17. Town maintenance work on private ways.
- § 204-18. Penalties and enforcement.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Secs. 1 through 17, 21, 28 and 37, of the General Bylaws. Amendments noted where applicable.]

§ 204-1. Interpretation.

The words "street" and "streets" where used in these bylaws shall be construed as including all public ways, roads, alleys, lanes, and sidewalks, also those parts of all public squares, and public places which form traveled parts of the highways.

§ 204-2. Excavations, construction and obstructions.

No person shall break or dig up the ground in any street or erect any staging for building, or place or deposit any stone, brick, timber or other building material thereon without first obtaining the written permission of the Selectboard.

§ 204-3. Permits; barriers required.

- A. The Selectboard may grant a permit in writing to any person for the purpose of building or other lawful purpose to dig up, obstruct or encumber so much and such parts of any street as they deem to be safe and proper.
- B. The person licensed under the preceding section shall comply with all regulations in such permit and shall at all times maintain suitable barriers around any excavation or obstruction made by him in the street and shall so light the same by lanterns or other means from twilight through the whole night to daylight, as to render the street safe and convenient for travelers.

§ 204-4. Solid or liquid waste deposits.

No person shall throw or sweep into or place or drop and permit to remain in any street or public way, any hoops, boards or other wood or material with nails projecting therefrom, or nails, shavings, hair, manure, rubbish, offal or filth of any kind or nature, or any noxious or refuse liquid or solid substance.

§ 204-5. Recreational activities restricted.

No person shall coast, roller skate, scooter, play ball, skateboard or engage in any other athletic game on Holbrook Avenue, Commercial Street and East Main Street or streets or public parking lots of the Central District or upon Route 6 except in accordance with orders and permits given by the Selectboard.

§ 204-6. Stones and missiles.

No person shall throw stones, snowballs or other missiles or shoot with or use a bow and arrow, or sling in any street or public way.

§ 204-7. Posting of advertisements and bills.

No person shall post or affix in any manner, paint or write or cause to be painted, printed or written, a notice, advertisement or bill upon a post, fence, wall or building or property in the Town, unless he has previously obtained the consent so to do from the person or persons having possession of such fence, pole, post, wall or building or property. With respect to Town property, permission must be obtained from the Selectboard.

§ 204-8. Graffiti.

No person shall make any indecent figures or write, print, paint or cut any obscene word or words upon or break, deface or injure in any manner any fence, post, sign or building or extinguish or remove without authority any streetlight so placed as to denote an obstruction in any place or way.

§ 204-9. Obscene language.

No person shall accost or address another person in any street or public place with any obscene or profane language.

§ 204-10. Loitering and obstructing pedestrians.

No person shall willfully or negligently obstruct the free passage of travelers in any street or upon any public sidewalk, nor shall any person so obstructing said street or sidewalk remain steadfast in any or upon any sidewalk after being directed by a police officer to move on.

§ 204-11. Disorderly conduct.

No person shall behave in an indecent or disorderly manner, nor use profane, indecent language, in any public place, building or any street or sidewalk of the Town.

§ 204-12. Groups obstructing pedestrians.

Three or more persons shall not continue to stand or remain in a group or near to each other on any street, sidewalk or in any public place in such a manner as to obstruct free passage of other pedestrians after having been requested by the Police or Constable, employed by the Town, to move on.

§ 204-13. Noise.

No person shall by loud hallooing, hooting or the making of loud and unseemly noises in the streets or public places willfully annoy or disturb another person.

§ 204-14. Firearms, weapons and explosives.

No person shall fire or discharge any kind of firearms, air or spring pistol or rifle, or set fire to any powder or combustible or throw any form of combustible or explosive article in any street or public place except in the discharge of some legal duty, without the permission of the Selectboard.

§ 204-15. Open burning.

No person shall make any bonfire or any other open fire except under a permit obtained from the Fire Warden.

§ 204-16. Unlawful peeping.

No person, except an officer of the law in performance of his duties, shall enter upon or remain upon the premises of another with the intention of peeking, spying, or looking into the window, door or other aperture of a house or structure in any manner or upon any person or persons therein.

§ 204-17. Town maintenance work on private ways.

To allow for the ready passage of emergency and other vehicles, the Highway Surveyor may, as he deems necessary in consultation with the Selectboard and the Police and Fire Department Chiefs, smooth out irregularities on private primary residential access roads in Wellfleet on the following conditions in accordance with MGL c. 40, § 6N:

- A. That those roads have been open for public use for six years;
- B. That 50% of the abutters sign an agreement with the Town that:

- (1) The task of major maintenance, repair, drainage, and surfacing remains the obligation of the abutters regardless of the action of the Town under the authority of this article;
- (2) Instead of any betterment charges being assessed, the road, while remaining private, be open for public use for the purposes for which public roads are commonly used, and that signs reading "Private Road Public May Use at Own Risk" be posted;
- (3) The Town would be indemnified and held harmless, as at present, in connection with any personal and property injury resulting from any Town work on or any defects in such road, such agreement to be recorded in the Barnstable Registry of Deeds, and the Highway Surveyor to maintain a record of labor costs, equipment use and materials to be reviewed by the Selectboard and Finance Committee each January.

§ 204-18. Penalties and enforcement.

- A. Any person who violates the following sections of this chapter shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 204-2	\$100	\$200
§ 204-3B	\$100	\$200
§ 204-4	\$100	\$200
§ 204-5	\$5	\$10
§ 204-6	\$5	\$10
§ 204-7	\$5	\$10
§ 204-8	\$200	\$200
§ 204-9	\$200	\$200
§ 204-10	\$200	\$200
§ 204-11	\$200	\$200
§ 204-12	\$200	\$200
§ 204-13	\$50	\$200
§ 204-14	\$200	\$200
§ 204-15	\$200	\$200
§ 204-16	\$200	\$200

- B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

Chapter 215
VEHICLES AND TRAFFIC

ARTICLE I
Operating Restrictions

- § 215-1. **Prohibited operation.**
- § 215-2. **Enforcement.**
- § 215-3. **Penalties and enforcement.**

ARTICLE II
Unregistered Vehicles and Trailers

- § 215-4. **Storage restrictions.**
- § 215-5. **Violations and penalties.**
- § 215-6. **Enforcement.**

ARTICLE III
Handicapped Parking

- § 215-7. **Parking areas for handicapped.**
- § 215-8. **Parking in spaces reserved for handicapped persons.**

ARTICLE IV
Vehicles in Cemeteries

- § 215-9. **Operating restrictions.**
- § 215-10. **Violations and penalties.**

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

ARTICLE I
Operating Restrictions
[Adopted as Art. VII, Secs. 24A and 37, of the General Bylaws]

§ 215-1. Prohibited operation.

- A. No person shall operate or park a motorized vehicle on:
 - (1) Any bicycle, pedestrian, or bridle path or trail owned or maintained by the Town of Wellfleet, Barnstable County, the Commonwealth of Massachusetts, or the United States, and prohibited to motorized vehicles by competent authority;
 - (2) Any real property of the Town of Wellfleet above the mean-high water line not encompassed within the layout or boundaries of any public or private road, way, public landing, or parking area designated for the parking and operation of motorized vehicles.
- B. Except:
 - (1) In an emergency for the purpose of protecting endangered persons, animals, or property.
 - (2) A Town, county, state, or federal official, employee, or authorized agent on official business.

- C. In addition to notice required by MGL c. 40, § 32, the Town of Wellfleet shall post signs reasonably calculated to apprise operators of motorized vehicles of the requirements of this bylaw.

§ 215-2. Enforcement.

The Town of Wellfleet Police Department (including special officers) shall have authority to enforce this bylaw, which enforcement shall include without limitation the non-criminal disposition procedure provided for in MGL c. 40, § 21D.

§ 215-3. Penalties and enforcement.

- A. Any person who violates the following sections of this article shall be fined the following amounts:

Section	First Offense	Each Subsequent
§ 215-1	\$50	\$100

- B. The Town of Wellfleet Police Department, including special officers, and any other official whom the Selectboard may from time to time designate shall have the authority to enforce said sections.

ARTICLE II

Unregistered Vehicles and Trailers

[Adopted as Art. VII, Sec. 29, of the General Bylaws]

§ 215-4. Storage restrictions.

No person shall, after July 1, 1986, have more than one unregistered motor vehicle and one unregistered trailer, or any part or portion thereof, un-garaged on premises owned or operated or controlled by him at any time unless authorized by the Selectboard. This bylaw shall not apply to trailer parks, boat yards commercial/private, licensed campgrounds, farms or like endeavors, premises duly licensed under provisions of MGL c. 140, §§ 58 and 59.

§ 215-5. Violations and penalties.

Any person failing to remove such vehicles within seven days after notice by Building Inspector of the Town shall be subject to a fine of \$100 and a fine of \$150 for each additional period of seven days of non-compliance.

§ 215-6. Enforcement.

The Town of Wellfleet Police Department (including special officers), the Building Inspector, and any other officer whom the Selectboard may from time to time designate shall have authority to enforce this article.

ARTICLE III

Handicapped Parking**[Adopted as Art. VII, Secs. 35 and 36, of the General Bylaws]****§ 215-7. Parking areas for handicapped.**

- A. Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for business, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural center, residential dwellings, or for any other place where the public has a right of access as invitees or licensees shall reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by said MGL c. 90, § 2 or for any vehicle transporting a handicapped person and displaying the special identification plate authorized by MGL c. 90, § 2 or for any vehicle bearing the official identification of a handicapped person issued by any other state, or any Canadian province, according to the following formula: If the number of parking spaces in any such area is:
- (1) More than 15 but not more than 25, one parking space;
 - (2) More than 25 but not more than 40, 5% of such spaces but not less than two;
 - (3) More than 40 but not more than 100, 4% of such spaces but not less than three;
 - (4) More than 100 but not more than 200, 3% of such spaces but not less than four;
 - (5) More than 200 but not more than 500, 2% of such spaces but not less than six;
 - (6) More than 500 but not more than 1,000, 1 1/2% of such spaces but not less than 10.
- B. Parking spaces designated as reserved under the provisions of this section shall be identified by the use of above-grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required, Unauthorized Vehicles May be Removed at Owner's Expense"; shall be as near as possible to a building entrance or walkway; shall be adjacent to handicapped curbs, ramps or other unobstructed methods permitting sidewalk access to a handicapped person; and shall be 12 feet wide or two eight-foot-wide areas with four feet of cross-hatch between them.
- C. Any person having lawful control of an off-street parking area which is in any respect not in compliance with this section may be warned by a written notice issued by the Wellfleet Police Department (including special officers) or any other official whom the Selectboard may from time to time designate specifying the existing violation or violations. If said violation or violations continue for a period of more than 30 days beyond the date of said warning, the person in violation shall be fined \$25 and \$50 for each additional period of 30 days' non-compliance. The Wellfleet Police Department (including special officers) or any other official whom the Selectboard may from time to time designate shall have authority to enforce this section, which enforcement shall include without limitation the non-criminal disposition procedure provided in MGL c. 40, § 21D.

§ 215-8. Parking in spaces reserved for handicapped persons.

- A. No person shall park an unauthorized vehicle within a space designated for use exclusively by disabled veterans or handicapped persons as authorized by § 215-7 or in such a manner as to obstruct a ramp designed for use by handicapped persons as a means of access to or egress from a street.
- B. Any person who violates this section shall be fined \$300 and the vehicle may be removed in accordance with the provisions of MGL c. 266, § 120D. The Town of Wellfleet Police Department (including special officers) and any other official whom the Selectboard may from time to time designate shall have authority to enforce this section, which enforcement shall include without limitation the non-criminal disposition procedure provided in MGL c. 40, § 21D.

ARTICLE IV

Vehicles in Cemeteries**[Adopted as Art. VII, Sec. 41, of the General Bylaws]****§ 215-9. Operating restrictions.**

No person shall operate a motorized vehicle within the boundaries of a burial ground or cemetery at a speed in excess of 10 miles per hour; or in such a manner as to enter or exit the burial ground or cemetery elsewhere than at a designated entrance gate; or outside the roadways designated for motorized vehicles except for the purposes of maintenance or repair of the cemetery; or in such a manner as to endanger or cause damage to public or private property.

§ 215-10. Violations and penalties.

Any person who violates this article shall be fined \$300 for each offense. The Town of Wellfleet Police Department (including special officers), the Town of Wellfleet Cemetery Commissioners, and any official whom the Selectboard may from time to time designate shall have authority to enforce this section, which enforcement shall include without limitation the non-criminal disposition procedure provided in MGL c. 40, § 21D.

Chapter 221
WATERWAYS

§ 221-1. Dumping and discharges prohibited.

§ 221-2. Violations and penalties.

§ 221-3. Enforcement.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Sec. 33, of the General Bylaws. Amendments noted where applicable.]

§ 221-1. Dumping and discharges prohibited.

No person shall dump or discharge treated or untreated sanitary waste, debris, refuse, garbage, hydrocarbons, or any other pollutant in the great ponds or marine waters within the Town of Wellfleet.

§ 221-2. Violations and penalties.

Any person who violates this section shall be fined \$100 for the first offense and \$200 for each subsequent offense.

§ 221-3. Enforcement.

The Town of Wellfleet Police Department (including special officers), the Harbormaster, the Assistant Harbormaster, the Shellfish Constable, the Assistant Shellfish Constable, the Health-Conservation Agent, and any other official whom the Selectboard may from time to time designate shall have authority to enforce this section, which enforcement shall include without limitation the non-criminal disposition procedure provided for in MGL c. 40, § 21D.

Chapter 228
YARD SALES

§ 228-1. Permit required; number limited.

§ 228-3. Definitions.

§ 228-2. Operating restrictions and requirements.

§ 228-4. Violations and penalties.

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet as Art. VII, Sec. 41a, of the General Bylaws. Amendments noted where applicable.]

§ 228-1. Permit required; number limited.

Any person or organization may conduct a yard sale by first obtaining a permit from the Chief of Police. Not more than two such permits may be granted for any particular location per calendar year.

§ 228-2. Operating restrictions and requirements.

- A. Each yard sale may extend for not more than three consecutive calendar days.
- B. The permit holder shall be responsible for the parking of motor vehicles so as not to hinder the free flow of traffic.
- C. Any signs posted by the permit holder must be removed by the end of the sale.
- D. At the yard sale, the offering for sale of used articles by others may take place with the concurrence of the owner of the property on which the sale takes place.

§ 228-3. Definitions.

For the purpose of this bylaw:

YARD SALE — Is defined as the offering for sale of property originally acquired for personal use and not for the purpose of resale.

§ 228-4. Violations and penalties.

Violations of this bylaw shall be punishable by a fine of \$50 for each offense. Each day a violation exists shall be deemed a separate offense.

Chapter 235

ZONING

<p>ARTICLE I Purpose</p> <p>§ 235-1.1. Purpose statement.</p>	<p>§ 235-6.5. Windmills.</p> <p>§ 235-6.6. Cluster residential developments.</p> <p>§ 235-6.6.1. Affordable flexible residential design.</p>
<p>ARTICLE II Definitions</p> <p>§ 235-2.1. Terms defined.</p>	<p>§ 235-6.7. Commercial, industrial and general use standards.</p> <p>§ 235-6.8. Burning of cover.</p> <p>§ 235-6.9. Cutting of timber.</p>
<p>ARTICLE III Districts</p> <p>§ 235-3.1. Establishment of districts.</p> <p>§ 235-3.2. District objectives.</p> <p>§ 235-3.3. Zoning Map.</p> <p>§ 235-3.4. Interpretation of district boundaries.</p>	<p>§ 235-6.10. Drainage and damming.</p> <p>§ 235-6.11. (Reserved)</p> <p>§ 235-6.12. Landscaping.</p> <p>§ 235-6.13. Floodplain District zoning regulation.</p> <p>§ 235-6.14. Special Flood Hazard District regulations.</p> <p>§ 235-6.15. (Reserved)</p> <p>§ 235-6.16. (Reserved)</p>
<p>ARTICLE IV Application</p> <p>§ 235-4.1. Application of regulations.</p>	<p>§ 235-6.17. Curb cut permits.</p> <p>§ 235-6.18. Communication structures, buildings and appurtenances.</p> <p>§ 235-6.19. Bed-and-breakfast uses.</p>
<p>ARTICLE V Uses</p> <p>§ 235-5.1. Conformance with schedules.</p> <p>§ 235-5.2. Permitted uses.</p> <p>§ 235-5.3. Use regulations.</p> <p>§ 235-5.4. Intensity of use schedule.</p>	<p>§ 235-6.20. Adult entertainment uses.</p> <p>§ 235-6.21. Accessory dwelling units (ADU).</p> <p>§ 235-6.22. Home occupations.</p> <p>§ 235-6.23. Service trade home business (STHB).</p> <p>§ 235-6.24. National Seashore Park District special permit.</p>
<p>ARTICLE VI General Regulations</p> <p>§ 235-6.1. Nonconforming uses.</p> <p>§ 235-6.2. Accessory buildings.</p> <p>§ 235-6.3. Parking requirements.</p> <p>§ 235-6.4. Loading and unloading areas.</p>	<p>§ 235-6.25. Municipal wind turbines.</p> <p>§ 235-6.26. (Reserved)</p> <p>§ 235-6.27. (Reserved)</p> <p>§ 235-6.28. Provisions to encourage development of affordable dwellings in Wellfleet.</p>

WELLFLEET BYLAWS AND REGULATIONS

§ 235-6.29. Fast-food and formula restaurant prohibition.

§ 235-9.2. Main Street Overlay District.
§ 235-9.3. Medical Marijuana Overlay District (MMOD).

ARTICLE VII
Signs

- § 235-7.1. Objectives.
- § 235-7.2. Definitions.
- § 235-7.3. Administration and exemptions.
- § 235-7.4. Location of signs.
- § 235-7.5. Signs not requiring permits.
- § 235-7.6. Signs requiring permits.
- § 235-7.7. General prohibitions.
- § 235-7.8. Maintenance of signs.

ARTICLE VIII
Administration

- § 235-8.1. Enforcement.
- § 235-8.2. Permits required.
- § 235-8.3. Penalty.
- § 235-8.4. Zoning Board of Appeals.
- § 235-8.5. Appeals of Zoning Board of Appeals decisions.
- § 235-8.6. Amendments.
- § 235-8.7. Severability.
- § 235-8.8. Interpretation; conflict with other laws.
- § 235-8.9. Effective date.

ARTICLE IX
Overlay Districts

§ 235-9.1. Wellhead Protection District.

ARTICLE X

Large-Scale Ground-Mounted Solar Photovoltaic Installations

- § 235-10.1. Compliance with laws, bylaws, policies and regulations.
- § 235-10.2. Building permit and building inspection.
- § 235-10.3. LSGMSPI site plan review.
- § 235-10.4. Site control.
- § 235-10.5. Operation and maintenance plan.
- § 235-10.6. Utility notification.
- § 235-10.7. Accessory structures.
- § 235-10.8. Design standards.
- § 235-10.9. Safety and environmental standards.
- § 235-10.10. Monitoring and maintenance.
- § 235-10.11. Abandonment or decommissioning.
- § 235-10.12. Proof of liability insurance.
- § 235-10.13. Lapse of approval.

Appendix A, District Descriptions

Appendix B, MGL c. 40A, 6

[HISTORY: Adopted by the Town Meeting of the Town of Wellfleet 4-15-1975 ATM. Amendments noted where applicable.]

ARTICLE I

Purpose**§ 235-1.1. Purpose statement.**

In order to promote the health, safety, convenience and general welfare of its inhabitants, to lessen the danger of fire and congestion, and to improve the Town under the provisions of Chapter 40A of the General Laws, the use, construction, repairs, alteration and height of buildings and structures and the use of premises in the Town are hereby regulated as hereinafter provided.

ARTICLE II

Definitions**§ 235-2.1. Terms defined.**

In this bylaw the following terms, unless a contrary meaning is required by the context, or is specifically prescribed, shall have the following meanings. Words used in the present tense include the future, and the plural includes the singular; the word "lot" includes the word "plot"; the word "building" includes the word "structure"; the word "shall" is intended to be mandatory; "occupied" or "used" shall be considered as though followed by the words "or intended, arranged or designed to be used or occupied." The word "person" includes a corporation or partnership as well as an individual.

ACCESSORY USE — A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. In buildings restricted to residential use, the office of a professional man, customary home occupations traditional to the Town, and workshops not conducted for compensation shall be deemed accessory uses.

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

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

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

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

ALTERATION — As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities or an enlargement whether by extending on a side or by increasing in height, or the moving from one location or position to another.

AMUSEMENT PARK — A premises or any part thereof used to provide one or more mechanical devices, rides, games or any other like attractions to the public for hire or compensation of any kind, whether for a fee or by admission, or in connection with another service for which a fee is charged.

AMUSEMENT, INDOOR — A movie theater, bowling alley, or other commercial entertainment or recreation wholly carried on within an enclosed building.

AMUSEMENT, OUTDOOR — A drive-in theater, golf driving range, or similar facility other than a regulation golf course of not less than nine holes or any other commercial entertainment or recreation carried on in whole or in part outdoors; outdoor amusement shall not include a swimming pool, private or public, where no charge is made or where such is operated in connection with a hotel, motel, camp or club.

ANTIQUE SHOP/ART GALLERY — A building or part thereof used for exhibiting antiques or works of art and for retail sales of same. An antique shop/art gallery may be considered as a home occupation as defined herein, provided that it meets all the requirements of a "home occupation." **[4-24-1989 ATM]**

APARTMENT — A part of a multiple-family dwelling consisting of a room or suite of rooms intended, designed or used as a residence. **[Amended 4-30-1985 ATM by Art. 65]**

ARCADE — A building or part thereof used for the operation of more than 10 automatic amusement devices for hire.

AREA, BUILDING — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps.

AREA, NET SITE — The total area within the property lines, excluding external streets.

AUTO COURT — An area of land with one or more detached buildings with a single room of less than 300 square feet, with or without bath, used or designed to be used primarily as overnight sleeping accommodations for tourists.

AUTOMATIC AMUSEMENT DEVICE — Any mechanical or electronic amusement device operated for hire, gain or reward, including but not limited to video or electronic amusement devices, automatic amusement devices as defined in MGL c. 140, § 177A, and billiard tables.

BASEMENT — A story partly underground but having at least 1/2 of its height above the average level of the adjoining ground. A basement shall be counted as a story for purposes of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet.

BED-AND-BREAKFAST — An owner-occupied dwelling in which no more than three bedrooms accommodating not more than six persons are offered for rent for the primary purpose of furnishing overnight lodging and a breakfast meal to the overnight guests only.

BOATHOUSE, COMMERCIAL — A facility for the construction, storage, rental, or servicing of boats for hire or compensation, and for the sale of boats and marine equipment.

BOATHOUSE, PRIVATE — A facility for the storage of boats for private individual use and not for hire.

BUILDING — A structure forming a shelter for persons, animals, property or an activity and having a roof. Where appropriate in the context, the word "building" shall include the principal and accessory use or uses to which the building is put.

BUILDING HEIGHT — The vertical distance from the highest point of the roof to the average of the mean ground level existing grade of all sides of the building, such measurement to be based on the elevation of the lot in its natural state prior to construction, grading or filling.

BUILDING, ACCESSORY — A supplemental building or a portion of a main building, the use of which is incidental to that of the main or principal building, and which is located on the same lot therewith.

BUILDING, DETACHED — A building designed or intended for a single purpose, surrounded by open space on the same lot.

BUILDING, FRONT LINE OF — The line of that face of the building nearest the front line of the lot. This face shall include sun parlors, enclosed projection from the main body of the building covered porches whether enclosed or unenclosed, but not include steps.

BUILDING, PRINCIPAL — A building in which is conducted the main or principal use of the lot on which said building is situated.

BULK STORAGE, OPEN — Exposed outside storage of sand, lumber, coal or other bulk materials or supplies.

BULK STORAGE TANKS — Exposed outside storage tanks, silos, or similar structures for the storage of oil, gas, fuels, or other liquids or materials, with the exception of those located upon a farm and employed for farm purposes.

BUSINESS OFFICE — A building or part thereof devoted to the administration of a business or commercial enterprise which involves clerical, accounting and other administrative procedures but which excludes the receipt, processing and sale of merchandise; or a building or part thereof devoted to the professional office of a physician, lawyer, engineer, architect, accountant, real estate or insurance agent or broker, or similar activity.

BUSINESS, PERSONAL SERVICE — Any building or part thereof used for the purpose of rendering a service upon the premises to the public where the sale of a product is not involved.

BUSINESS, RETAIL TRADE — A building or part thereof used for the storage and display for the retail sale of foods, drugs, clothing, hardware, furniture, appliances, books, and other items of merchandise commonly associated with or essential to the maintenance of home, person, and property.

CAMP — An area of land upon which is located, or upon which it is intended to locate the facilities required to operate upon a seasonal basis a continuing supervised recreational, health, and educational, religious, or athletic program, or a combination thereof, and for persons enrolled for periods of not less than one week.

CAMPER — A small, portable vacation vehicle used for living purposes, whether standing on wheels, attached to a mobile body or on rigid supports.

CAMPGROUND — A parcel of land used or intended to be used, let or rented for occupancy by campers or for occupancy by or of tents or movable or temporary overnight dwelling facilities of any kind, exclusive of camps as defined by this section.

CELLAR — A story partly underground and having more than 1/2 of its clear height below the average level of the adjoining ground. A cellar shall not be considered in determining the permissible number of stories.

CLUB — An organization with a state or national charter catering exclusively to members and their guests, and its premises and buildings used for recreational, athletic, education, religious, or civic purposes and conducted primarily without gain, provided there are not conducted any vending stands, merchandising or commercial activities except as required generally for its membership and the purposes of such club.

CLUSTER DEVELOPMENT — A residential development with reduced-sized lots clustered together into one or more groups separated from adjacent property and other groups within the development by open land.

COMMUNICATION APPURTENANCE — Any antenna, device, wiring or equipment utilized in connection with the reception or transmission of electromagnetic radiation and which is attached to a preexisting structure. A communication appurtenance shall not include an antenna utilized by a federally licensed amateur radio operator or a home TV antenna.

COMMUNICATION BUILDING — Any building utilized primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation and which is accessory to a communication structure.

COMMUNICATION STRUCTURE — Any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation and including the antennas, wiring or other devices attached thereto; provided, however, that a communication structure shall not include an antenna used by a federally licensed amateur radio operator or a home TV antenna.

CONTRACTOR'S YARD — Premises used by a building contractor or subcontractor principally for storage of equipment and supplies, fabrication of subassemblies, or parking of wheeled equipment.

CONVERSION OF A DWELLING UNIT — An alteration of a dwelling or change in its use, so as to accommodate a family or families in addition to the number for which it was used or designated at the time of the adoption of this bylaw.

CORNER LOT — A lot which has an interior angle of less than 135° at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°.

COTTAGE COLONY — A group of two or more detached dwellings located on the same lot, each containing one dwelling unit only which is designed for independent family living, including cooking facilities and occupied on a seasonal basis only. "Seasonal" shall be defined as a period commencing April 1 of each calendar year and terminating November 30

§ 235-2.1

ZONING

§ 235-2.1

of the same calendar year. Each unit shall contain not less than 550 square feet of floor area and not more than 768 square feet.

COURT — An unoccupied open space, other than a yard, on the same lot with a building, which is bound on two or more sides by the walls of such building.

COURT, INNER — A court enclosed on all sides by exterior walls of a building, or by exterior walls and lot lines on which walls are allowable.

COURT, OUTER — A court extending to a street line or opening upon any front, side or rear yard.

COVERAGE — The percentage of the lot area covered by the area of a building or buildings.

CUSTOMER-OWNED GENERATOR — A large-scale ground-mounted solar photovoltaic installation owned by an entity other than the electric utility company. **[4-22-2013 ATM]**

DEGRADED OR PREVIOUSLY DISTURBED LAND — An area where the natural condition of the land or vegetation thereon has been significantly altered, by acts such as mowing, cutting, grading, excavation, paving or other construction activity, including land being redeveloped from prior commercial use. **[4-22-2013 ATM]**

DUMP — A lot of land or part thereof used for the disposal by abandonment, dumping, burying, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles, or parts thereof, or waste materials of any kind.

DWELLING — A building designed or used exclusively as the living quarters for one or more families.¹

DWELLING, ACCESSORY — A self-contained housing unit, inclusive of sleeping, cooking and sanitary facilities, on the same lot as a principal dwelling or other principal structure that shall be leased year-round. **[Added 6-26-2021 ATM by Art. 45]**

DWELLING, MULTIPLE-FAMILY — A detached building containing two or more dwelling units and having side, front and rear yards.

DWELLING, ONE-FAMILY — A detached building containing one dwelling unit only and having side, front and rear yards.

ERECT — To build, construct, reconstruct, move upon, or conduct any physical development of a premises required for a building. To excavate, fill, drain or other such preparations for building shall also be considered to erect.

FAMILY — One or more persons of which there may be not more than five unrelated persons occupying a dwelling unit and living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

FARM, COMMERCIAL — Any parcel of land which is used for gain in the raising of agricultural products, livestock, poultry and dairy products. It includes necessary farm

1. Editor's Note: The definition of "dwelling, affordable accessory," which immediately followed this definition, was repealed 6-26-2021 ATM by Art. 45.

structures within the prescribed limits and the storage of equipment used. It excludes riding academies, livery or boarding stables and pet kennels.

FARM-FAMILY, AGRICULTURAL — Any parcel of land or a portion thereof used for the raising of agricultural products for home consumption or for sale, which use is secondary to the primary residential use of the property.

FARM-FAMILY, LIVESTOCK — Any parcel of land or portion thereof used for raising and keeping of livestock and/or poultry, which use is secondary to the primary residential use of the property. Specifically excluded from this definition are riding academies, livery or boarding stables, and pet kennels.

FILLING STATION — Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying or otherwise cleaning or servicing such motor vehicles. Such use shall not include bodywork or the painting of vehicles or other than minor repair work.

FLOOR AREA OF A BUILDING — The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use, but including the area of roofed porches and roofed terraces. All dimensions shall be measured between exterior faces of walls.

FLOOR AREA RATIO — The ratio of the total gross floor area of a building or buildings on one lot to the total area of the lot.

FLOOR AREA, LIVABLE — The sum of the gross horizontal area of the floors of a dwelling used or intended to be used for living, sleeping, cooking or eating purposes, excluding cellar, basement floor area not devoted to residential use.

FOOD TRUCK — **[Added 4-23-2018 ATM by Art. 44]**

- A. A readily movable, non-motorized trailer or cart or a motorized wheeled vehicle that is designed and equipped to cook, prepare, and/or serve food for retail sale while parked on land other than a public or private street, and shall include any food truck, food cart, canteen truck, catering truck, breakfast truck, lunch truck, lunch wagon, or any other mobile food vehicle. All food trucks must be registered with the Massachusetts Registry of Motor Vehicles, as required.
- B. The following food truck uses are exempt from this definition and do not require a special permit:
 - (1) A food truck operating at a special event approved by the Selectboard, such as Oysterfest, a carnival or similar event;
 - (2) A food truck operating as an accessory use to an outdoor municipal or governmental recreational use, including but not limited to public beaches, municipal playing fields or similar use; and
 - (3) A food truck catering a private event in any zoning district, which shall remain on the property for a period not to exceed 24 hours.

FUNERAL HOME — A dwelling or other structure used and occupied by a professional licensed mortician for burial preparation and funeral services.

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GAME ROOM — A building or part thereof used for the operation of no more than 10 automatic amusement devices for hire.

GARAGE, PRIVATE — A garage used for storage purposes only with a capacity of not more than three vehicles.

GARAGE, PUBLIC — Any garage not a private garage which is used for the sale, servicing, repair, storage or rental of automobiles and trucks and which in connection therewith supplies gasoline and oil to such motor vehicles.

GIFT OR CRAFT SHOP — A building or part thereof used for the display and retail sale of crafts and items primarily designed as gifts and keepsakes as distinguished from the retail sale of food, clothing, hardware, furniture and items more commonly associated with or essential to the maintenance of home, person and property. **[4-24-1989 ATM]**

GUEST HOUSE, PRIVATE — A detached or semidetached building located upon the same lot with a one-family dwelling containing not more than 250 square feet and not containing cooking facilities, the use of said building being limited to the entertainment of relatives and friends without fee or other costs.

GUEST HOUSE, PUBLIC — A one-family dwelling in which not more than six individual rooms are offered for rent for the primary purpose of furnishing overnight lodging to tourists, and which may provide a common dining area for persons staying at the guesthouse within the facility. It shall include tourist homes, but shall not include a hotel, motel or motor inn. **[Amended 4-30-1985 ATM by Art. 67; 4-27-1992 ATM by Art. 38]**

HEALTH CARE CLINIC — An outpatient facility that may include, but shall not be limited to, as an integral part of the clinic such related facilities as laboratories, therapy, administrative services, prescription services and staff offices for the diagnosis, treatment or other medical care of human ailments.

HOME OCCUPATION — A business activity conducted as an accessory use of a dwelling by a member of the resident family, either entirely within the dwelling, or within an accessory building located on the same lot, allowed by right as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.22 of this bylaw. This shall not include the following uses: tourist home; barber shop; beauty parlor; commercial stable or pet kennel; restaurant; nursing or convalescent home; funeral home.

HOSPITAL — An institution providing health services, primarily for in-patients, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, out-patient department, training facilities, central service facilities, and staff offices.

INDIVIDUAL STORAGE UNITS — A commercial building providing one or more rental spaces for the storage of household goods, personal belongings and other non-toxic, non-hazardous items. Individual storage units shall not have a source of potable water or sanitary facilities.

INDUSTRY, HEAVY — The production, assembly, processing, finishing or manufacture of any object or material which results in or would result in noise, dust, odor, vibration, gasses or any objectionable feature that can or could be detected at any time off the premises upon which located.

INDUSTRY, LIGHT — Fabrication, assembly, processing, finishing work or packaging in such a manner that noise, dust, odor, vibration, or similar objectionable features are confined to the premises and are in no way objectionable to abutting property.

INN — A building, together with its accessory buildings, used or arranged or designed to be used to provide living accommodations, including room and meals served from central cooking and dining facilities operated under a common victualler license. An inn may or may not serve meals to the general public. The definition herein given shall also include that for a hotel.

JUNK — Any article or material or collection thereof, which is worn out, cast off or discarded and which is ready for destruction or has been collected or stored for salvage or conversion. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

JUNKYARD — The use of any area of any lot, whether inside or outside a building, for the storage, keeping or abandonment of junk, or scrap or discarded materials, or the dismantling, demolition or abandonment of automobiles or other vehicle(s) or machinery or parts thereof.

LINE, STREET — The dividing line between the street right-of-way and the lot.

LODGE, BUILDING — Structure occupied by a nonprofit social or civic organization as defined under "club."

LOT — Parcel of land occupied or intended to be occupied by one principal building or principal use and its accessory buildings, except as provided for in § 235-5.4N of these bylaws, together with such open spaces as are required under the provisions of this bylaw, having not less than the minimum area required by the bylaw for a lot in the district in which such land is situated, and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of the law to be adequate as a condition of the issuance of a building permit for a building on such land.

LOT AREA — The contiguous horizontal area of a lot, exclusive of any area on a street or way open to public or private use and excluding that land which is swamp, pond, bog, dry bog, marsh, areas of exposed groundwater, or which is below mean high tides.

LOT FRONTAGE — That portion of a lot fronting upon and having access to a street. Measured continuously along one street line between side lot lines, or in the case of corner lots, between one side lot line and the mid-point of the corner radius. On curved streets, may alternatively be measured as the straight-line distance between points on the side lot lines at the required setback line, provided that said lines are approximately straight and normal to the street line, and provided that 60% of the requirement can be met at the street line.

LOT LINES — The line bounding a lot as defined herein.

MARINE AQUACULTURE — An activity related to the processing, harvesting, procurement, sale, or handling of fish, shellfish, or other water-related foodstuffs or products.

MOTEL — A building or group of buildings, whether detached or connected, each containing three or more units of at least 360 square feet used or designed to be used as individual sleeping and dwelling units, excluding cooking facilities, by transient travelers,

tourists or vacationers. A motel may include accessory uses such as a restaurant and other secondary facilities commonly associated with the operation of a hotel or motel.

MOTOR VEHICLE CAR SALES — Premises used for the display for sale of one or more new or used motor vehicles, including automobiles, trucks, tractors or similar equipment.

MOTOR VEHICLE JUNKYARD — The use of any area of any lot or premises for the purpose of storing, keeping, dismantling, demolishing, junking, salvaging of parts to, or the abandonment of motor vehicles or motor-driven equipment.

MOTOR VEHICLE REPAIR SHOP — A building, or portion of a building, arranged, intended or designed to be used for making repairs to motor vehicles.

MOTOR VEHICLE REPAIR, INCIDENTAL — The repair of motor vehicles incidental to any use allowed under the bylaw.

NATIONAL SEASHORE PARK GROSS FLOOR AREA (NSPGFA) — Is defined as per § 235-5.4D.

NON-COMPLYING STRUCTURE — Structures built without benefit of a permit or without benefit of an appropriate permit.

NONCONFORMING USE — A building or land lawfully occupied by a use that did not conform to the regulations of the district in which it is situated at the time of the adoption of zoning regulations and of any amendments thereto.

NURSERY SCHOOL — A school designed to provide daytime care for two or more children from two to six years of age inclusive, and operated on a regular basis.

NURSING OR CONVALESCENT HOME — Any dwelling or building with sleeping rooms where persons are housed or lodged and furnished with meals and nursing care for hire, not including a hospital.

OCCUPANCY PERMIT — A permit issued by the Selectboard, or a person designated by them authorizing the occupancy and the use of land and/or structures and buildings.

OPEN SPACE — An unoccupied space open to the sky on the same lot with a building, free of all structures, parking, pavement or other uses that preclude landscaping.

PARKING SPACE — That area required for parking one automobile, which in this bylaw is held to be an area nine feet wide and 20 feet long, not including passageways.

PARKING, PRIVATE — Space for parking accessory to a principal use, not to include parking for fee or parking of more than one commercial vehicle except on farms.

PARKING, PUBLIC — An area used for the purpose of parking vehicles for a fee.

PET KENNEL — A building, structure or area used for the harboring of more than three dogs, cats or other domestic pets that are more than six months old.

PORCH, OPEN — A porch that has no walls or windows other than that of the main building to which it is attached notwithstanding Town and State Building Codes, with which there must be compliance. **[4-25-1988 ATM]**

PRINCIPAL USES — Categories of uses listed in § 235-5.3 of the Wellfleet Zoning Bylaws as Residential, Commercial, Commercial (Heavy), Institutional and Farm Uses.

QUARRY, SAND PIT, GRAVEL PIT, TOPSOIL STRIPPING — A lot of land or part thereof used for the purpose of extracting stone, sand, gravel, or topsoil for sale or for use at a site removed from said lot, exclusive of the process of grading a lot preparatory to the construction of a building for which application for a building permit had been made and said permit issued.

RESTAURANT — A building or part thereof to be used for the preparation, indoor sale, and consumption of meals and refreshments on the premises. Seating area for a restaurant may include open or outdoor terrace or patio upon issuance of a special permit. **[4-23-1990 ATM]**

RESTAURANT, DRIVE-IN — Premises where meals and other items of nourishment and refreshment are offered for sale, and where any portion of these are consumed or intended to be consumed off-premises or within cars parked on the premises. **[4-23-1990 ATM]**

RESTAURANT, FAST-FOOD — A restaurant with drive-up window service, or that otherwise receives payment and/or dispenses products to patrons while in their vehicles. **[4-25-2011 ATM]**

RESTAURANT, FORMULA — A restaurant that stands alone or with other use(s), and which prepares food and beverage on site for sale to the public, and which is required by contractual or other arrangement or as a franchise to offer any of the following features: standardized menu, trademark or service mark, defined as a word, phrase, symbol, design or logo, or a combination of words, phrases, symbols, designs and/or architecture, facade, or color scheme that identifies the restaurant as one of 25 or more other restaurants worldwide. **[4-25-2011 ATM]**

RIDING ACADEMY — Any establishment where horses are kept for riding, driving, or stabling for compensation or incidental to the operation of any club, association or other similar establishment.

ROADSIDE STAND, SEMI-PERMANENT — A structure of a semi-permanent type intended to be left in place over an extended period of time from which products, the major portion of which are produced upon the premises or are legally gathered from the sea or seashore, are displayed and offered for sale.

ROADSIDE STAND, TEMPORARY — A temporary and easily portable structure or device placed on private property by the side of a street or way for the purpose of displaying for sale perishable goods or items legally grown upon the premises or legally gathered from the sea, seashore, or the land, the same to be removed when not in use.

SEASONAL — This term shall refer to a period of time commencing each calendar year on the first day of April and terminating the last day of November of each calendar year.

SERVICE TRADE — A business activity which provides service to customers primarily in or on the customers' homes or premises, including but not limited to carpentry, masonry, plumbing and heating, electrical work, well drilling, appliance repair, home and lawn maintenance, and landscape services. Service trades may be conducted as a home occupation as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.22 of this bylaw.

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SERVICE TRADE BUSINESS — A service trade that does not meet the limitations of § 235-6.22, Home occupations, or § 235-6.23, Service trade home business, of this bylaw. Service trade businesses may be allowed by special permit as shown in Use Regulations § 235-5.3B, Commercial.

SERVICE TRADE HOME BUSINESS (STHB) — An accessory use of a dwelling that does not meet the limitations of § 235-6.22, Home occupations, conducted by a member of the resident family, either entirely within the dwelling, or within an accessory building located on the same lot, allowed by special permit as shown in Use Regulations § 235-5.3A, Residential, subject to the limitations of § 235-6.23 of this bylaw.

SHED — A single -story detached accessory building or structure which has dimensions that do not exceed 120 square feet of floor area or 12 feet in height, which is used for a purpose which is customarily incidental and subordinate to the use of the principal building, and which is located on the same lot. Such buildings or structures shall not be heated, and shall not be used as a dwelling unit, guest unit or commercial accommodation.

SIGN, AREA OF — See Article VII, Signs.

SIGNS — See Article VII, Signs.

SOLAR PHOTOVOLTAIC ARRAY — An arrangement of solar photovoltaic panels. **[4-22-2013 ATM]**

SOLAR PHOTOVOLTAIC INSTALLATION, LARGE-SCALE GROUND-MOUNTED (LSGMSPI) — A solar photovoltaic system, including all accessory structures, that is a principal use on a site of at least 8.5 acres in common ownership, and which is mounted on the ground (not roof-mounted), and has a minimum nameplate capacity of 250 kW direct current (DC).

SOLAR PHOTOVOLTAIC INSTALLATION, LARGE-SCALE GROUND-MOUNTED (LSGMSPI) SITE PLAN REVIEW — A review by the Planning Board to determine conformance with all applicable Town of Wellfleet zoning bylaws.

SOLAR PHOTOVOLTAIC INSTALLATION, RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in direct current.

STABLE, PRIVATE — An accessory building in which horses are kept for private use and not for hire, remuneration or sale.

STABLE, PUBLIC — A building in which two or more horses are kept for remuneration, hire or sale.

STREET — A street or way other than a private way which meets the minimum requirements of the Planning Board as established in accordance with the provisions of MGL c. 41, § 81L (Subdivision) of the General Laws.

STREET GRADE — The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STREET, PRIVATE — A way which has not been accepted by the Town as a public street or way, or one which has not been dedicated to public use in accordance with an approved subdivision or one in which the public has not acquired rights of usage by prescription.

STREET, PUBLIC — A street or way laid out and accepted by the Town as a public way, or a state or county road or way.

STRUCTURE — Anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground, except a boundary wall or fence.

STUDIO (PRIVATE); also ARTIST STUDIO — A building or part of a building generally limited to a one-room working space designed to accommodate an occupation relative to production of various forms of art, such as painting, sculpture, photography. Such a unit may be included within "home occupation" as defined in this bylaw only when such unit meets all requirements of the "home occupation" definition.

SWIM OR TENNIS CLUB (PRIVATE) — A voluntary or corporate association owned solely by its members, the objectives, pursuits or purposes of which are social or recreational, operating or formed for the purposes of operating a club on a membership basis and not operated for profit, the principal facilities of which shall be a swimming pool or pools and/or tennis court or courts owned by it and maintained on the land owned or leased by it, and which may maintain and operate on the same premises such accessory facilities owned by it as are usually provided by a swim or tennis club. Accessory facilities shall not include bowling alleys.

SWIMMING POOL — Any body of water or receptacle for water having a depth at any point greater than two feet, used or intended to be used for swimming or bathing and constructed, installed or maintained in or above the ground outside any building.

SWIMMING POOL AND/OR TENNIS CLUB (PUBLIC) — A Town, state or federally owned or leased facility or facilities not operated for profit with any license, permit, or other type of usage fee utilized to defray cost related to the operation and maintenance of the facility. Principal facilities shall be a swimming pool or pools and/or tennis court or courts. Accessory facilities generally associated with swimming pool(s) and/or tennis court(s) are to be included in this definition. Bowling alleys are not accessory facilities.

TEMPORARY STRUCTURE — One to be used for less than six months.

TENNIS COURT — Grass, clay or asphalt surfaced area uncovered and unenclosed by opaque sidewalls, used or intended to be used for tennis or tennis-related actions and constructed, installed or maintained on or above the ground outside any building.

TOURIST HOME — (See Guest House.)

TRAILER HOME/MOBILE HOME — A unit designed for living purposes which is built on a chassis and which was at any time portable, whether still standing on wheels or transferred to rigid supports.

TRAILER PARK — A tract of land occupied by or designed or intended for the occupancy of trailer homes or any similar vehicle.

TRANSPORT TERMINAL — Yards or structures for the storage and/or servicing of two or more commercial vehicles and the storage of materials in transit.

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USE — The specific purpose for which land or a building is designed, arranged, intended, or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

VEHICLE, COMMERCIAL — Any vehicle used in business which is in excess of 10,000 lbs. gross vehicle weight.

WAREHOUSING — Storage of bulk goods within a building for distribution but not for retail sale on the premises.

WIND ENERGY CONVERSION SYSTEM or W.E.C.S. or WINDMILL — A device which converts wind energy to mechanical or electrical energy.

WIND ROTOR — The blades, plus hub to which the blades are attached, that are used to capture wind for the purpose of energy conversion. The rotor is used generally on a pole or tower and, along with other generating and electrical storage equipment, forms a wind energy conversion system.

YARD — A space on the same lot with a building.

YARD, FRONT — A space on the same lot with the building, between the front line of the building and the front line of the lot and extending to the side lines of the lot.

YARD, REAR — A space on the same lot with the building, between the rear line of the building and the rear line of the lot and extending the full width of the lot.

YARD, SIDE — A space on the same lot with the building, situated between the building and the side line of the lot and extending from the front yard to the rear yard. Any lot line not a rear line or a front line shall be deemed the sideline.

ARTICLE III

Districts

§ 235-3.1. Establishment of districts. [Amended 4-29-1986 ATM by Art. 22]

For the purpose of this bylaw, the Town is hereby divided into the following types of districts:

Central District	CD
Residential 1	R1
Residential 2	R2
National Seashore Park	NSP
Commercial	C
Commercial 2	C2

§ 235-3.2. District objectives.

District objectives are as follows:

- A. Residential 1. To provide moderate density residential environment in areas generally unserved by public utilities, but containing land characteristics to accommodate such densities without endangering the public's health, safety or welfare.
- B. Residential 2. To provide for variety and choice in residential environments and compatible employment opportunities, avoiding the creation of hazards or congestion and wherever possible maintaining the character of rural environs. **[Amended 4-29-1986 ATM by Art. 22]**
- C. Central District. To provide concurrent development of residential and nonresidential uses subject to conditions to assure spatial segregation of incompatible uses.
- D. Commercial. To provide for small and moderate-scale business development for local and transient service, at the same time preserving or enhancing ocean views from highway, preserving or enhancing landscaping, minimizing visibility of parked autos, and avoiding creation of hazards or congestion.
- E. National Seashore Park. To provide for those residential and commercial uses that do not conflict with the regulations governing the activities of the National Seashore Park and are not incompatible with the character of the park, including the preservation of natural and scenic areas, as well as providing of certain recreational and leisure time activities for users of the park.
- F. Commercial 2. To provide for small and moderate-scale business development for local and transient service, low-intensity light industrial and enhanced service trade use.
 - (1) Activity type and mix:
 - (a) The proposal poses no environmental hazard because of use or storage of explosive, flammable, toxic or radioactive materials.
 - (b) The proposal will not result in air pollution or excessive noise.
 - (2) Site design:
 - (a) Scenic views from public ways and other developed properties are considerately treated in the design of the site.
 - (b) Topographic change is minimized.
 - (c) Unnecessary removal of existing trees or other important natural features is avoided.
 - (d) Pedestrian movement within the site and to other places is well provided for.
 - (e) Vehicular movement within the site is safe and convenient and arranged so as not to disturb abutting properties.
 - (f) Visibility of parking and service areas from public streets is minimized through facility location and the use of topography and vegetation.

- (g) Potential disturbances such as noise, glare, and odors are effectively confined to the premises through buffering or other means.
- (3) Facility design:
 - (a) Scenic views from public ways and other developed properties are considerately treated in the design of buildings.
 - (b) Primary exterior materials match the appearance of materials commonly found on existing buildings within the Town (not to be construed by the Zoning Board of Appeals as authority to regulate or restrict materials regulated by the State Building Code).
 - (c) Domestic scale is produced in the building's design through massing devices such as breaks in wall and roof planes and through the design of architectural features.
- (4) Landscaping, design and appearance standard:
 - (a) A landscaped buffer strip of no less than 10 feet shall be provided adjacent to any public or private road to visually separate parking and other uses from the road, where feasible and without interfering with vehicular or pedestrian safety.
 - (b) A landscaped buffer strip shall be provided adjacent to adjoining uses, excluding areas providing shared access and parking. The buffer strip shall be planted with a combination of grass, medium-height shrubs (evergreen varieties preferred) and shade trees.

§ 235-3.3. Zoning Map.

Said districts are bounded as shown on the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk. That map and all explanatory matter thereon is hereby made a part of this bylaw. The responsibility for keeping the Zoning Map current will be that of the Selectboard or its designee.

§ 235-3.4. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines or side lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at

such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.

- D. Where the boundary of district follows a stream or borders upon marsh land or projects into a pond or other body of water, said boundary line shall be deemed to be the center of said stream, abut the edge of said marsh and project across said pond or other body of water.

ARTICLE IV

Application

§ 235-4.1. Application of regulations.

Except as specifically provided in this bylaw:

- A. No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is or is proposed to be located.
- B. No building shall hereafter be erected or altered to accommodate or house a greater number of families, seasonally or permanently, to occupy a greater percentage of lot area, or to have narrower or smaller rear yards, front yards, side yards, and inner and outer courts than is specified herein for the district in which such building is or is proposed to be located.
- C. No part of a yard or other open space about any building or use required for the purpose of complying with the provisions of this bylaw shall be included as a part of a yard or other open space similarly required for another building or use.
- D. No lot on which a building is located in any district shall be reduced or changed in size or shape so that the building or lot fails to comply with the lot area, width, frontage, setback or yard provisions of this bylaw. This prohibition shall not apply, however, when a portion of a lot is taken or conveyed for a public purpose.
- E. Not more than one dwelling may be erected on a lot.

ARTICLE V

Uses

§ 235-5.1. Conformance with schedules.

- A. In the districts specified in § 235-3.1 and in accordance with objectives of the districts specified in § 235-3.2, no building, structure or premises shall be erected, altered or used except as set forth in the "Use Regulation Schedule" and "Intensity of Use Schedule" and as provided in § 235-5.3 and § 235-5.4.
- B. Symbols employed shall mean the following:
 - P A permitted use
 - O An excluded or prohibited use

- A Use authorized under special permits as provided for in § 235-8.4B
- PB Permitted only under a special permit issued by the Planning Board

§ 235-5.2. Permitted uses. [4-23-1990 ATM]

Permitted uses and uses authorized under special permits shall be in conformity with the provisions of § 235-5.3 (Use Regulations) and shall not be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, dust, glare, odor, fumes, smoke, gas, sewage, refuse, noise, vibration, danger of explosion or fire, traffic congestion. Any use not listed as a permitted use in § 235-5.3 shall be deemed a prohibited use, except that a use not listed in § 235-5.3 may be allowed by special permit as provided for in § 235-8.4B from the Zoning Board of Appeals, provided said Board determines that the use closely resembles in its neighborhood impact(s) a use listed as permitted, or authorized under special permit, in the same zoning district. Said determination shall be in addition to the required findings of the Board as provided for in § 235-8.4B.

§ 235-5.3. Use regulations. [Amended 4-30-1985 ATM by Art. 60; 4-29-1986 ATM by Art. 22; 4-23-2018 ATM by Art. 45; 6-26-2021 ATM by Art. 45]

A. Residential.

	CD	R1	R2	NSP	C	C2
Bed-and-breakfast	P	P	P	P	P	P
Boat house, private	P	P	P	P	P	P
Camper	O	O	O	O	O	O
Cluster residential development	O	PB	PB	O	O	O
Conversion of dwelling unit	O	A	A	O	O	O
Dwelling, accessory	P	P	P	A	P	P
Dwelling, affordable	A	A	A	O	A	A
Dwelling, multiple-family	O	O	O	O	A	O
Dwelling, one-family	P	P	P	P	P	P
Garage, private	P	P	P	P	P	P
Guest house, private	O	P	P	P	P	P
Home occupation	P	P	P	P	P	P
Parking, private	P	P	P	P	P	P
Personal services (business)	A	O	O	O	A	O
Roadside stand, temporary	O	P	P	O	P	P
Service trade home business (STHB)	A	A	A	A	A	A
Signs ¹	P	P	P	P	P	P
Stable, private ²	O	A	A	A	A	A
Studio, private	P	P	P	P	P	P
Swimming pool/tennis court, private	P	P	P	P	P	P
Trailer home/mobile home	O	O	O	O	O	O

NOTES:

¹ In accordance with the provisions of Article VII of the bylaw.

² With approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.

B. Commercial. [Amended 6-11-2022 ATM by Art. 42²]

	CD	R1	R2	NSP	C	C2
Adult bookstore	O	O	O	O	A	O
Adult motion picture theatre	O	O	O	O	A	O
Adult paraphernalia store	O	O	O	O	A	O
Adult video store	O	O	O	O	A	O
Establishment displaying live nudity ¹	O	O	O	O	A	O
Amusement, indoor	A	O	O	O	A	O
Amusement, outdoor	O	O	O	O	A	O
Amusement park	O	O	O	O	O	O
Animal hospital	O	O	O	O	A	O
Antique shop/art gallery	A	O	O	O	A	O
Arcade	O	O	O	O	A	O
Auto court	O	O	O	O	O	O
Boat house, commercial	A	A	A	O	A	O
Campground	O	O	O	O	O	O
Club	A	O	A	O	A	A
Communication structure	O	A	A	A	A	A
Communication building	O	A	A	A	A	A
Communication appurtenance	A	A	A	A	A	A
Contractor's yard	O	O	O	O	O	O
Cottage colony	O	A	A	O	A	A
Filling station	O	O	O	O	A	O
Food truck	A	O	O	O	A	O
Funeral home	A	A	A	O	A	O
Game room	A ²	O	O	O	A ³	O
Garage, public	O	O	O	O	A	O
Gift or craft shop	A	O	O	O	A	O
Guesthouse, public	O	A	A	O	A	O
Individual storage units	O	O	O	O	A	A
Industry, light	A	O	O	O	A	A
Inn	O	O	O	O	A	O
Lodge	A	O	O	O	A	O
Motel	O	O	O	O	A	O
Motor vehicle repair, incidental	O	O	O	O	A	A
Nursery school	A	A	A	O	O	O
Nursing home	O	A	A	O	A	O
Office, business	A	O	A	O	A	O
Parking, public	A	O	O	O	A	O

2. Editor's Note: Attorney General approval pending.

	CD	R1	R2	NSP	C	C2
Personal service (business)	A	O	O	O	A	O
Pet kennel	O	O	O	O	A	O
Registered marijuana dispensary (RMD)	O	O	O	O	A ⁴	A ⁴
Restaurant, indoor ⁵	A	O	O	O	A	O
Restaurant, drive-in ⁵	O	O	O	O	A	O
Restaurant, fast-food ⁶	O	O	O	O	O	O
Restaurant, formula ⁶	O	O	O	O	O	O
Retail trade (business)	A	O	O	O	A	O
Roadside stand, semi-permanent	O	O	O	O	O	O
Service trade business	O	O	O	O	A	A
Solar photovoltaic installation, large-scale ground-mounted (LSGMSPI)	O	O	O	O	O	P ⁷
Swimming pools/tennis club (public)	O	O	O	O	A	O
Swimming pools/tennis club (private)	A	O	O	O	A	O
Trailer park	O	O	O	O	O	O

NOTES:

- ¹ With the term "nudity" as defined by MGL c. 272, § 31.
- ² Only by not-for-profit organization or municipality on property principally occupied by said organization or municipality.
- ³ Only as an accessory, secondary use to an existing commercial use on the same lot.
- ⁴ Use authorized under special permits in the Medical Marijuana Overlay District in the C and C2 Zoning Districts as provided for in § 235-9.3 and as provided for in § 235-8.4B of these Zoning Bylaws.
- ⁵ With the approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.
- ⁶ The use limitations pertaining to fast-food restaurant and formula restaurant shall apply whether the use is a principal use or accessory use.
- ⁷ Provided parcel contains at least 75% degraded or previously disturbed land, is held in common ownership as of the date of this amendment, and subject to LSGMSPI site plan review by the Planning Board to assure compliance with the C2 District objectives contained in § 235-3.2, and as provided in § 235-10.3 of this bylaw.

C. Commercial (Heavy).

	CD	R1	R2	NSP	C	C2
Bulk storage, open	A	O	O	O	A	A
Bulk storage, tanks	A	O	O	O	A	A
Dump	O	O	O	O	O	O
Junkyard	O	O	O	O	O	O
Industry, heavy	O	O	O	O	O	O
Marine aquaculture	A	O	O	O	A	P
Motor vehicle junkyard	O	O	O	O	O	O
Motor vehicle repair shop	O	O	O	O	A	O
Motor vehicle sales	O	O	O	O	A	O
Quarry, sandpit, etc.	O	O	O	O	O	O
Transportation terminal	O	O	O	O	A	O
Warehouse	O	O	O	O	A	A

D. Institutional.

	CD	R1	R2	NSP	C	C2
Camp	O	O	A	O	O	O
Cemeteries	O	A	A	O	O	O
Government facilities	P	P	P	P	P	P
Health care clinic	A	A	A	A	A	A
Hospital	O	O	O	O	A	O
Municipal purposes	P	P	P	P	P	P
Municipal wind turbine ¹	O	O	O	A	O	O
Public and semi-public institutions of an historic, philanthropic or charitable nature	P	P	P	P	P	P
Religious institutions	P	P	P	P	P	P
Utilities, with open storage	O	O	O	O	O	O
Utilities, without open storage	A	A	A	A	P	A

NOTE:

¹ Special permit authorized under § 235-6.2E and § 235-8.4B of these Zoning Bylaws.

E. Farm uses.

	CD	R1	R2	NSP	C	C2
Farm, commercial	P	P	P	P	P	P
Farm-family, agriculture	P	P	P	P	P	P
Farm-family, livestock ¹	O	A	A	A	A	A
Greenhouse, commercial	P	P	P	P	P	O
Riding academy ¹	O	A	A	A	A	O
Stable, public ¹	O	A	A	A	A	O

NOTE:

¹ With the approval of the Zoning Board of Appeals upon advice of the Board of Health and in accordance with restrictions that may be imposed.

§ 235-5.4. Intensity of use schedule. [Amended 4-30-1985 ATM by Art. 61 and Art. 63; 4-29-1986 ATM by Art. 22; 4-25-2006 ATM by Art. 23]

A. Minimum lot requirements.

	CD	R1	R2	NSP	C	C2
Area (square feet)	20,000	30,000	40,000	3 acres	40,000	30,000
Frontage (feet)	125	135	135 ¹	200	200	135

NOTE:

¹ Increase to 200 feet on Route 6.

B. Minimum yard requirements.

	CD	R1	R2	NSP	C	C2	MSO
Front (feet)	25	30	30 ¹	50	100 ²	50 ^{3, 4}	25 ⁵
Side (feet)	20	25	25	35	35	35 ^{3, 4}	6
Rear (feet)	25	30	30	35	35	35 ^{3, 4}	15

NOTES:

- ¹ On Route 6 increase to 100 feet, except front yard setback may be reduced to not less than 30 feet with a special permit from the Zoning Board of Appeals.
- ² Of which not less than 25% of the required front yard must be maintained with vegetative cover (20% of which must border Route 6 and meet requirements as specified in § 235-6.12A, Perimeter buffering). Front setbacks may be decreased to 50 feet for nonresidential uses, provided building is wood-sided. Front setbacks may be decreased to 30 feet for residential uses with a special permit from the Zoning Board of Appeals.
- ³ Minimum yard requirements may be reduced to R1 requirements for residential uses with a special permit from the Zoning Board of Appeals.
- ⁴ Minimum front, side, and rear yard requirements for large-scale ground-mounted solar photovoltaic installations (LSGMSPI) shall be 100 feet, except for accessory structures, which shall be subject to minimum front, side, and rear yard setback requirements for the C2 Zoning District.
- ⁵ Front yard setbacks may be reduced to zero with a special permit from the Zoning Board of Appeals.

C. Maximum building coverage.

	CD	R1	R2	C	C2
Maximum building coverage	15%	15%	15%	25%	15%

D. Maximum National Seashore Park gross floor area (NSPGFA).

Lot Area	Maximum NSPGFA
Less than 10,500 square feet (just under 1/4 acre)	5% maximum building coverage
10,501 square feet to 21,000 square feet (1/4 to 0.48 acre)	1,050 square feet plus 7.4% of lot area over 10,500
21,001 to 42,000 square feet (0.48 to 0.97 acre)	1,825 square feet plus 3.2% of lot area over 21,000
42,001 to 84,000 square feet (0.97 to 1.92 acre)	2,500 square feet plus 1.43% of lot area over 42,000
84,001 to 126,000 square feet (1.92 to 2.89 acres)	3,100 square feet plus 1.2% of lot area over 84,000
126,001 square feet (2.89 acres and above)	3,600 square feet

NOTE:

The National Seashore Park gross floor area (NSPGFA) of a lot within the NSP District shall conform to the above table. In no event shall the dwelling exceed 2,800 square feet, nor shall the sum of the NSPGFA of a dwelling and its accessory buildings on any NSP District lot exceed 3,600 square feet.

- (1) National Seashore Park gross floor area (NSPGFA). The sum of the horizontal area(s) of the floors of a dwelling and all accessory buildings on a lot within the National Seashore Park District. All dimensions shall be measured between exterior faces of exterior walls, or exterior floor faces of decks.
- (2) For the purposes of calculating of NSPGFA, the following shall be included:
 - (a) Garage space, whether stand-alone or attached to or built into the dwelling or accessory buildings shall be attributed to the appropriate building.
 - (b) Basements, except areas as noted below.
 - (c) The sum of excess areas of: 1.) total porch area in excess of 400 square feet, and 2.) total deck area five feet or more above grade in excess of 400

square feet. The sum of such excess areas shall be attributed to the dwelling.

- (d) A guesthouse, private, which in the NSP District may exceed 250 square feet, and will be deemed an accessory building.

(3) And the following shall be excluded:

- (a) Cellars and attics.
- (b) Floor area with a ceiling height of less than five feet.
- (c) Sheds: up to two sheds, plus one additional shed for each 1/2 acre above one acre of lot area. Any sheds beyond this limit shall be included in NSPGFA as accessory buildings.
- (d) Basement areas used exclusively for heating, cooling, mechanical and electrical equipment necessary to the operation of the building.

E. Maximum height of buildings.

	CD	R1	R2	NSP	C	C2
Stories	2	2	2	2	2	2
Feet	28	28	28	28	28	28

F. Intensity of use application to multiple-family dwellings. The first unit of a multiple-family dwelling or of an apartment building shall require a minimum land area equal to the lot requirements of the district in which located. Each additional unit will require 8,000 square feet of land area. Front, side and rear yard and maximum building coverage requirements of the district in which the structures are located shall apply.

G. Intensity of use application to accessory dwelling units (ADUs). An accessory dwelling unit shall consist of a minimum of 200 square feet of livable floor area, subject to any requirements of the state. **[Amended 6-26-2021 ATM by Art. 45]**

H. Intensity of use application to the conversion of dwelling units. No dwelling unit shall be converted into two or more units unless each resulting unit consists of a minimum of 600 square feet of livable floor area; the external appearance of the structure is not changed; the front, side and rear yard requirements of the district in which located are met; and the lot area is not less per dwelling than the lot requirement of the district in which located, except in the case of an accessory dwelling unit, as provided in § 235-6.21 of these Zoning Bylaws. **[Amended 6-26-2021 ATM by Art. 45]**

I. Intensity of use application to motels. A minimum of an acre of land is required for the construction of a motel. Not more than 10 units may be constructed upon an acre of land, with an additional 4,000 square feet being required for each unit in excess of 10. No motel unit shall be located nearer than 125 feet to a public way. All other front, side and rear yard requirements of the district in which located shall be complied with.

J. Intensity of use application to commercial farm. A commercial farm shall require a minimum of five acres of land.

- K. Intensity of use application to camps. A camp shall require a minimum of four acres of land, exclusive of areas covered by water.
- L. Intensity of use application to cottage colonies. No cottage colony shall be constructed upon an area consisting of less than 40,000 square feet, and there shall be a minimum of 4,000 square feet for each unit, with no part of one unit being located closer than 25 feet to another. The front, side and rear yard requirements of the district in which located shall be complied with.
- M. Intensity of use application to restaurant. The total of the indoor and outdoor seating of the restaurant shall not exceed the total capacity of the restaurant as licensed by the Town of Wellfleet. **[4-23-1990 ATM]**
- N. Intensity of use application to more than one allowed principal use and/or principal building on a lot. More than one allowed principal use and/or principal building may be permitted on a lot in District C and District C2 with a special permit granted by the Zoning Board of Appeals in accordance with § 235-8.4B of the Wellfleet Zoning Bylaws.

ARTICLE VI

General Regulations

§ 235-6.1. Nonconforming uses.

The lawful use of any structure of land existing at the time of enactment or subsequent amendment of this bylaw may be continued although such structure or use does not conform with provisions of the bylaw, subject to the following conditions: [Note: MGL c. 40A, § 6 attached (last few pages).³]

- A. Alteration or extension. No addition to or increase in the extent of a nonconforming use of a structure or land may be made, except that the Zoning Board of Appeals may grant a special permit for expansion of existing campgrounds, mobile home parks, motels or motor courts, and cottage colonies using only those parcels employed at the time the use was made nonconforming.
- B. Restoration. In case of destruction or damage by fire or other catastrophe, a legally nonconforming structure may be rebuilt in substantially the form it had at the time of the destruction or damage, or in any form if within applicable setback requirements in accordance with existing building code requirements, and not larger than previously (provided that reconstruction is started within 12 months and completed within 24 months of the catastrophe).
- C. Changes. A nonconforming use may be changed to a more nearly conforming use; and once changed to a more nearly conforming or conforming use, no structure or land shall be permitted to revert to a less conforming use.
- D. Discontinuance or abandonment. A nonconforming use, which has been abandoned, shall not be reestablished. Any nonconforming use discontinued for a period of two

3. Editor's Note: See Appendix B, included as an attachment to this chapter.

years or more shall not be reestablished, and any future use shall conform with this bylaw, unless reestablishment is authorized by special permit from the Zoning Board of Appeals, upon its determination that the discontinuation occurred despite good faith efforts of the owner to reestablish the use within two years, and that reasonable efforts will be made to mitigate any harmful impact upon the vicinity. **[Amended 4-30-1985 ATM by Art. 20]**

E. Alterations to nonconforming single- or two-family residential structures.

- (1) Nonconforming single- or two-family residential structures may be altered if:
 - (a) The Building Inspector determines that the alteration will not increase the nonconforming nature of the structure; or
 - (b) If the alteration will increase the nonconforming nature of the structure, the Zoning Board of Appeals issues a special permit after determining that the alteration is not substantially more detrimental to the neighborhood than the existing nonconforming structure.
- (2) Conforming single- and two-family residential structures located on nonconforming lots may be altered if:
 - (a) The structure after the alteration will continue to conform; or
 - (b) If the structure after the alteration will not continue to conform, the Zoning Board of Appeals issues a special permit after determining the alteration is not substantially more detrimental to the neighborhood than the existing nonconforming use.
- (3) Permits issued under Subsection E(1)(b) and E(2)(b) of this section shall be subject to the provisions of § 235-8.4B(4) and § 235-8.4C(5) of this bylaw. In making the determination to issue the permit, the Zoning Board of Appeals may consider other criteria in § 235-8.4B.
- (4) For purposes of this section:
 - (a) "Alteration" means any alteration, reconstruction, extension, structural change, or replacement; and
 - (b) An "increase in the nonconforming nature of the structure" means any alteration that results in an increase in the volume of that portion of the structure presently nonconforming.

§ 235-6.2. Accessory buildings.

No accessory building or structure, except a shed, permitted sign or a temporary roadside stand, shall be located within a required front or side yard area or nearer to the rear lot line than 10 feet. Sheds, as defined in Article II of this bylaw, must be located a minimum of 30 feet from the front line and five feet from the side and rear lines. The door or access to a shed must be to the inside of the property on which it is located if a shed is located within 25 feet of the side lot line or 10 feet of the rear lot line.

§ 235-6.3. Parking requirements. [Amended 4-30-1985 ATM by Art. 66]

- A. Any building hereinafter constructed or converted to another use shall be so located on its parcel of land that there may be provided adequate off-street parking areas in conformance with the following minimum standards:

Use	Spaces Required
Stores - retail business	At least 2 spaces for each establishment or 1 space for each 150 square feet of floor area, whichever is larger, plus 1 space for each 3 employees or nearest multiple thereof.
Banks and similar business	1 space for each 150 square feet of floor area plus 1 space for each 3 employees or nearest multiple thereof.
Inns, motels, tourist homes, etc.	1 space for each 2 sleeping accommodations plus 1 space for each 3 employees. Each double bed to be considered 2 sleeping accommodations.
Theaters, funeral homes and places of assembly	1 space for each 4 seats.
Restaurants - places serving food or beverages	1 space for each 4 seats plus 1 space for each 3 employees or nearest multiple thereof.
Residential areas	2 spaces for each individual dwelling unit; except in the case of apartments, where 1 1/2 spaces shall be provided for each unit.
Nonresidential uses	In all other cases of nonresidential uses in a residential area, there shall be provided at least 1 space for each 3 employees plus 1 space for each 150 square feet of gross floor area.
Industrial, manufacture and wholesale uses	1 space for each 3 employees based on the maximum number of employees the plant is designed to employ.
Bowling alleys	4 spaces for each alley.
Guest house	1 space for each sleeping room.
Health care clinic, medical or dental center or professional offices	4 spaces for 800 square feet of floor area plus 1 space for each 2 employees.

Use	Spaces Required
Bed-and-breakfast	In addition to the requirements for 2 parking spaces for each individual dwelling unit as specified above, 1 parking space shall be provided for each bedroom in a new bed-and-breakfast and for each bedroom added to an existing bed-and-breakfast.

B. Development of significant impact.

(1) Applicants for special permits for uses so controlled and which involve required parking for 10 or more cars, or involve more than 4,000 square feet floor area of new construction or for any adult entertainment use regulated herein under § 235-6.20 or uses in the Main Street Overlay District herein under § 235-9.2 and regardless of floor area or the number of parking spaces, shall submit to the Zoning Board of Appeals three copies of the following:

- (a) An application;
- (b) A site plan prepared by an architect, landscape architect, or registered professional engineer, showing proposed structures, drives, parking, landscaping, screening and drainage;
- (c) A ground floor plan and elevation of all proposed building and elevations of proposed signs; photographs of the premises and all adjoining structures.

Forthwith upon receipt of the above materials, the Zoning Board of Appeals shall transmit one set of them to the Planning Board for its review and recommendation. **[Amended 4-25-2006 ATM]**

(2) Other uses. Parking requirements for all other uses not specifically mentioned shall be determined by the Zoning Board of Appeals for those uses controlled by special permit and by the Selectboard or by the Inspector of Building appointed by the Board for those allowed uses unless such use is subject to the provisions of § 235-6.3B of this bylaw.

(3) Central District parking. Lots that are partly within the Central District and partly within the R1 Residential District may use the R1 portion of their lot for parking with a special permit from the Zoning Board of Appeals, provided that adequate measures are taken to mitigate any adverse impact on abutting properties. Such mitigation may include, but not be limited to, fencing or screening to control the visibility of the parking, access to the parking area that protects public safety and is consistent with existing traffic patterns and flow.

C. Developer-funded impact studies for "development of significant impact." The following developer-funded impact studies shall be required for "developments of significant impact" unless deemed unnecessary by the involved Town board(s):

(1) A traffic impact study to determine the development's effect on road traffic-carrying capacity, road physical environment, and traffic and pedestrian safety.

- (2) A financial impact study to determine the development's effect on public service expenditures for administrative, police, fire, school and road maintenance services.

D. Egress. [Added 9-22-1986 STM by Art. 33]

- (1) Any driveway likely to carry more than 200 trips per average summer business day must comply with the following unless the Zoning Board of Appeals grants a special permit for an alternative configuration, upon its determination that safety will be adequately protected, based on commonly employed engineering standards, or unless the Massachusetts Department of Public Works⁴ imposes requirements precluding compliance:

	On Route 6	Other Locations
Exiting vehicle unobstructed sight distance at edge of traveled way	350 feet	200 feet
Driveway center line separation from other driveway serving 100+ trips	275 feet	100 feet
Driveway center line separation from intersecting street sideline	150 feet	50 feet
Maximum driveway width unless greater width justified by engineered design	24 feet	18 feet
Minimum curb radius	50 feet	25 feet
Acceleration/deceleration lanes required	Yes	No

- (2) No existing parcel shall be divided into lots with frontage, which would preclude meeting the driveway separation requirements, unless access rights-of-way are deeded to enable shared egress.

§ 235-6.4. Loading and unloading areas.

Berths shall be provided for the loading and unloading of stock, merchandise, equipment, supplies and other usual business and industrial commodities in accordance with the following conditions:

- A. Retail store and service establishments: For each retail store or service establishment with gross floor area of from 3,000 to 8,000 square feet at least one berth. Additional berths at the rate of one berth for each additional 8,000 square feet or nearest multiple thereof.
- B. Manufacturing, industrial and other commercial use: One berth shall be provided for floor area up to 8,000 square feet and for larger floor areas additional berths as required by the Zoning Board of Appeals.

4. Editor's Note: Now the Massachusetts Department of Transportation (MassDOT).

§ 235-6.5. Windmills.

- A. Windmills shall be permitted by a special permit from the Zoning Board of Appeals. No special permit for a windmill shall be granted unless the Zoning Board of Appeals makes a finding that the windmill complies with the following conditions:
- (1) The minimum setback distance for all windmills from any abutter's property line shall be at least equal to the maximum height of the machine from grade plus 20 feet. Setbacks will be measured to the center of the tower base.
 - (2) The maximum tower height shall be 65 feet from grade to the center of the rotor.
 - (3) Climbing access to the windmill tower shall be limited either by (I) the installation of a fence with locked gate around tower base or by (II) limiting tower climbing apparatus to no lower than 10 feet from the ground. If a fence is used, it shall be no lower than five feet and constructed in such a manner as to restrict passage through said fence, including such construction as stockade, woven wood, chain link, etc., but excluding split rail.
 - (4) The diameter of a rotor may not exceed 35 feet. The minimum height of the rotor shall not be less than 15 feet from the ground as measured from the lowest point of the arc of the rotor.
 - (5) The windmill shall not generate excessive noise, cause interruption of television or radio station reception or otherwise constitute a public nuisance.
- B. A windmill will be considered abandoned if not operated for a period of two years or if it is designated as a safety hazard or a public nuisance by the Building Inspector. Once a windmill is designated as abandoned, the owner shall be required to immediately dismantle it.
- C. For the purposes of the bylaw, the following definitions shall be applied:
- WINDMILL — A device which converts wind energy to mechanical or electrical energy.
- ROTOR — The blades plus the hub to which the blades of a windmill tower are attached.
- D. Before applying for a special permit under this section, the applicant shall obtain the Building Inspector's approval of the proposed windmill. The Building Inspector shall approve the proposed windmill upon making the determination that it (I) will not constitute a safety hazard of a public nuisance and (II) complies with the State Building Code and any other applicable law. The Building Inspector's approval required herein shall be in addition to the building permit required by § 235-8.2 of this bylaw.

§ 235-6.6. Cluster residential developments.

The Planning Board is hereby designated the special permit granting authority for all cluster residential developments and shall have the power to hear and decide applications for special permits as provided by this section.

- A. Objective: to allow intensive use of land while at the same time maintaining existing character; preserve open space for conservation and recreation; introduce variety and

choice into residential development; meet housing needs; and facilitate economical and efficient provision of public services.

- B. Application. Applicants shall submit five copies of an application and plans which shall comply with the requirements of the Wellfleet Subdivision Control Regulations⁵ and which shall also indicate proposed land and building area, location of common open space and upland area. A registered land surveyor or equivalent licensed professional shall prepare the plans. Preliminary subdivision plans, if any, should be submitted to the Planning Board prior to the application for a special permit. The definitive subdivision plan shall be submitted with the special permit application. The Planning Board shall transmit copies of the application and plans to the Board of Health, Conservation Commission, Fire Department or any other agencies whose review is sought. Those agencies shall submit reports to the Planning Board within 35 days of the referral and the Planning Board shall make no decision upon the application until receipt of all such reports or until 35 days have elapsed. The Planning Board may hold public hearings under MGL Ch. 41, the Subdivision Control Law, and the special permit simultaneously.
- C. Other materials. The application materials shall indicate each landowner's interest in the land to be developed, the form of organization proposed to own and maintain the open space and any common facility, the substance of covenants and grants of easements to be imposed upon the use of land or structures, and a development schedule.
- D. Minimum area/number of dwelling units. A cluster development shall encompass at least 15 acres of contiguous land. The maximum number of dwelling units per cluster development shall equal the total upland area (minus land for road construction) divided by the minimum lot size in that district; if the development includes land in more than one district, the largest lot size shall be used to calculate the number of units allowed.
- E. Open space. Open space shall be preserved for recreation or conservation and shall include not less than 25% of the upland within the cluster development. The open space shall either be conveyed to and accepted by the Town or a non-profit organization, the principal purpose of which is the preservation of open space, or a corporation or trust owned or to be owned by the owners of lots or residential units in the development. If such a corporation or trust is used, ownership thereof shall pass with conveyance of the land or residential units. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded, providing that such land be kept in an open or natural state and not be built upon or developed for accessory uses such as parking or roadways.
- F. Dimension requirement for cluster development.

Minimum Lot Size	10,000 square feet
Minimum Frontage	No requirement
Minimum Front Yard	No requirement
Minimum Side Yard	No requirement
Minimum Rear Lot	No requirement

⁵ Editor's Note: See Ch. 300, Subdivision Regulations.

Maximum Lot Coverage	15%
Maximum Height	See § 235-5.4E.

Setback from boundary of development: Structures in the cluster development shall be sited to minimize the impact on abutting property; no structure within a cluster may come closer to the boundary of the development than 35 feet. The minimum distance between dwelling units shall be 25 feet. The permitting authority may reduce these dimensional requirements upon clear demonstration that the proposed development offers exceptional advantages.

- G. Drinking water. The provisions for drinking water to each dwelling unit shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts.
- H. Wastewater disposal. The provisions for wastewater disposal shall meet all requirements of the Wellfleet Board of Health and the Commonwealth of Massachusetts. No private septage or sewage treatment facility or advanced wastewater treatment equipment shall be used in cluster development.
- I. Roads.
 - (1) Pervious surfaces may be used except where grades require pavement.
 - (2) Right-of-way for roads may be reduced to 30 feet at the discretion of the Planning Board.
 - (3) Roadway width shall be minimum consistent with access for emergency vehicles.
 - (4) The road layout shall minimize cutting and grading.
 - (5) Other requirements of the Wellfleet Subdivision Control Regulations with regard to road design shall be complied with.⁶
- J. Utilities and easements. All utilities shall be installed underground. Easements shall be provided for public water, sewers, gas, and, where applicable, telecommunication services. Underwater storage of water for fire protection shall be provided in a manner acceptable to the Wellfleet Fire Department.
- K. Clearing of site. The site shall not be cleared prior to submission to and review by the Planning Board of a preliminary plan; or, if no preliminary is submitted, prior to submission to and approval by the Planning Board of the definitive plan.
- L. Design guidelines. Applicants are encouraged to apply, where pertinent, the recommendations for Compact Residential Developments as set forth in pages 44 through 48 of "A Design Guideline Manual for Sustainable Development on Cape Cod," which is available from the Building Inspector, the Town Planner or the Cape Cod Commission.
- M. Criteria. Special permits for cluster development may be made upon the determination of the Planning Board that the plan meets all requirements of the Zoning Bylaw and is preferable to a conventional grid-type subdivision in preserving open space for

6. Editor's Note: See Ch. 300, Subdivision Regulations.

conservation or recreation, in utilizing natural features of the land, in allowing more efficient provision of streets, utilities and other public services.

§ 235-6.6.1. Affordable flexible residential design. [Added 4-23-2018 ATM by Art. 40]

A. Purpose.

- (1) The purpose of this § 235-6.6.1 of the Wellfleet Zoning Bylaws is to provide a residential development zoning provision with flexible dimensional regulations to encourage efficient site layout that minimizes land consumption and creates opportunities for diversified and affordable housing. The Town wishes to encourage affordable flexible residential design (AFRD) as an alternative to conventional development because AFRD results in creation of more affordable housing for year-round residents, while allowing more design flexibility to encourage more efficient site layout and preservation of contiguous open space.
- (2) The goals of AFRD are:
 - (a) To encourage and to promote the provision of affordable housing for year-round residents.
 - (b) To allow greater flexibility and creativity in the design of residential developments.
 - (c) To encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional or grid subdivision.
 - (d) To facilitate the construction and maintenance of streets, utilities, and public services in a more efficient manner.
 - (e) To further housing and land use goals of the Local Comprehensive Plan.

B. Definitions. In this § 235-6.6.1, the following terms have the meaning indicated:

AFFORDABLE FLEXIBLE RESIDENTIAL DESIGN ("AFRD") — A residential development in which at least 30% of the base allowable density is composed of affordable dwelling units and buildings are clustered together with allowance for reduced lot sizes and frontage. The land not included in the building lots is preserved as open space. AFRD may include residential subdivisions or residential development where the property is held in condominium or other form of ownership in which the property is not subdivided.

BASE ALLOWABLE DENSITY — The maximum number of lots or units that could be built on a site under a conventional subdivision plan, as demonstrated in a preliminary subdivision plan, in accordance with § 235-6.6.1G.

COMMON OPEN SPACE — Any open space set aside, dedicated, designated, or reserved for use as passive recreation, natural buffers, and active recreation as permitted by this § 235-6.6.1. Common open space shall be contiguous wherever possible and shall not include roadways, parking areas, or private yards.

INCOME-ELIGIBLE HOUSEHOLD — A one or more person household whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by the DHCD Guidelines.

OPEN SPACE — For the purposes of this § 235-6.6.1 of the Zoning Bylaws, open space shall mean any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for use and enjoyment of the owners and occupants of an AFRD, as permitted by this § 235-6.6.1.

C. Applicability.

- (1) AFRD is allowed by special permit under zoning, in accordance with this § 235-6.6.1, for development that proposes to provide at least 30% of the base allowable density number, as determined in accordance with § 235-6.6.1G, as affordable dwelling units for income-eligible households.
- (2) The minimum area required for an AFRD development is 60,000 square feet of contiguous upland.
- (3) AFRD is subject to the requirements of the Rules and Regulations Governing the Subdivision of Land, Wellfleet, Mass ("Subdivision Rules and Regulations"),⁷ as applicable, except where modification is allowed in accordance with § 235-6.6.1F, and subject to any other generally applicable non-zoning land use regulations. AFRD may be proposed in the NSP, CD, R1, R2, C, and C2 Zoning Districts; except that any AFRD development in the NSP must comply with the Act of Congress of August 7, 1961, which provided for the establishment of the Cape Cod National Seashore and the regulations promulgated thereunder. If subdivision approval is not required because a new roadway is not proposed, an applicant may nevertheless apply for AFRD subject to the requirements of this § 235-6.6.1.

D. Special permit granting authority. The Planning Board shall act as the special permit granting authority for AFRD applications. The Planning Board may adopt, and from time to time amend, rules and regulations consistent with the provisions of this § 235-6.6.1, MGL c. 40A and other provisions of the Massachusetts General Laws, and the Subdivision Rules and Regulations, and shall file a copy of said rules and regulations with the Town Clerk.

E. Relationship to Subdivision Rules and Regulations. Nothing herein shall exempt a proposed subdivision from compliance with other applicable provisions of the Wellfleet Zoning Bylaws or the Subdivision Rules and Regulations,⁸ nor shall it affect the right of the Board of Health to approve, condition or disapprove a subdivision plan in accordance with the provision of such Subdivision Rules and Regulations. In any case where the Subdivision Rules and Regulations conflict with zoning, the Wellfleet Zoning Bylaws govern.

F. Modification of subdivision roadway. The Planning Board may reduce applicable subdivision road construction standards (including but not limited to roadway width,

7. Editor's Note: See Ch. 300, Subdivision Regulations.

8. Editor's Note: See Ch. 300, Subdivision Regulations.

center line radii, curbing, cul-de-sac radius, drainage requirements, etc.), and notwithstanding these reductions, subdivision road constructions will not apply to base allowable density calculations in § 235-6.6.1G(2) where, in the opinion of the Planning Board, such reductions will result in enhanced overall site design and provide adequate and safe access for the development.

G. Base allowable density.

- (1) The base number of dwelling units permitted under AFRD shall not exceed that which would be permitted under a conventional ("grid") subdivision that complies with the Wellfleet Zoning Bylaws, Subdivision Rules and Regulations⁹ and any other applicable laws and regulations of the Town or the state.
- (2) To determine the base allowable density, an applicant shall submit a preliminary subdivision plan that demonstrates the allowable base number of units. The Subdivision Rules and Regulations shall apply to the preliminary subdivision plan layout without waivers.
- (3) The Planning Board may grant a density bonus for additional dwellings in accordance with § 235-6.6.1H. The number of dwelling units shall not exceed the base allowable density except where the Planning Board has granted a density bonus.

H. Density bonus. The Planning Board may grant a density bonus in exchange for the provision of deed-restricted affordable housing or lot(s). For each affordable dwelling unit provided under this section, one additional dwelling unit may be permitted.

I. Types of residential development. The allowable dwelling units may be developed as single-family or multiple-family dwelling units, provided that the number of dwelling units does not exceed the base allowable density as determined in § 235-6.6.1G, or as allowed in § 235-6.6.1H, where a density bonus is granted.

J. Dimensional requirements.

- (1) Minimum AFRD area. The minimum area for an AFRD development is 60,000 square feet contiguous upland.
- (2) Minimum lot size. There is no minimum size for lots within an AFRD. The limiting factor on lot size in AFRD is the need for adequate water supply and sewage disposal. Therefore, minimum lot size shall be sufficient to meet Board of Health requirements for disposal of sewage and protection of water supply.
- (3) Frontage. There is no numerical requirement for road frontage in AFRD. Each lot must have legal, actual and adequate frontage so as to allow vehicular access to a public way or a way approved under Subdivision Rules and Regulations.¹⁰ Actual and adequate frontage shall be determined by the Planning Board.
- (4) Setbacks. The minimum setback for any building from a property line shall be 10 feet. In no event shall any dwelling be closer than 20 feet to each other. However,

9. Editor's Note: See Ch. 300, Subdivision Regulations.

10. Editor's Note: See Ch. 300, Subdivision Regulations.

all setbacks from the perimeter lot line AFRD area shall be 30 feet for front and rear and 25 feet for sides.

K. Site design.

- (1) Lot arrangement. Lots shall be located in a manner that protects scenic views, wildlife habitat, hilltops, ponds, steep slopes, and other sensitive environmental resources and land of conservation value, while facilitating pedestrian and bicycle circulation.
- (2) AFRD proposals are required to design the site using the following process:
 - (a) Identify conservation value: areas such as wetlands, buffer zones, habitat, cultural resources, etc. shall be identified and removed from the base allowable density calculations as noted in § 235-6.6.1F.
 - (b) Place the dwellings to maximize residents' access to open space, preservation of views, privacy, etc.
 - (c) Align roads, ways, and trails to provide vehicular and pedestrian access.
 - (d) Draw lot lines around the dwellings, or in the case of a condominium development the designated areas shall be delineated.
- (3) Shared driveways. Shared driveways serving no more than five dwelling units may be allowed in the AFRD, provided that adequate vehicular access to the site has been provided by a way, or ways, that meets the following criteria:
 - (a) Minimum width: 10 feet, with two-foot clear area on each side and pull-off areas;
 - (b) Maximum grade: 10%;
 - (c) Driveway design can accommodate vehicular travel and provide direct ingress and a rapid response time for emergency vehicles. The Board may require that secondary access be provided for reasons of public safety and convenience.

L. Application requirements.

- (1) Pre-application meeting. A pre-application discussion is required between the applicant and the Planning Board. The purpose of this informal meeting is to introduce the applicant to the AFRD zoning and Subdivision Rules and Regulations and discuss the applicant's objectives prior to developing engineered plans and other application materials.
- (2) Application materials. Applicants shall submit 16 copies of an AFRD application and plans which shall comply with the submission requirements of the Subdivision Rules and Regulations and which shall also indicate proposed land and building area, location of common open space and upland area. The plans shall be prepared by a team including a registered civil engineer and a registered land surveyor.

- (a) Preliminary plan and existing conditions plans. Prior to submission of a special permit application, applicants shall submit a preliminary subdivision plan in accordance with the Subdivision Rules and Regulations for the purposes of determining the number of lots/units possible on in the AFRD (i.e., base allowable density), in accordance with § 235-6.6.1F. For this reason, it is recommended that a copy of an existing conditions plan be submitted at this stage. The existing conditions plan shall include but not be limited to existing topography at two-foot contours, wetlands, water bodies and the one-hundred-year floodplain, existing rights-of-way, easements, and existing structures, the location of significant features such as woodlands, tree lines, open fields or meadows, scenic views, watershed divides and drainage ways, fences and stone walls, roads, driveways, and cart paths.
 - (b) Definitive plan. The definitive subdivision plan shall be submitted with the special permit application. Where an AFRD development is not a subdivision of land, the AFRD development plan shall conform to the submission requirements for a definitive plan.
 - (c) Other materials. Applicants shall also include a statement indicating the proposed use and ownership of the open space, where applicable.
- (3) The Planning Board may conduct the public hearing for the AFRD special permit concurrently with a public hearing for the subdivision in conformity with the provisions of MGL c. 41, §§ 81K - 81GG and the Subdivision Rules and Regulations.
 - (4) Strict compliance with the requirements of these Subdivision Rules and Regulations may be waived when, in the judgment of the Board, such action is in the public interest, and not inconsistent with the Subdivision Control Law. The application for approval of a definitive plan must be accompanied by a written request for waiver of strict compliance with the Subdivision Rules and Regulations, the regulation sought to be waived, the nature and location of the waiver sought, and a statement by the applicant's surveyor or engineer that such waiver is consistent with each of the purposes set forth in § 300-1.3 of the Subdivision Rules and Regulations.
- M. Approval criteria. The Planning Board may grant a special permit for an AFRD application upon making the following determinations:
- (1) The proposed development meets the goals and purposes of AFRD.
 - (2) The proposed development is suitable for the proposed location, and the layout of the developed areas, including buildings, roads, and utilities, conforms to the natural features of the parcel, minimizes the amount of land to be disturbed, protects sensitive resources on site, and provides an efficient design of streets and ways and utilities.
 - (3) The proposed development complies with the special permit standards of § 235-8.4B of the Wellfleet Zoning Bylaws.
- N. Common open space requirements.

- (1) Required open space. AFRD areas greater than 10 acres shall provide a minimum of 25% of the site area of the parcel as permanently protected open space, except where reduction is allowed, as set forth in § 235-6.6.1N(2) below. Applicants are encouraged to retain natural vegetation for screening, roadway buffers, and natural resource protection to the maximum extent feasible.
- (2) Applicants are encouraged to include wetlands and water bodies within the open space; however, the amount of wetland that may count towards the open space requirement shall not exceed the percentage of wetland on the entire site under existing conditions. Roadway rights-of-way shall not count toward the area to be provided as open space.
- (3) The Planning Board may reduce the open space requirement for AFRD proposals with one or more of the following characteristics:
 - (a) The number of affordable units provided exceeds 50% of the base allowable density.
 - (b) The project site is located within a 1/2 mile of Wellfleet Center Historic District or Paine Hollow Historic District.
 - (c) More than 50% of the existing project site is previously disturbed.
 - (d) The project site contains an historic structure(s), and the historic structure will remain in its current location or moved elsewhere on the site.
 - (e) The project is located adjacent to open-space land such as the National Seashore, conservation land, wetland, or similar type open-spaced areas, if the layout of the AFRD benefits outweigh the open-space benefits.

O. Permissible uses of open space.

- (1) Purposes. Open space shall be used solely for passive recreation or conservation purposes by residents. At least 1/2 of the required open space may be required by the Planning Board to be left in a natural state. The proposed use of the open space shall be specified in the AFRD application.
- (2) Infrastructure in open space. A minimal amount of stormwater infrastructure may be located in the open space area, provided it is designed as low-impact development as defined by the Massachusetts Department of Environment Protection in its regulations and guidance and does not significantly impact the features to be preserved. If the applicant demonstrates to the satisfaction of the Planning Board that there are practical difficulties in locating required septic fields within the areas to be developed, the fields may be located in adjacent parts of the open space, provided the Planning Board finds that such use will not be detrimental to the character, quality, or use of the open space, wetlands or water bodies, and enhances the site plan.

P. Open space restriction.

- (1) Except as provided in § 235-6.6.1P(2), the open space shall be protected with a permanent restriction. The applicant shall provide a permanent restriction or restrictions (conservation, open space or similar) in favor of a government entity,

a land trust, homeowners' association, or a not-for-profit organization with a mandate that includes land conservation.

- (2) In the case of an AFRD that is less than or equal to 10 acres with more limited open spaces to be used primarily by its residents, the Planning Board may accept as adequate protection the combination of homeowners' association, deed or covenant restrictions, and the conditions in the special permit decision.

Q. Encumbrances. All areas to be set aside as open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

R. Design requirements. The location of open space provided through this § 235-6.6.1 shall be consistent with the policies contained in the Local Comprehensive Plan and the Open Space and Recreation Plan, as amended from time to time and on file with the Town. The following design requirements shall apply to open space and lots provided through this § 235-6.6.1, as applicable:

- (1) Open space shall be planned as large, contiguous areas whenever possible. Long thin strips or narrow areas of open space (less than 100 feet wide) shall occur only when necessary for access, as vegetated buffers along wetlands or the perimeter of the site, or as connections between open space areas.
- (2) Open space shall be arranged to protect valuable natural and cultural environments such as wetland buffers, unfragmented forestland and significant trees, wildlife habitat, open fields, scenic views, trails, and archeological sites and to avoid development in hazardous areas such as floodplains and steep slopes. The development plan shall take advantage of the natural topography of the parcel and cuts and fills shall be minimized.
- (3) Open space may be in more than one parcel, provided that the size, shape and location of such parcels are suitable for the designated uses.
- (4) Where the proposed development abuts or includes a body of water or a wetland, these areas and the 100 foot buffer to such areas, as stated in § 141-3 of the Wellfleet Environmental Protection Bylaw, shall be incorporated into the open space. Where appropriate, reasonable access shall be provided to shorelines.
- (5) The maximum number of house lots compatible with good design shall abut the open space and all house lots shall have reasonable physical and visual access to the open space through internal roads, sidewalks or paths. An exception may be made for resource areas vulnerable to trampling or other disturbance.
- (6) Development along existing scenic roads and creation of new driveway openings on existing regional roadways shall be minimized.
- (7) Where a proposed development abuts land held for conservation purposes, the development shall be configured to minimize adverse impacts to abutting conservation land.

S. Affordability restriction.

- (1) As a condition to an AFRD special permit, the applicant shall be required to execute an affordable dwelling restriction ("restriction") for each affordable

dwelling unit using DHCD's universal Affordable Housing Deed Rider and governed by the terms and conditions of the DHCD Guidelines. All restrictions shall be for perpetuity or the longest period allowed by law. No certificate of occupancy shall be issued until the applicant has provided proof of recording of the restriction in the Registry of Deeds to the Planning Board and the Building Inspector. Local preference for affordable dwelling units shall be provided to the extent allowed by DHCD Guidelines.

- (2) It shall be a condition upon every special permit issued under this § 235-6.6.1 that the applicant shall comply with any DHCD regulations under Chapter 40B of the Massachusetts General Laws and the DHCD Guidelines for qualification of the dwelling units created under this Subsection S towards the Town's subsidized housing inventory, including but not limited to the form of the affordable dwelling restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards and maximum rent or sale price.

- T. Severability. If any provision of this § 235-6.6.1 is held invalid by a court of competent jurisdiction, the remainder of § 235-6.6.1 shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this § 235-6.6.1 shall not affect the validity of the remainder of the Wellfleet Zoning Bylaws.

§ 235-6.7. Commercial, industrial and general use standards.

No activity shall be permitted in any district of the Town unless its operation is conducted so that any noise, vibration, flashing, cinders, dust, fumes, gasses, odors, smoke, radiation and electromagnetic interferences can be and are effectively confined to the premises. No such activity shall be allowed which is detrimental to neighboring property by reasons of special danger of fire or explosion.

- A. Denial of permit. The Selectboard or person designated by it, whichever may be responsible for the issuance of building or use permits, shall, subject to the applicant's right of appeal, deny a building, use, or occupancy permit if in his opinion he has reason to believe that said permit, if issued, and resulting use of said premises is contrary to the intent of this section.
- B. Right of appeal. Any applicant denied a permit under the provisions of this section shall have the right of appeal to the Zoning Board of Appeals and said Board, following a hearing with due notice thereof, may order the issuance of said permit if it finds that action taken in denying said permit was without sufficient reason.

§ 235-6.8. Burning of cover.

Within the National Seashore Park District there shall be no burning of cover unless determined by the proper official to be necessary for the welfare and safety of the Town, and then such burning shall be in accordance with the requirements of MGL c. 48, § 13.

§ 235-6.9. Cutting of timber.

Within the National Seashore Park District there shall be no cutting of timber except for the following reasons:

- A. By an owner for the purpose of reasonably controlling brush or trees;
- B. Maintenance cutting in pastures;
- C. Cutting for clearance or maintenance on right-of-way, including those pertaining to public utilities or public highways.

§ 235-6.10. Drainage and damming.

Within the National Seashore Park District there shall be no drainage, damming or relocating of any watercourse, except by publicly authorized agency for the purpose of pest control.

§ 235-6.11. (Reserved)**§ 235-6.12. Landscaping. [Added 4-29-1986 ATM by Art. 21]**

The following requirements are intended to assure that vegetation provides visual contrast, separation between premises, and some protection from sun and wind. Alternatives to the following specifications may be authorized on approval of the special permit granting authority as a condition of the special permit based on the following criteria, taking into consideration existing vegetation, soils, and other site conditions, provided that effective screening, shading, and definition of property lines are achieved.

- A. Perimeter buffering.
 - (1) Parking areas for 10 or more cars, outdoor storage areas, loading facilities, or similar service areas shall be separated from the Route 6 right-of-way by at least 35 feet, from all property lines in the Central District by at least three feet, and from all other property lines by at least 10 feet.
 - (2) Alternatively, separation from Route 6 may be reduced to 20 feet and separation from all other property lines may be reduced to five feet, provided that not less than 20% of lot area is maintained with vegetative cover.
 - (3) Yards between parking, storage, loading, and service areas and property lines, including those bordering Route 6, shall be vegetated (excepting drives, walks, tidal flats, etc.), through retention of existing plants and trees, or, where this is impossible, planted with native species, and must include trees (two feet in caliper) sufficient in number that, if evenly spaced (which they need not be) their crowns would approximately meet each other at maturity. Brush or shrubbery must initially be essentially continuous to three feet or more in height, with mature height of at least four feet, except where that interferes with driver visibility. In the Central District, a combination of fencing and landscaping may be used where continuity of vegetation is inappropriate or impossible.

- B. Parking lot plantings. Parking lots for 10 or more cars shall contain or be bordered within five feet by at least one tree per 10 parking spaces, trees to be of two inches caliper or larger, and if within the parking area, to be planted in curbed soil plots allowing not less than 40 square feet of unpaved soil area per tree. Trees and shrubs that die must be replaced within 12 months. One required parking space may be omitted for each 300 square feet of planting area within the parking lot, on approval of the Zoning Board of Appeals as a condition of the special permit, upon the Board's determination that parking demand will still be adequately served.

§ 235-6.13. Floodplain District zoning regulation. [Added 4-30-1985 ATM by Art. 56; amended 4-28-2014 ATM by Art. 45]

- A. Floodplain District. The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Wellfleet designated as Zone A, AE, AO or VE on the Barnstable County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Barnstable County FIRM that are wholly or partially within the Town of Wellfleet are panel numbers 25001C0229J, 25001C0233J, 25001C0234J, 25001C0237J, 25001C0239J, 25001C0241J, 25001C0242J, 25001C0243J, 25001C0244J, 25001C0261J, 25001C0262J, 25001C0263J and 25001C0264J dated July 16, 2014. The exact boundaries of the District may be defined by the one-hundred-year base flood elevations shown on the FIRM and further defined by the Barnstable County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Building Inspector and the Conservation Commission. The underlying permitted uses are allowed, provided they meet the following additional requirements, as well as those of the Massachusetts State Building Code dealing with construction of Floodplain (780 CMR).
- B. Development regulations. The following requirements apply in the Floodplain District:
- (1) Within Zone A, where the one-hundred-year 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 and 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 five acres, whichever is the lesser, within unnumbered A Zones.
 - (2) Within Zone AO on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.
 - (3) In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - (4) All subdivision proposals must be designed to assure that:

- (a) Such proposals minimize flood damage;
 - (b) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (c) Adequate drainage is provided to reduce exposure to flood hazards.
- (5) Within the Floodplain District are areas designated as coastal high hazard areas (Zone VE). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wave wash, the following provisions shall apply: All new construction shall be located landward of the reach of the mean high tide.

§ 235-6.14. Special Flood Hazard District regulations. [Added 4-30-1985 ATM by Art. 57; amended 5-5-1987 ATM by Art. 73; 4-25-1988 ATM; 4-28-2014 ATM by Art. 45]

In special flood hazard areas subject to high wave impact and/or severe flood inundation (Zone A, AE, AO, VE) of the Barnstable County Flood Insurance Rate Map (FIRM) for the Town of Wellfleet dated July 16, 2014 and in accordance with any revisions or issuance, no new building shall be erected or constructed and no new subsurface disposal system installed except as authorized or required by the Board of Health; no paving; no existing structure shall be enlarged; no structure shall be moved except as landward of the reach of mean high tide; no dumping; no filling or earth transfer shall be permitted except as authorized by the Conservation Commission; and there shall be no additional mobile homes.

A. Within these zones the following uses are permitted:

- (1) Conservation of watercourses, plants and wildlife.
- (2) Outdoor recreation, including play areas, nature study, boating, fishing including shellfishing and marine aquaculture, and hunting where otherwise legally permitted, temporary structures relating to carnivals and recreational activities.
- (3) Grazing, farming, agriculture and the harvesting of crops.
- (4) Temporary nonresidential structures used in connection with fishing, shellfishing, aquaculture, harvesting, storage or sale of products raised on the premises.
- (5) Dwellings, signs and parking lots lawfully existing prior to the adoption of these provisions.
- (6) Utility lines and facilities, and sewerage pipes installed according to plans approved by the Board of Health, the Conservation Commission and the Plumbing Inspector.
- (7) Boardwalks, wooden stairways, snow fences.
- (8) Non-commercial signs (as permitted in the residential districts, § 235-7.2 of the Wellfleet Zoning Bylaw), provided such uses do not affect the natural flow of any watercourse.

B. To meet minimum lot area requirements for uses allowed in the underlying zone, lots must have a contiguous lot area outside of the Floodplain District of at least 60% of the

minimum lot area requirement, and said area must be accessible from a street or way open to public or private use. For purposes of determining lot coverage, the entire lot area shall be the basis; however, all structures and related facilities must be confined to that portion of the lot which is not swamp, pond, bog, dry bog, marsh, areas of exposed groundwater or which lies within the Floodplain District.

- C. To appeal the restrictions in this section, application may be made to the Wellfleet Zoning Board of Appeals for a floodplain exemption from this floodplain bylaw in accordance with the following conditions:
- (1) A determination that the granting of an exemption will not result in increased flood heights, decreased flood storage capacity, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing local laws.
 - (2) A showing of good and sufficient cause.
 - (3) A determination that failure to grant the variance would result in exceptional hardship to the applicant.
 - (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (5) Compliance in all respects with sections of the State Building Code (780 CMR) which address floodplain and coastal high hazard areas.
 - (6) Approval of the Wellfleet Conservation Commission in accordance with MGL c. 131, § 40, the Wetlands Protection Act, and with the Town of Wellfleet's Environmental Protection Bylaw.¹¹
- D. If an exemption is granted to construct a structure below the base flood elevation, the Zoning Board of Appeals shall notify the applicant in writing over their signatures that the issuance of such an exemption will result in increased premium rates for flood insurance.
- E. The Zoning Board of Appeals will maintain a record of all exemptions issued, including justification for their issuance, and report such exemptions issued in the Annual Report submitted to the Federal Insurance Administration.
- F. In a riverine situation, the Wellfleet Conservation Agent shall notify the following of any alteration or relocation of a watercourse:
- (1) Adjacent communities.
 - (2) NFIP State Coordinator
 Massachusetts Department of Conservation and Recreation
 251 Causeway Street, Suite 600-700
 Boston, MA 02114-2104

11. Editor's Note: See Ch. 141, Environmental Protection.

(3) NFIP Program Specialist

Federal Emergency Management Agency, Region I

99 High Street, 6th Floor

Boston, MA 02110

§ 235-6.15. (Reserved)**§ 235-6.16. (Reserved)****§ 235-6.17. Curb cut permits.**

A. Purposes. The purpose of this bylaw is to provide conformity in design and construction of entrances and exits onto public ways within the Town of Wellfleet, to provide maximum protection to the public through the orderly control of traffic moving onto and from a public way, to minimize soil/slope erosion, and to provide necessary drainage to areas adjacent to public ways.

B. Definitions.

ADJACENT PROPERTY OWNER — A person or entity owning property bordering on a way.

DRIVEWAY — Privately owned access to and from a way.

WAY — A Town-owned road/way.

C. Procedure. Prior to commencing driveway construction, an adjacent property owner desiring to gain access to a way shall make written application to the Director of the Wellfleet Department of Public Works and obtain a curb cut permit from said department. The application shall include:

- (1) A plan showing location of the property, the proposed driveway, and the intersection of the driveway with the way;
- (2) Specific details of drainage when required;
- (3) Specific provisions to minimize slope or soil erosion if necessary;
- (4) Such other identifying information that may be requested by the DPW.

D. Design standards. The Director of the Department of Public Works in reviewing such application shall consider if the design and location of the proposed curb cut minimizes traffic hazards, the slope/soil erosion and provides adequate drainage.

E. Issuance. Upon review of the plans and a determination that the plans meet the above criteria, the DPW Director shall issue a curb cut permit. Failure of the DPW Director to issue a permit within 10 days of the receipt of a completed application shall be deemed to be a grant of the curb cut permit as requested.

- F. Appeal. Any person aggrieved by the inability to obtain the permit as requested may appeal to the Zoning Board of Appeals within 30 days of the date of the decision of the Director of Public Works.
- G. Fee. The Selectboard shall have the authority, from time to time, to set fees for this permit and any required inspections.

§ 235-6.18. Communication structures, buildings and appurtenances. [Approved 2-18-1987 by Attorney General; amended 7-17-1998]

- A. Purpose. The purpose of this part of the Zoning Bylaw is to establish requirements, guidelines, standards and procedures to regulate the permitting and installation of communication structures, buildings and appurtenances in a manner that minimizes adverse impacts in the Town of Wellfleet.
- B. Requirements. The Planning Board is hereby designated the special permit granting authority for special permits issued under § 235-6.18. No communication structure, building or appurtenance shall be erected, constructed or installed without first obtaining a special permit from the Planning Board. The Planning Board shall hold a public hearing within 65 days of the filing of an application and shall issue a decision within 90 days following the date of the public hearing.
 - (1) No communication structure, building or appurtenance shall be installed within the Wellfleet Harbor Area of Critical Environmental Concern (ACEC). Complete designation documents are available upon request and full-size boundary maps drawn on USGS topographic quad sheets may be viewed by appointment at the ACEC Program office, Department of Environmental Management (DEM), 100 Cambridge Street, Room 1404, Boston, MA 02202. Boundaries of ACECs have been digitized and are available at the EOEA Data Center, 20 Somerset Street, 3rd floor, Boston, MA 02108 (617-727-3888).
 - (2) Setbacks. The minimum distance from the perimeter of the communication structure to any property line shall be the height of the structure including any antennas or appurtenances plus 10 feet. The minimum distance from any guy wire, anchor or brace to any property line shall be the length of the guy wire or brace plus 10 feet. The setbacks for a communication building shall comply with the setback requirements of the zoning district.
 - (3) Parking. Provisions for parking shall be in accordance with § 235-6.3A of this Zoning Bylaw.
 - (4) Safety. Communication structure, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state and local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of a Category 5 hurricane. If FAA or FCC regulations are changed then the owner or operator shall bring the structure, building and appurtenances into compliance with the new regulations within six months of the effective date of such regulations or earlier if a more stringent compliance schedule is included in the regulation. Failure to comply with any new regulations

shall be grounds for removal of non-complying structures, buildings and appurtenances at the owner's expense.

- (5) **Removal.** An applicant and the landowner, if different from the applicant, must execute a covenant (or post a bond as set forth below) with the Planning Board agreeing to remove, within six months, all communication structures, buildings or appurtenances that have not been operated for four consecutive months unless the reason for non-operation is the result of major damage. In the event of major damage, the repair or removal of the structure, building or appurtenance must begin within six months of the damage date and must be completed within 12 months of the damage date. Failure to comply with the covenant shall be grounds for the removal of structures, buildings and appurtenances at the owner's expense. For the purpose of this paragraph, "major damage" shall mean damage to the communication structure or building caused through no fault of the owner or operator which prevents the owner or operator from using the equipment located thereon or therein. The applicant may as an alternative post a bond with the Treasurer of the Town of Wellfleet in an amount approved by the Planning Board and by an insurer approved by the Planning Board to cover the estimated costs of removal. If the applicant fails to remove the structure and/or buildings in accordance with the provisions of this paragraph, then the Town may use the bond to remove the structure and/or building and the balance of the funds, if any, will be returned to the applicant.
- (6) **Fencing.** Fencing shall be provided to control access to the site of the communication structure and building and shall be consistent with the character of abutting properties. Fencing is not required for antennas or other appurtenances mounted on a preexisting structure.
- (7) **Lighting.** Communication structures and appurtenances shall be lighted only if required by the FAA. Lighting of communication buildings and the site shall be limited to lighting required to provide safe access and shall be shielded from abutting properties.
- (8) **Signs.** There shall be no signs except a sign identifying the facility and a telephone number where the owner or operator can be reached on a twenty-four-hour basis; a no-trespassing sign; and any signs required to warn of danger. All signs shall comply with the requirements of this bylaw.
- (9) **Visual.** The installation of a communication structure, building or appurtenance shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional vegetative screening shall be employed where practical and particularly to screen abutting residential property whether developed or not.
- (10) **Regional criteria.** Siting, to the extent it does not conflict with provisions of this bylaw, shall be consistent with regional criteria established by the Cape Cod Commission.
- (11) **Environmental.**
 - (a) No hazardous waste shall be discharged on the site.

- (b) All run-off of stormwater from communication structures, buildings and appurtenances, driveways and parking areas shall be contained on site; the amount of impervious surface on the site shall be minimized. Any road or other surface on the lot shall comply with Chapter 135, Drainage Control, of the Wellfleet General Bylaws.
 - (c) Under normal operating conditions, noise emanating from the communication structure, building or appurtenance at the boundary of the lot on which it is sited shall not be greater than would otherwise exist in the absence of the communication structure, building or appurtenance. These requirements shall be met for wind conditions between calm and 100 miles per hour. In accordance with procedures approved by the Planning Board, the applicant shall measure the sound level at the boundary of the site on which the communication structure, building or appurtenance will be sited before any development takes place and shall demonstrate by measurements that the sound level at the boundary during normal operation does not exceed the levels before development.
- (12) Siting standards. In addition to the other requirements of this bylaw the applicant must comply with the following standards:
- (a) Communication structures and appurtenances shall, if feasible, be located on preexisting structures, provided such installation shall preserve the character of the structure. The applicant has the burden of proving that there are no feasible preexisting structures.
 - (b) If the applicant demonstrates that there are no feasible preexisting structures, then a communication structure, building and appurtenances shall, if feasible, be located on public land. The applicant shall have the burden of proving that there is no available public land.
 - (c) Multiple, small towers are preferred to a single high tower.
 - (d) Multiple antennas on a single structure at a single site are preferred, if technically feasible, to multiple towers with fewer antennas.
 - (e) Appurtenances mounted on or installed within an existing structure shall not increase the height of the structure. Any alteration of the appearance of the structure shall be minimized by design features which minimize the visibility of the appurtenance by the use of matching colors and textures and minimizing changes to the outside of the structure.
- (13) Pre-application consultation. At least 30 days before submitting an application for a special permit for the installation of a communication structure, building or appurtenance, the applicant shall consult with the Planning Board. The purpose of the consultation is to facilitate the permitting of communication structures, buildings and appurtenances by the exchanges of information between the applicant and the Planning Board in order to clarify and resolve concerns of the Board and to minimize potential problems with the application. The applicant shall submit the following written information to the Planning Board:

- (a) A survey of all sites for the installation of communication structures, buildings or appurtenances which are feasible for providing the intended services. The survey shall include a rationale for the selection of a prime and at least one alternative site. All sites in Wellfleet shall be located on the appropriate sheet(s) of the Wellfleet Assessor's Atlas;
 - (b) A survey of all preexisting structures which are capable of supporting the equipment necessary to provide the intended service and a technical report which demonstrates why any such structure cannot be used by the applicant;
 - (c) The radiation pattern of all proposed antennas showing the frequency and intensity of radiation between ground level and 28 feet above ground level at all locations within Wellfleet;
 - (d) Calculation of the sound level in decibels between ground level and 28 feet above ground level at 10, 50, 100 and 500 feet from the communication structure, building or appurtenance for wind velocities between calm and 100 miles per hour with all equipment operating at normal levels;
 - (e) A delineation on the Assessor's Atlas of all areas in Wellfleet which will not be served by the proposed installation for the prime and an alternate site;
 - (f) A statement of the services to be supported by the proposed communication structure, building or appurtenance;
 - (g) A description of special design features to minimize the visual impact of proposed communication structures, buildings and appurtenances;
 - (h) A certification that the applicant has complied with all federal and state requirements to provide the proposed service; and
 - (i) Within 30 days after the pre-application consultation, the applicant shall arrange to fly a three-foot-diameter balloon at the primary and an alternate site at the maximum height of the proposed installation. The date and location of the flights shall be advertised at least 14 days, but not more than 21 days, before the flights in a newspaper with a general circulation in the Town of Wellfleet.
- (14) Application submittal requirements. All written information submitted in accordance with § 235-6.18B(15) and (16) shall be certified by an appropriate licensed professional.
- (15) Applications for siting on public land or on a preexisting structure. If a communication structure, building or appurtenance is to be installed on a preexisting private structure or on land or a structure owned, prior to the effective date of this bylaw, by the federal government or the Commonwealth of Massachusetts, or on land or a structure owned by the Town of Wellfleet, the applicant shall submit the following written information to the Planning Board:
- (a) A draft contract between the applicant and the owner (if different from the applicant);

- (b) A description of the proposed facility at the proposed prime and alternate sites, including:
 - [1] Height of the facility and its associated equipment and antennas;
 - [2] Access roads and power supplies;
 - [3] Type, size and number of transmitters;
 - (c) A site plan (scale not less than one inch equals 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, one-hundred-year flood zones, waterways, wetlands and all associated equipment and structures on the site, including elevations of all equipment and structures, including sufficient detail to delineate the external finish of all structures and equipment; and
 - (d) A landscape plan showing the proposed site before and after development, including topography and screening proposed to protect abutters.
- (16) For all applications other than those set forth in § 235-6.18B(15), the applicant shall submit the following written information to the Planning Board:
- (a) A statement of the purpose for which the applications is made;
 - (b) The exact legal name of each person seeking a special permit and the address or principal place of business of each such person. If any applicant is a corporation, trust, association, or other organized group, it shall also give the state under which it was created or organized;
 - (c) The name, title, address, and telephone number of the attorney or other person to whom correspondence or communications in regard to the application are to be addressed. Notice, orders, and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant;
 - (d) A statement of the need for the proposed facility with as much specific information as is practicable to demonstrate the need, including a description of the proposed system and how the proposed facility would eliminate or alleviate any existing deficiency or limitation;
 - (e) A statement of the benefits expected from the proposed facility with as much information as is practicable;
 - (f) A description of the proposed facility at the proposed prime and alternate sites, including:
 - [1] Height of the facility and its associated equipment and antennas;
 - [2] Access roads and power supplies;
 - [3] Special design features;
 - [4] Type, size and number of transmitters and receivers, as well as the signal frequency, power output, and power density at the tower base,

site boundary, and building where people might be exposed to the maximum power densities from the facility;

- [5] A map showing any fixed facilities with which the proposed facility would interact;
 - [6] The coverage signal strength, and integration of the proposed facility with any adjacent fixed facility, to be accompanied by propagation maps showing interfaces with any adjacent service areas; and
 - [7] A forecast of when maximum capability would be reached for the proposed facility and for facilities that would be integrated with the proposed facility;
 - [8] Calculations confirming compliance with the structural, acoustical, environmental and siting requirements of § 235-6.18B.
- (g) A description of the proposed prime and alternative site, including:
- [1] The most recent U.S.G.S. topographic quadrangle map (scale one inch equals 2,000 feet) marked to show the site of the facility and any significant changes within a one-mile radius of the site;
 - [2] A map (scale not less than one inch equals 200 feet) of the lot or tract on which the facility is proposed to be located showing the acreage and dimensions of such site, name and location of adjacent public and private roads or the nearest public road, and the names of abutting owners and portions of their lands abutting the site;
 - [3] A site plan (scale not less than one inch equals 40 feet) showing the proposed facility, fall zones, existing and proposed contour elevations, one-hundred-year flood zones, waterways, wetlands and all associated equipment and structures on the site, including elevations of all equipment and structures, including sufficient detail to delineate the external finish of all structures and equipment;
 - [4] Where relevant, a terrain profile showing the proposed facility and access road and existing and proposed grades; and
 - [5] The most recent area photograph (scale not less than one inch equals 1,000 feet) showing the proposed site, access roads and all abutting properties.
- (h) A statement explaining mitigation measures for the proposed facility, including:
- [1] Construction techniques designed specifically to minimize adverse effects on natural areas and sensitive areas;
 - [2] Special design features made specifically to avoid or minimize adverse effects on natural areas and sensitive areas;
 - [3] Establishment of vegetation proposed near residential, recreation and scenic areas;

- [4] Special design features made specifically so that the proposed structures, buildings and appurtenances shall blend with preexisting structures and buildings; and
- [5] Methods for preservation of vegetation for wildlife habitat and screening;
- (i) A description of the existing and planned land uses of the proposed prime and alternative sites and surrounding areas;
 - (j) A description of the scenic, natural, historic, and recreational characteristics of the proposed prime and alternative sites and surrounding areas;
 - (k) Sight line graphs to the proposed prime and alternative sites from visually impacted areas such as residential developments, recreational areas, and historic sites;
 - (l) A list describing the type and height of all existing and proposed communication structures, buildings and appurtenances within a ten-mile radius within the search area, or within any other area from which use of the proposed prime or alternative structure might be feasible from a location standpoint for purposes of the application;
 - (m) A description of efforts to share existing and proposed structures, or consolidate telecommunications antennas of public and private services onto the proposed facility;
 - (n) A description of the technical alternatives and a statement containing justification for the proposed facility;
 - (o) A description of rejected sites with a U.S.G.S. topographic quadrangle map (scale one inch equals 2,000 feet) marked to show the location of rejected sites;
 - (p) A detailed description and justification for the site selected, including a description of siting criteria and the process by which other possible sites were considered and eliminated, including, but not limited to, environmental effects, cost differential, coverages lost or gained, potential interference with other facilities and signal loss due to topographical features compared to the proposed prime and alternate sites;
 - (q) A statement describing hazards to human health, if any, with supporting data and references to regulatory standards;
 - (r) A statement of the estimated costs for site acquisition and construction of a facility at the prime and alternative sites;
 - (s) A schedule showing the proposed program of site acquisition, construction, completion, operation and relocation or removal of the existing facilities for the prime and alternative site;
 - (t) A copy of any filing or application that the applicant has been required to make, together with any decision with regard to such filing or application;

- (u) A landscape plan showing the proposed site before and after development, including topography and screening proposed to protect abutters;
 - (v) Plans which show siting at a prime and at an alternate site;
 - (w) A technical report which demonstrates that the maximum height of the installation is the minimum feasible to provide the intended service.
- (17) The Planning Board may also refer applications to the Board of Health and the Conservation Commission for review. Applications that propose the use of a site on National Park Service property shall also be sent to the Superintendent of the Cape Cod National Seashore.
- (18) Completeness. The Planning Board shall not approve any application that does not comply with all the requirements of this bylaw.
- C. Approval criteria. The Planning Board shall act in accordance with the standards and requirements set forth herein and in accordance with § 235-8.4B of this bylaw and with the Massachusetts General Laws.
- D. Severability. The invalidity of any section of this bylaw shall not invalidate any other section.
- E. The Planning Board may grant a special permit for an application which does not meet all the requirements of § 235-6.18, provided the Planning Board makes a written finding which states why such action is in the best interests of the Town.

§ 235-6.19. Bed-and-breakfast uses.

Any bed-and-breakfast use, which is established or expanded, shall meet the requirements of the State Building Code, the Board of Health, the Fire Department and § 235-6.3A of this bylaw. No bed-and-breakfast use shall be established or expanded without a change of use permit issued by the Building Inspector. The Building Inspector shall not issue such a permit without a finding that all requirements of this bylaw have been complied with.

§ 235-6.20. Adult entertainment uses. [Amended 12-4-2000, AG approved 5-25-2000]

- A. Authority. This bylaw is enacted pursuant to MGL c. 40A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interests of limiting the location of and preventing the clustering and concentration of sexually oriented businesses, also known as "adult entertainment uses," as defined and designated herein, in response to studies demonstrating their deleterious effects.
- B. Purpose.
- (1) It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crime, adverse impacts on public health, adverse impacts on the business climate of cities and towns, adverse impacts on the

property values of residential and commercial properties, and adverse impacts on the quality of life in cities and towns. All of said secondary impacts are adverse to the health, safety, and general welfare of the Town of Wellfleet and its inhabitants.

- (2) The provisions of this bylaw have neither the purpose nor intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose or intent of this bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitutions of the United States or of the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this bylaw to legalize the sale, rental, distribution, or exhibition of obscene or other illegal matter or materials.

C. Definitions. Adult entertainment uses shall include the following uses:

- (1) Adult bookstores, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (2) Adult motion picture theatre, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (3) Adult paraphernalia store, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (4) Adult video store, as defined by MGL c. 40A, § 9A (see § 235-2.1).
- (5) Any establishment which, to a substantial extent, or as a principal use, displays live nudity for its patrons, with the term "nudity" as defined in MGL c. 272, § 31.

D. Adult entertainment uses by special permit, criteria, and conditions. Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this bylaw and may be permitted only upon the grant of a special permit by the Zoning Board of Appeals. Such special permit shall not be granted unless each of the following standards has been met.

- (1) The application for a special permit for an adult entertainment use shall provide the name, address, and telephone number of the legal owner and all principal investors of the establishment, the legal owner and all principal investors of the property, and the manager of the proposed establishment.
- (2) No adult entertainment use special permit shall be issued to any person convicted of violating the provisions of MGL c. 119, § 63 or MGL c. 272, § 28. The applicant shall be responsible for all related costs for record check processing.
- (3) Location.
 - (a) Adult entertainment uses shall not be located within:
 - [1] 500 feet from the nearest church, school (public or private), public beach, park, playground, play field, youth center, children's day-care center, licensed home day-care facility, library (public or private), or recreation facility; or

- [2] 500 feet from the nearest establishment licensed under MGL c. 138, § 12; or
 - [3] 500 feet from any other adult entertainment use.
- (b) The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest property line of any of the designated uses set forth above.
- (c) In addition, no structure that contains an adult entertainment use shall be closer than 100 feet to any R1 or R2 residential zoning district boundary.
- (4) No part of any structure that contains an adult entertainment use shall be closer than 50 feet to any lot line, nor shall any adult use be permitted on any parcel containing less than 50,000 square feet of lot area or 150 feet of frontage, irrespective of the minimum lot and setback requirements contained in § 235-5.4, Intensity of Use Schedule.
- (5) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- (6) No adult entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials, to the general public on the exterior of the building or on the interior where the same may be seen through any openings in walls or roofing, doorways, or glass or other like transparent material, any sexually explicit figures or words as defined in MGL c. 272, § 31.
- (7) No adult entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- (8) The proposed adult entertainment use shall comply with the off-street parking requirements set forth in this bylaw.
- (9) No adult entertainment use shall have any flashing lights or neon signs visible from outside the establishment.
- (10) No adult entertainment use shall have a freestanding accessory sign or off-premise sign.
- (11) No adult entertainment use shall be established prior to submission and approval of a site plan by the Zoning Board of Appeals, pursuant to Article VI, § 235-6.3B. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed adult entertainment use and the boundary of the nearest R1 and R2 residential zoning district and the nearest property line of each of the uses set forth in § 235-6.20D(3) above.
- (12) No adult entertainment establishment shall employ any person or persons who would be excluded as a permit holder under this bylaw.

- E. Conditions. The special permit granting authority may impose reasonable conditions, safeguards and limitations on the time or use of any special permit granted, and may require that any such special permit granted shall be personal to the applicant, shall not run with the land and shall expire upon expiration of the applicant's lease or upon sale or transfer of the subject property.
- F. Expiration. A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be automatically renewable for successive two-year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon public safety factors applied at the time that the original special permit was granted.
- G. Variances. (Disapproved and deleted by Attorney General May 25, 2000)
- H. Severability. The provisions of this section are severable and, in the event that any provisions of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

§ 235-6.21. Accessory dwelling units (ADU). [Amended 6-26-2021 ATM by Art. 45]

- A. Purpose. To enable an increase of year-round rental housing opportunities; to encourage greater diversity of housing types appropriate to residents with varying needs; and to support a stable and diverse year-round community and a robust local workforce.
- B. Accessory dwelling unit (ADU). An accessory dwelling, as defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws, is an additional dwelling unit allowed on a single lot in all districts of the Town if in compliance with all Town, Commonwealth of Massachusetts and federal statutes, bylaws and regulations where applicable, unless otherwise allowed by this bylaw.
 - (1) Accessory dwelling units are allowed either as a detached building, or as a separate dwelling unit within or attached to a dwelling, a building used for a principal use; or within or attached to any accessory building, as defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws.
 - (2) Accessory dwelling units shall be no larger than 1,200 square feet of livable floor area as that term is defined in § 235-2.1, Definitions, of the Wellfleet Zoning Bylaws.
 - (3) In order to maintain its status as an accessory use to the principal use on the same lot, the ADU must be held in the same ownership as the principal use.
 - (4) The rights and requirements of this bylaw and/or special permit, as they apply to each ADU, shall run with the land upon any transfer of ownership of a property containing an accessory dwelling unit built under the provisions of this bylaw.
 - (5) A property owner may choose to cease to use an accessory dwelling unit by formally reporting its change in use to the agent designated by the Town Administrator to administer and monitor such units and altering it to meet the

requirements of a permitted use. The agent will then register this change in use with the Building Inspector, the Health Agent and the Town Assessor.

C. Procedure.

- (1) The property owner shall apply for a building permit and/or certificate of occupancy for an ADU. The Board of Health shall also review and inspect the ADU for compliance with the Health Code prior to the issuance of a certificate of occupancy.
- (2) Prior to the issuance of a certificate of occupancy, the ADU shall be registered with the agent designated by the Town Administrator who will administer and monitor such units, maintain a current record of such units and register them with the Town's Assessor, Building Department, and Health Department.

D. Monitoring. An Affidavit of Compliance signed by the property owner shall be submitted initially, when the unit is first occupied or used, and then annually, on September 1st or the nearest business day, to the agent designated by the Town Administrator to monitor and administer such units to confirm that the accessory dwelling unit or units are being leased for a minimum of a year, and not otherwise leased or occupied for any other purpose, and that they shall be used as a dwelling, according to the standards and conditions of this bylaw.

E. Enforcement and penalties. Upon a written determination by the Building Inspector that the property owner has failed to comply with these provisions, the property owner shall bring the unit or units into compliance within 30 days of such written notice pursuant to MGL c. 40A, § 7. In addition, the Building Inspector shall impose any and all fines and penalties referenced in § 235-8.3 of these bylaws.

F. Opportunity for affordable housing property tax exemption. A property owner who leases an accessory dwelling unit affordably and in compliance with this bylaw, as specified by the Special Act of 2010 and adopted by Wellfleet voters in May 2011, may apply to the agent designated by the Town Administrator to administer and monitor such units to receive an application for a property tax exemption.

§ 235-6.22. Home occupations.

A. Purpose. The purpose of this bylaw is:

- (1) To allow by right and regulate the conduct of a home occupation as an accessory use;
- (2) To allow residents to utilize their homes as a work place and a source of livelihood under certain circumstances and conditions;
- (3) To ensure home occupations are compatible with the neighborhoods in which they are located; and
- (4) To protect neighborhoods from adverse impacts of activities associated with home occupations.

B. Requirements and standards. Home occupations shall conform to the following standards:

- (1) No more than two non-family members shall be employed in the home occupation.
- (2) There shall be no exterior sign or other display except as permitted under Article VII, Signs, and no exterior indication of the home occupation which detracts from or is in conflict with the neighborhood character.
- (3) No offensive effect of the home occupation shall be perceptible off-premises, including but not limited to noises, vibration, smoke, dust, odor, heat, glare, fire hazard, electrical disturbance or interference with communication devices or other hazard or nuisance.
- (4) The floor area in use by the home occupation shall not exceed 25% of the total floor area of the principal and any accessory buildings.
- (5) No exterior storage of home occupation related materials or equipment is permitted on the home occupation premises unless screened, if necessary, from abutters and street by a stockade-type fence six feet in height. However, equipment as noted in Subsection B(9) and (10) is exempt from screening, as well as any boats, vehicles, trailers or accessory structures. **[Amended 4-23-2018 ATM by Art. 37]**
- (6) Exterior storage of home-occupation-related materials or equipment shall not exceed 30% of the lot area for aquaculture, shellfishing, and fishing home occupations, and shall not exceed 15% of the lot area for all other home occupations.
- (7) The onsite sale of consumer goods shall be prohibited except for the sale of products or goods produced, fabricated or refurbished on the premises as a result of the home occupation.
- (8) The physical presence of the public and the regular physical presence of non-family member employees shall be limited to the hours between 7:00 a.m. and 8:00 p.m. Monday through Sunday from Memorial Day through Labor Day, and between 7:00 a.m. and 8:00 p.m. Monday through Saturday at all other times.
- (9) Traffic generated by the home occupation shall not significantly increase the volume of traffic in the neighborhood so as to create any traffic hazard, nuisance, or congestion. Any need for parking generated by the conduct of the home occupation shall be met off the street. Long-term parking (more than six hours) shall be limited to two vehicles, excluding the resident family's personal household vehicle(s).
- (10) No more than two motor vehicles (as that term is defined by MGL c. 90, § 1, but containing no more than six wheels), and no more than two trailers (as that term is defined by MGL c. 90, § 1, but not exceeding 16 feet in length), used exclusively in the home occupation, may be kept on the premises.
- (11) There shall be no disposal of toxic or hazardous materials on the home occupation premises.

§ 235-6.23. Service trade home business (STHB).

- A. Purpose. The purpose of this bylaw is:
- (1) To allow by special permit and regulate the conduct of service trade home businesses (STHBs) as an accessory use;
 - (2) To allow residents to utilize their homes as a work place and a source of livelihood under certain circumstances and conditions;
 - (3) To ensure STHBs are compatible with the neighborhoods in which they are located; and
 - (4) To protect neighborhoods from adverse impacts of activities associated with STHBs.
- B. Requirements and standards. STHBs shall conform to the following standards:
- (1) No more than three non-family members may report to the STHB premises for regular work;
 - (2) No exterior storage of STHB-related materials or equipment is permitted on the STHB premises unless concealed from view of abutters and street by a fence or suitable plantings of evergreen or deciduous shrubs and trees;
 - (3) Exterior storage of STHB-related materials or equipment shall not exceed 30% of the lot area;
 - (4) No more than two motor vehicles (as that term is defined by MGL c. 90, § 1, but containing no more than six wheels), and no more than two trailers (as that term is defined by MGL c. 90, § 1, but not exceeding 16 feet in length), used exclusively in the STHB, may be kept on the premises;
 - (5) There shall be no exterior sign or other display except as permitted under Article VII, Signs, and no exterior indication of the STHB which detracts from or is in conflict with the neighborhood character;
 - (6) No offensive effect of the STHB shall be perceptible off-premises, including but not limited to noises, vibration, smoke, dust, odor, heat, glare, fire hazard, electrical disturbance or interference with communication devices or other hazard or nuisance;
 - (7) The floor area in use by the STHB shall not exceed 30% of the total floor area of the principal and any accessory buildings;
 - (8) Traffic generated by the STHB shall not significantly increase the volume of traffic in the neighborhood so as to create any traffic hazard, nuisance, or congestion. Any need for parking generated by the conduct of the STHB shall be met off the street. Long-term parking (more than six hours) shall be limited to three vehicles, excluding the resident family's personal household vehicle(s);
 - (9) The physical presence of the public and the regular physical presence of non-family member employees shall be limited to the hours between 7:00 a.m. and

8:00 p.m. Monday through Sunday from Memorial Day through Labor Day, and between 7:00 a.m. and 8:00 p.m. Monday through Saturday at all other times; and

- (10) There shall be no disposal of toxic or hazardous materials on STHB premises.

§ 235-6.24. National Seashore Park District special permit.

A. Purpose of National Seashore Park District special permit.

- (1) The purpose of the National Seashore Park District special permit is to review proposed structures and alterations to existing structures to ensure protection of the legitimate interests of the adjoining property owners; to encourage construction that is sensitive to the scale, size and massing of buildings; to protect continued public visual access to ponds, rivers, marshes, the ocean and the bay; to provide additional means of addressing environmental needs and concerns of the Town; and to recommend alternatives so that development or redevelopment minimizes the impact on abutting land, the neighborhoods and the community at large.
- (2) Further, the purpose of the National Seashore Park District special permit is to ensure that the National Seashore Park District objectives found in § 235-3.2 of this bylaw are adhered to and that the proposed building changes are not detrimental to these objectives; and are compatible with these objectives.

B. Applicability. A National Seashore Park District special permit is required for any private property within the boundaries of the Cape Cod National Seashore whose owner proposes to tear down, build anew, make alterations to, or relocate existing buildings, or add new accessory buildings that would:

- (1) Exceed the maximum National Seashore Park gross floor area (NSPGFA) listed in § 235-5.4D of this bylaw; or
- (2) Otherwise increase the nonconforming nature of the structure, within the standards of § 235-6.1E of this bylaw.
- (3) Nothing in § 235-6.24 shall be construed as authorizing the issuance of a special permit which exceeds the limitations set forth in Footnote 1 of § 235-5.4D.

C. Standards and criteria. In addition to the standards and criteria listed in § 235-8.4B of this bylaw, the following criteria shall apply to properties within the National Seashore Park District that are subject to a special permit:

- (1) The landscape shall be preserved in its natural state insofar as practical. The Board shall encourage the applicant to avoid grade changes and the removal of native vegetation and soil. Any grading or earth-moving shall be planned and executed in such a manner, and retain to the extent practicable final contours consistent with existing terrain both on and adjacent to the site.
- (2) Proposed buildings and foundations shall, to the extent practicable, minimize alteration on steep slopes, floodplains, hilltops, dunes, coastal banks, scenic views and wetlands to preserve the integrity and scenic qualities of natural features whenever possible. Proposed developments shall take into account and, to the

extent practicable, minimize obstruction of water views and other scenic views from publicly accessible locations.

- (3) Proposed developments shall preserve and protect unusual or rare natural and/or historical features. Development and redevelopment shall not interfere with legal access. Proposed developments should minimize obstruction of water views and other scenic views from publicly accessible locations. Electric, telephone, cable and other utility lines shall be installed underground unless the Board determines that the benefits to be achieved are outweighed by costs or other factors.
- (4) The protection of unusual or significant environmental resources including protection and maintenance of groundwater quality and recharge volume and the water quality of coastal and fresh surface water bodies is critical and shall be evaluated. All runoff shall be recharged on site based on a calculated twenty-five-year storm. Stormwater infiltration systems shall be designed so that run-off shall not be increased, groundwater recharge is maximized, pollution impacts are minimized and neighboring properties will not be adversely affected.
- (5) Lighting must be consistent with General Bylaws of the Town of Wellfleet. There shall be protection of adjacent properties and the night sky from intrusive lighting. Consideration should be given to the placement of decks and patios and their potential for noise pollution and its adverse impact on adjacent properties.
- (6) In addition to § 235-5.4D NSPGFA (National Seashore Park gross floor area), the Board shall consider the Cape Cod National Seashore's 50% Use Guideline. Proposed development shall not exceed the 50% formula unless the Board finds that the development shall not have a significant adverse impact on the scenic views and on the prevailing scale, mass and character of the neighborhood and zoning district. The Cape Cod National Seashore's 50% expansion guideline is based on "the livable area of the single-family residence that existed as of September 1, 1959" and allows for 50% expansion to the single-family dwelling; and of this expansion total sum another 50% is allowed for use on an accessory structure(s). For example, 1,000 square feet of single-family dwelling living space as of September 1, 1959 is expandable to 1,500 square feet, and of this total sum another 750 square feet is allowable for an accessory building.

§ 235-6.25. Municipal wind turbines.

- A. Purposes. The purpose of this bylaw is to allow by special permit utility-scale wind facilities on municipally owned land and to provide for standards for the placement, design, construction, monitoring, upkeep, modification and removal of wind facilities that address public safety and consideration of environmental and community impacts, including impacts on scenic, natural, historic resources, and provide adequate financial assurance for decommissioning. Any physical modifications to existing wind facilities that alter the type or increase the size of such facilities or other equipment shall require a special permit.
- B. Definitions.

ROTOR — The blades plus the hub to which the blades are attached.

TIP HEIGHT — Height of the tip of the rotor blade when extended 90° from grade, as measured from the base at grade of the support tower.

UTILITY-SCALE WIND FACILITY — A wind facility with a rated capacity of 100 KW or more and where the primary use of the facility is electrical generation to be provided into the electrical grid.

WIND FACILITY (WF) — All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, transmission, storage, collection and supply equipment, substations, transformers, service and access roads, and one or more wind turbines.

WIND TURBINE (WT) — A device which converts wind energy to electrical energy, which typically includes a support tower.

C. General requirements.

- (1) The applicant shall be the WF operator, if one exists, and the Town of Wellfleet as the landowner.
- (2) Special permits.
 - (a) Utility-scale wind facilities shall be permitted by a special permit from the Planning Board acting as the special permit granting authority (SPGA), provided that the Planning Board makes a finding that the wind facility complies with the following conditions:
 - [1] The specific site is an appropriate location for such use;
 - [2] The use is not expected to adversely affect the surrounding area or neighborhood;
 - [3] There is not expected to be any serious hazard to the public and general welfare of the Town, and no nuisance is expected to be created by the use;
 - [4] The potential environmental benefits outweigh the potential adverse environmental impacts;
 - [5] Adequate and appropriate facilities and resources will be provided for the proper operation of the use;
 - [6] Adequate resources will be provided for the removal of the WF after its useful life.
 - (b) Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the wind facility, should they occur.
 - (c) Compliance with laws, ordinances and regulations. The construction and operation of all such wind facilities shall be consistent with all applicable local, state and federal requirements, including but not limited to all safety,

construction, environmental, electrical, communications and aviation requirements.

- (d) Proof of liability indemnification. The applicant shall provide evidence of adequate indemnification for all risks, including possibly by way of liability insurance in an amount and for the duration sufficient to cover loss or damage to persons and structures occasioned by the failure of the facility. There shall be a minimum indemnification amount equal to \$2,000,000.
- (e) Site control. The applicant shall provide documentation of the actual or prospective control of the project site sufficient to allow for installation and use of the proposed facility. Documentation shall also include proof of control over setback areas and access roads, if required. Control shall mean the legal authority to prevent use or construction of any structure for human habitation within the setback areas.
- (f) Prior to filing an application for a special permit, but not more than 180 days prior to filing the application, the applicant shall arrange for a balloon or crane test at the proposed site or at a site not more than 100 feet from the proposed site. The balloon test shall be conducted for duration of not less than six hours during full daylight. The date range and time of the test shall be advertised in a newspaper of general circulation in the Town at least seven days prior to the test, but not more than 30 days prior to the test. In addition, notice shall be provided to the Town Administrator, abutters and abutting Historic Commissions and to the Town Clerks of all adjacent towns. The balloon test shall demonstrate the hub height and maximum rotor blade tip height of the wind turbine generator by tethering one balloon at the hub height and one balloon at the maximum tip height of a rotor blade for the turbine model to which the special permit will apply.

D. General siting standards.

- (1) The maximum allowable tip height shall be no greater than 400 feet.
- (2) Minimum setback distance for a WT from the applicant's property line shall be at least equal to the maximum tip height. Setbacks will be measured to the center of the tower base. The setback from an applicant's lot line may be reduced with the written permission or granting of an easement to the Town by the abutting property owner(s) and the SPGA. Setbacks for facilities other than the tower will conform with Wellfleet Zoning Bylaws. The SPGA may reduce the minimum setback distance as appropriate based on site-specific considerations, if the project satisfies all other criteria for the granting of a special permit under the provisions of this section.

E. Design standards.

- (1) Color and finish. The SPGA shall approve the WT color, although a neutral, non-reflective exterior color designed to blend with the surrounding environment is encouraged.
- (2) Lighting. WT(s) shall be lighted only if, and only to the extent, required by the Federal Aviation Administration. Lighting of the other parts of the WF, such as

appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be designed to minimize glare, and otherwise shielded and down cast to reduce light pollution.

- (3) Signs. Signs on the wind facility shall comply with the requirements of the Town's sign regulations, and shall be limited to:
 - (a) Those necessary to identify the wind facility owner, provide a twenty-four-hour emergency contact phone number, and warnings of any danger at the base of the wind facility.
 - (b) Educational signs providing information about the facility and the benefits of renewable energy are exempt from the sign code, but must be approved as part of the SPGA permit process.
 - (c) Advertising shall not be allowed on the WT except for reasonable identification of the manufacturer or operator of the wind facility.
- (4) Utility connections. Reasonable efforts shall be made to locate utility connections from the wind facility underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- (5) Appurtenant structures. All appurtenant structures to such wind facilities shall be subject to reasonable regulations concerning the bulk and height of structures, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including, but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other and shall be contained within the turbine tower whenever technically and economically feasible. Structures shall only be used for housing of equipment for this particular site. Whenever feasible, structures should be shaded from view by vegetation and/or clustered to avoid adverse visual impacts.

F. Safety, aesthetic and environmental standards.

- (1) Emergency services. The applicant shall provide a copy of the project summary and site plan to the local emergency services entity, as designated by the SPGA. Upon request the applicant shall cooperate with local emergency services in developing an emergency response plan.
- (2) Unauthorized access. WTs and other structures part of the WF shall be designed to prevent unauthorized access.
- (3) Shadow/flicker. A shadow and flicker analysis performed by an independent qualified engineer in order to determine the degree and effect of potential shadow and flicker upon abutting dwellings.
- (4) The wind facility and associated equipment shall conform to the provisions of the Department of Environmental Protection's Division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the SPGA agree that those provisions shall not be applicable.

- (a) A wind facility will be considered to be violating these regulations if the source:
- [1] Increases the broadband sound level by more than 10 dB(A) above ambient; or
 - [2] Produces a "pure tone" condition - when an octave band center frequency sound pressure level exceeds the two adjacent center frequency sound pressure levels by three decibels or more.
- (b) These criteria are measured both at the property line and at the nearest inhabited dwelling. "Ambient" is defined as the background A-weighted sound level that is exceeded 90% of the time measured during equipment hours. The ambient may also be established by other means with consent from the DEP.
- (c) For purposes of permit application consideration the SPGA will accept a sound modeling analysis performed by an independent qualified engineer which is consistent with the Massachusetts Department of Environmental Protection guidance for sound measurement (310 CMR 7.10) based on the WF manufacturer's sound information on the proposed WT.
- (d) The SPGA, in consultation with the DEP, shall determine whether such violations shall be measured at the property line or at the nearest inhabited residence.
- (5) Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the wind facility and is otherwise prescribed by applicable laws, regulations and ordinances.

G. Monitoring and maintenance.

- (1) Facility maintenance. The wind facility shall be maintained in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security and safety measures. Site access and control shall be maintained to an acceptable level. The recipient of the special permit shall be responsible for the cost of maintaining the wind facility and any access road(s) and the cost of repairing any damage occurring as a result of operation and construction.
- (2) Modifications. All modifications to a wind facility made after issuance of the special permit shall require approval by the SPGA as provided in this section.

H. Abandonment or decommissioning.

- (1) Removal requirements. Any wind facility which has reached the end of its useful life or has been abandoned shall be removed. When the wind facility is scheduled to be decommissioned, the applicant shall notify the Town by certified mail of the proposed date of discontinued operations and plans for removal. The owner/operator shall physically remove the wind facility no more than 150 days after the date of discontinued operations. At the time of removal, the wind facility site shall be restored, if a natural site to a state of reasonable conditions to revert back

to its pre-construction natural state, or if a previously developed site a state similar to its prior state. More specifically, decommissioning shall consist of:

- (a) Physical removal of all wind turbines, structures, equipment, security barriers and transmission lines from the site.
 - (b) Disposal of all solid and hazardous waste in accordance with local and state disposal regulations.
 - (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner to leave designated below-grade foundations in order to minimize erosion and disruption to existing vegetation.
- (2) Abandonment. Absent notice of a proposed date of decommissioning, the facility shall be considered abandoned when the facility fails to operate for more than one year without the written consent of the SPGA. The SPGA shall determine in its decision what proportion of the facility is inoperable for the facility to be considered abandoned. If the owner/operator fails to remove the wind facility in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town shall have the authority to enter the property and physically remove the facility.
 - (3) Financial surety. The SPGA may require the applicant to provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the facility, of an amount and form determined to be reasonable by the SPGA, but in no event to exceed 125% of the cost of removal and compliance with the additional requirements set forth herein. Such surety will not be required for municipally or state-owned facilities. The applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for cost-of-living adjustment.

I. Application process and requirements.

- (1) All applications shall be filed with the Wellfleet Town Clerk along with 10 copies and the required fee. Pursuant to MGL c. 44, § 53G, the SPGA shall have the authority to require that the applicant pay for necessary professional services reasonably required to review and to analyze adequately the contents of any site plan or related impact study.
- (2) Upon receipt of the application by the Wellfleet Town Clerk, the SPGA shall hold an advertised public hearing within 65 days. Said advertisement shall appear in a local newspaper of general publication no less than 14 days prior to the scheduled public hearing. It shall be the responsibility of the SPGA to notify abutters and abutters to abutters within 300 feet via first class mail, with said mailing to take place no less than 14 days prior to the scheduled public hearing.
- (3) All applications submitted under this section for final review shall include:
 - (a) Completed application form.

- (b) Certified list of abutters and abutters to abutters within 300 feet prepared and certified by the Town of Wellfleet Assessor.
- (c) A site plan. All site plans shall be prepared by a registered land surveyor or registered civil engineer. All site plans shall be prepared at an appropriate scale suitable for the content of the topic covered on the sheet and shall include the following:
 - [1] The location and boundaries of the lot, including monuments, adjacent street/ways and a list showing names and addresses of direct abutters and abutters to the abutters within 300 feet;
 - [2] Existing and proposed topography showing five-foot contours showing benchmark used and significant land features, natural and man-made, including, but not limited to, the location of wetlands, streams, bodies of water, drainage swales and areas subject to flooding;
 - [3] Proposed location and design of wind facility, including all turbines, ground equipment, appurtenant structures, transmission infrastructure, access, fencing, exterior lighting, etc., including dimensions and all elevations;
 - [4] The existing and proposed location of driveways, walkways, access and egress points, and the location and number of parking spaces, all proposed changes to the landscape of the site, including grading, vegetation clearing and planting, and exterior lighting, other than FAA lights, and screening vegetation.
- (d) Certification of height approval from the Federal Aeronautics Administration (FAA).
- (e) Visualizations. The SPGA shall select between three and six sight lines, including from the nearest dwelling(s) and other public ways and/or sites, with a view of the WF(s), for pre- and post-construction view representations. Sites for view representations shall be selected from populated areas or public ways within a two-mile radius of the wind facility. View representations shall have the following characteristics:
 - [1] View representations shall be in color and shall include actual pre-construction photographs and accurate post-construction simulations of the height and breadth of the WT(s) on the pre-construction photographs of existing views.
 - [2] All view representations will include descriptions of the locations, distances, and focal length of camera lens used.
- (f) Include approvals from other regulatory boards and commissions required, including but not limited to the Board of Health, the Conservation Commission, the Historic Review Commission, but with the exception of a special permit from the Zoning Board of Appeals, if anticipated, or other permits which legally must succeed the site plan approval by the SPGA.

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- (g) Operation and maintenance plan. The applicant shall submit a plan for maintenance of access roads and stormwater controls, as well as general procedures for operational maintenance of the wind facility.
- (4) The SPGA shall have the right, upon good cause, to waive all or any part of the above site plan content requirements, such waiver to occur within a duly noticed public meeting or public hearing.
- J. SPGA decision. The SPGA shall issue a decision within 90 days following the date of the public hearing. The applicant shall be responsible for filing the SPGA decision at the Barnstable Registry of Deeds or Land Court, as applicable. Prior to the issuance of a building permit, the applicant shall present evidence of such recording to the Building Commissioner and the Planning Board Secretary.
- K. Term of special permit.
 - (1) A special permit issued for a wind facility shall be valid for 25 years, unless extended or renewed. The time period may be extended or the permit renewed by the SPGA upon satisfactory operation of the wind facility. Request for renewal must be submitted at least 180 days prior to expiration of the special permit. Submitting a renewal request shall allow for continued operation of the facility until the SPGA acts. At the end of that period (including extensions and renewals), the WF shall be removed as required by this section.
 - (2) The applicant or facility owner shall maintain a phone number and identify a responsible person for the public to contact with inquiries and complaints throughout the life of the project.

§ 235-6.26. (Reserved)

§ 235-6.27. (Reserved)

**§ 235-6.28. Provisions to encourage development of affordable dwellings in Wellfleet.
[Added 4-26-2011 ATM]**

- A. Purpose. The purpose of this bylaw is to further the goal of encouraging various lot sizes and housing types for persons of various income levels in accordance with MGL c. 40A, § 9, which allows municipalities to adopt "incentive" ordinances for the creation of affordable year-round dwellings, and for the purpose of helping people who, because of rising land prices, have been unable to obtain suitable housing at an affordable price and maintaining a stable economy by preventing out-migration of residents who provide essential services.
- B. Definitions.

AFFORDABLE DWELLING DEVELOPMENT — A tract of land of 50,000 square feet or more containing units of residential housing, of which at least 25% are encumbered by affordable dwelling deed restrictions.

DWELLING, AFFORDABLE — A dwelling unit which is subject to an affordable dwelling restriction, pursuant to § 235-6.28G, and on a minimum lot size of 20,000 square feet.

C. Authority.

- (1) The Planning Board is hereby designated the special permit granting authority for all affordable dwelling development applications under this bylaw, and shall have the power to hear and decide applications for special permits and to adopt regulations for carrying out its duties under this bylaw.
- (2) For the purpose of promoting the development of affordable dwellings in Wellfleet, the Planning Board may by special permit allow the creation of affordable dwellings in residential and commercial zoning districts consistent with § 235-5.3A of the Zoning Bylaws. All affordable dwellings created shall be for the primary and sole domicile of the eligible tenant or owner for year-round occupancy.

D. Special permit requirements for affordable dwellings.

- (1) The Planning Board shall have the discretion to reduce the off-street parking requirements otherwise applicable under § 235-6.3A where:
 - (a) The number of units to be restricted under § 235-6.28 equals or exceeds 25% of the total units; and
 - (b) The applicant demonstrates that the proposed parking is sufficient to address the parking needs of the affordable dwelling and/or affordable dwelling development.
- (2) The second unit created, and at a minimum, every fourth unit created thereafter, shall be deed restricted as permanently affordable units, per the applicable standards in § 235-6.28G below.
- (3) An affordable dwelling unit must have the following minimum areas:
 - (a) Studio: 250 square feet.
 - (b) One-bedroom units: 700 square feet.
 - (c) Two-bedroom units: 900 square feet.
 - (d) Three-bedroom units: 1,200 square feet.
 - (e) Four-bedroom units: 1,400 square feet.
- (4) The affordable dwelling development must conform to all other requirements of the Zoning Bylaw. In the event that a provision of § 235-6.28 conflicts with another provision of the bylaw, the provisions of § 235-6.28 shall control.

E. Standards and criteria. In reviewing applications under this bylaw, the Planning Board shall apply the following standards and criteria:

- (1) At least 25% of all dwelling units created under this bylaw shall be restricted as provided for under § 235-6.28G;

- (2) At least 25% of the total number of bedrooms within any affordable dwelling development shall be within said restricted dwelling units;
 - (3) The applicant has conformed to the standards and criteria of this bylaw and will deliver the needed affordable dwelling units;
 - (4) The proposed development is suitable for the proposed location, with proportions, orientation, materials, landscaping and other features that provide a stable and desirable character complementary and integral with the site's natural features;
 - (5) The development, density increase or relaxation of zoning standards has no material, detrimental effect on the character of the neighborhood or Town and is consistent with the performance standards in § 235-8.4B of the Wellfleet Zoning Bylaws.
- F. Area, setback and frontage requirements for affordable dwelling units and developments.
- (1) The Planning Board shall have discretion to reduce or suspend the minimum area and frontage requirements otherwise applicable under § 235-5.4A of the Wellfleet Zoning Bylaws for an affordable dwelling development; provided, however, that there must be at least 10,000 square feet of lot area for each bedroom created in an affordable dwelling development.
 - (2) Where an applicant proposes to divide the tract of land that is the locus of a proposed affordable dwelling development, the minimum lot size shall be 20,000 square feet for each affordable unit. All other units included in the development shall comply with lot area requirements in § 235-5.4A of this Zoning Bylaw.
 - (3) The Planning Board may, in its sole discretion, reduce the front, side or rear yard setback requirements of § 235-5.4B; provided, however, that said setbacks shall be no less than 10 feet.
 - (4) In the case of a subdivided lot, the Planning Board shall have discretion to reduce or suspend the minimum road width for access and frontage may be created through the establishment of a common driveway deemed to provide safe and adequate access.
 - (5) The Planning Board shall have the discretion to permit a density of less than 10,000 square feet for each bedroom if the applicant can demonstrate to the satisfaction of the Planning Board and the Board of Health that the sewage disposal system servicing the development will result in nitrogen loading of less than 10 parts per million.
- G. Affordable dwelling restrictions. As a condition to any special permit issued under § 235-6.28, the applicant shall be required to execute an affordable dwelling restriction ("restriction") in a form acceptable to the Planning Board. All restrictions shall be for perpetuity or the longest period allowed by law. The special permit shall not be exercised until the applicant records the restriction in the Registry of Deeds.
- (1) The restriction shall provide that units made available for ownership shall be made available to households earning at or below 80% of the Barnstable County median income (BCMI), adjusted for household size. The initial sales price of

such units shall be calculated on the basis of what a household at 70% of the BCMI could afford to pay (assume a household size of one more than the number of bedrooms in the unit). In determining this amount:

- (a) No more than 30% of the household's gross income may be allocated to housing costs (mortgage principal and interest, real estate taxes, house and private mortgage insurance, and any homeowners' association or condominium fees);
 - (b) Current interest rates offered for thirty-year, no-point fixed-rate loans with down payments of 5% of total cost shall be applied; and
 - (c) Current real estate taxes for the Town of Wellfleet shall be used.
- (2) Any lot containing an affordable dwelling shall be subject to a recorded restriction that shall restrict the lot owner's ability to convey interest in the affordable dwelling except leasehold estates for the term of the restriction or sale to an income-qualified individual or family in accordance with § 235-6.28G below.
 - (3) It shall be a condition upon every special permit issued under this bylaw that the applicant shall comply with any Massachusetts Department of Housing and Community Development ("DHCD") regulations under Chapter 40B of the Massachusetts General Laws and guidelines for qualification of the dwelling units created under this bylaw towards the Town's subsidized housing inventory, including but not limited to the form of the affordable dwelling restriction and regulations concerning tenant selection and marketing, unit design standards, and income eligibility standards and maximum rent or sale price.
 - (4) In the event that a dwelling unit subject to a restriction created under this bylaw becomes vacant, the owner shall give written notice to the Wellfleet Housing Authority. It is the intent of this bylaw that a local preference shall be used in filling vacancies to the extent permitted by DHCD regulations and guidelines and state or federal laws.
 - (5) An affordable dwelling available for rental shall be rented to households earning at or below 80% of the Barnstable County median income (BCMI), adjusted for household size. Maximum rents for studio, one-bedroom, two-bedroom, etc., units, respectively, shall be in accordance with current Housing and Urban Development (HUD) published Fair Market Rental Guidelines for Barnstable County.
 - (a) All occupants of the affordable dwelling shall, upon initial application and annually thereafter, submit to the Town or its agent necessary documentation to confirm their eligibility for the dwelling unit.
 - (b) Property owners are required to submit to the Town or its agent information on the rents to be charged along with a lease for a one-year period. Each year thereafter they shall submit information to the Town or its agent on annual rents charged along with a one-year lease.

- (6) This section shall not prevent a lot owner from building an affordable dwelling that meets the requirements of this bylaw and from transferring such dwelling and lot to an income-eligible immediate family member (sibling, parent or child) by gift or inheritance, provided that the restriction required by § 235-6.28G is properly recorded prior to issuance of a building permit.
- (7) Penalty. Failure to comply with any provision of this section may result in fines established in § 235-8.3 of the Wellfleet Zoning Bylaws. Any profits or proceeds from leasing, rental or sale which has not received prior consent from the Wellfleet Housing Authority shall be paid to the Wellfleet Affordable Housing Trust Fund.

H. Procedure.

- (1) The property owner shall complete and submit an application for a special permit to the Planning Board demonstrating that the standards and criteria of § 235-6.28E have been met.
- (2) The Planning Board shall hold a public hearing in accordance with the procedures and requirements set forth in MGL c. 40A, § 9.
- (3) After approval of the special permit, the property owner shall complete and submit to the Inspector of Buildings an application for a building permit.
- (4) The property owner shall obtain a certificate of occupancy from the Inspector of Buildings prior to the affordable dwelling(s) being occupied.

§ 235-6.29. Fast-food and formula restaurant prohibition. [4-25-2011 ATM]

Purpose: The Cape Cod seaside character of Wellfleet is unique, and is important to the people of the community and their collective identity as a community, as well as to the visiting public. Far more than most Cape Cod towns, Wellfleet retains its rural village character, which is integral to the fabric of the community. Wellfleet is also traditionally home to small, locally owned and operated businesses. In these senses, Wellfleet has maintained its identity in a manner rare in the region. The purpose and intent of the formula-based restaurant prohibition is to address the adverse impact (in terms of noise, litter, traffic, and aesthetically inappropriate development) that standardized fast-food and formula restaurants would have on Wellfleet's distinctive Cape Cod character, general welfare, and historical and cultural relevance as a rural community. These uses are therefore prohibited in order to preserve and protect the unique and locally oriented community experience of Wellfleet, and all that this offers to its citizens and tourists alike as a treasured destination. This policy is also consistent with the policy direction of the Town's Comprehensive Plan, the Cape Cod Commission Act, and the enabling act of the Cape Cod National Seashore, with which Wellfleet is intimately and intricately associated.

ARTICLE VII

Signs**§ 235-7.1. Objectives.**

- A. To preserve and enhance Town character by requiring new or replacement signs which are compatible with their surroundings, are appropriately sized for their location and appropriate for the zoning district within which a sign is located without unduly restricting the conduct of lawful enterprise or expression.
- B. To promote the public welfare and safety through the elimination of roadside distractions.

§ 235-7.2. Definitions.

SIGN — Any display of lettering, logos, pictorial matter, flags other than governmental flags, banners, objects, colors, lights, or illuminated tubes, or the application or attachment of same to any device, surface, structure, boundary wall or fence, which is visible to any member of the public, which either conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly, a use conducted on the premises, excluding window displays of merchandise.

SIGN AREA — The area within a single rectangle enclosing all the display area of the sign(s), including borders, frames, structural members, and without deduction for open space or other irregularities. The area is determined by multiplying the extreme width by the extreme height above the lowest three feet of the supports. A single sign may have two sides that are facing in different directions and will be measured as the larger area of the sides.

SIGN, TEMPORARY — Any sign that is displayed for not more than 30 days within a calendar year. All temporary signs shall be related to a temporary event or activity.

§ 235-7.3. Administration and exemptions.

- A. This bylaw shall be administered by the Building Inspector. Except as required by law and as otherwise set forth below, no sign shall be erected without a permit issued by the Building Inspector.
- B. Signs erected by the municipal, county, state or federal government as may be deemed necessary for their respective functions are exempted from the provisions of the Sign Bylaw.
- C. Signs required by municipal, county, state or federal regulation or law are exempted from the provisions of this Sign Bylaw.
- D. One flag per business, to a maximum size of 15 square feet, is exempted from the provisions of this Sign Bylaw.
- E. All signs must be located on the premises of the use, business, occupation, event or activity for which the sign conveys a message to the public, or intends to advertise, direct, invite, announce, or draw attention to, directly or indirectly.

- F. All temporary signs shall be removed promptly upon conclusion of the events or activities announced thereon.
- G. A nonconforming sign in existence at the time of adoption of this bylaw shall be allowed to remain until one or more of the following conditions occurs: the sign is substantially relocated, replaced, reconstructed.
- H. When the provisions of this bylaw, or the drawing and specifications approved thereunder, or the terms of a permit issued thereunder, are not complied with, a stop-work or removal order shall be served on the property owner and/or his representative, tenant, or person in possession of the property by the Building Inspector, and a copy thereof shall be posted at the site of the violation. Such stop-work or removal order shall not be removed except by written notice from the Building Inspector's office after satisfactory evidence has been supplied that the violation has been corrected. Failure to comply with such stop-work or removal order shall constitute a violation of this bylaw. Any person violating any provision of the bylaw shall be fined as provided in § 235-8.3 from the time that the stop-work or removal order is first served, for each offense.
- I. Persons aggrieved by this bylaw, or actions of the Building Inspector relative to it, may appeal to the Wellfleet Zoning Board of Appeals pursuant to § 235-8.4A.

§ 235-7.4. Location of signs.

- A. All signs must be located on the premises in such a way as not to obstruct the view of traffic or create other safety hazards. Signs must be located with at least a two-foot setback from the property line.
- B. Signs that project over a public right-of-way shall be allowed only in the Central District and only on buildings which cannot meet setback requirements. Such signs shall not project more than three feet from the face of the building, and must have a minimum clearance of nine feet above the public right-of-way. No signs shall project over roadways. Signs projecting over a public right-of-way, including sidewalks, must be approved by the Selectboard.
- C. Signs, including temporary signs, shall not be placed on sidewalks.

§ 235-7.5. Signs not requiring permits.

- A. One sign for each family residing on the premises indicating the owner or occupant, provided that no sign shall exceed two square feet of sign area.
- B. One unlighted sign for home occupations on each premises not exceeding six square feet of sign area or five feet in height, advertising all home occupation(s).
- C. On each premises, not more than four unlighted directional signs, each not exceeding one square foot of sign area.
- D. On each premises, one unlighted sign related to the sale, rent or lease may be displayed while the premises, or any part thereof, is on offer for sale, rent or lease. Such sign shall not exceed six square feet of sign area or five feet in height, except in the

National Seashore Park District, where the sign shall not exceed two square feet of sign area, or three feet in height.

- E. On each premises, one unlighted sign may be displayed while the premises, or any part thereof, is subject to a valid building permit. Such sign shall not exceed six square feet of sign area or five feet in height and shall be related to the building permit. All such signs shall be removed prior to issuance of a certificate of occupancy.
- F. Signs not requiring permits under this § 235-7.5 shall not be included in the aggregate limits under § 235-7.6.

§ 235-7.6. Signs requiring permits.

- A. Service trade home business(es) may have one sign not exceeding six square feet of sign area or five feet in height on each premises.
- B. Except as provided in § 235-7.6C below, a business may have an aggregate total of 24 square feet of sign area on each premises, including temporary signs. No sign shall exceed 12 square feet of sign area. No freestanding sign shall exceed the greater of eight feet in height above the natural grade, or eight feet above the grade of the adjacent roadway. Signs may be attached to the building; however, signs attached to building sides shall not project more than three feet from the building and must have a minimum clearance of nine feet above the ground level. Signs shall not project above the roof line.
 - (1) For each premises located as provided in § 235-7.6B and having multiple businesses, the premises may have additional sign area of six square feet for each business.
- C. For a business on a premises having frontage on and access onto Route 6 and located in the Commercial District, the business may have an aggregate total of 64 square feet of sign area, including temporary signs. No sign shall exceed 36 square feet of sign area. No sign shall exceed the greater of 10 feet in height above the natural grade or 10 feet above the grade of the adjacent roadway. Signs may be attached to the building; however, signs attached to a building shall not project more than three feet from the building sides and must have a minimum clearance of nine feet above ground level. Signs shall not project above the roof line.
 - (1) For each premises located as provided in § 235-7.6C and having multiple businesses, the premises may have additional sign area of nine square feet for each business.
- D. One sign bearing the name of a subdivision or condominium, not to exceed 12 square feet of sign area or eight feet in height. Alternatively, the subdivision or condominium may have one ladder-type sign, not to exceed eight feet in height, bearing multiple names of residents, provided that each name sign does not exceed one square foot in sign area.

§ 235-7.7. General prohibitions.

- A. Flashing signs, signs containing moving parts, and signs which create the illusion of motion are prohibited.
- B. The source of any sign's illumination which is visible from any public way or from any premises other than that upon which the sign is located, or light which is directed above the sign toward the sky, is prohibited.
- C. All signs internally illuminated by means of any concealed light source are prohibited, except for directional signs.
- D. All neon, neon-like or signs made of lights, including but not limited to light-emitting diode (LED), are prohibited.
- E. Any sign which identifies a business, service, project, or activity that is defunct or which has not existed on the premises for 12 consecutive months or more shall be considered to be an abandoned sign and is prohibited.
- F. Off-premises signs are prohibited.
- G. Signs installed on the roof, or on building, shall not project above the ridge of said roof.

§ 235-7.8. Maintenance of signs.

- A. All signs must be maintained in a secure and safe condition.
- B. Any sign that is deemed by the Building Inspector to be unsafe, not properly permitted, or to be a prohibited sign must be removed forthwith upon issuance of a citation to the owner. After 30 consecutive days of non-compliance, the Building Inspector may cause the sign to be removed at the owner's expense, subject to constitutional limitations and pursuant to the Building Inspector's authority to enforce this bylaw under § 235-8.1. and MGL c. 40A, § 7.
- C. Wrapping of signs is prohibited. Signs may be removed for winter storage or covered with painted plywood panels or other rigid material. Removal of signs for storage or maintenance shall not jeopardize protection provided under § 235-7.3G of this bylaw.

ARTICLE VIII
Administration

§ 235-8.1. Enforcement.

This bylaw shall be enforced by the Selectboard or by an Inspector of Buildings appointed by it.

§ 235-8.2. Permits required.

No building shall be built, altered or moved and no use of land or building shall be begun or changed without a permit having been issued. No building shall be occupied until application for permits shall be accompanied by a plan showing the lot, the area, and the building location on said lot with reference to front, side and rear lot lines.

- A. Construction or operations under a building or special permit shall conform to any subsequent amendment of this bylaw unless the use or construction is commenced within a period of not less than six months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
- B. Nonconforming structures 10 years or older. Any structure or alteration to a structure in existence for a period of at least 10 years shall be deemed to be a legally nonconforming structure under MGL c. 40A, § 7 and this bylaw, provided that no notice of an action, suit, or proceeding as to an alleged violation of MGL c. 40A or this bylaw has been recorded in the Registry of Deeds, as provided in MGL c. 40A, § 7.

§ 235-8.3. Penalty. [Amended 6-26-2021 ATM by Art. 45]

Any person violating any of the provisions of this bylaw may be fined not more than \$50 for each offense, except in the case of violations of § 235-6.21, Accessory dwelling units, the fine shall be \$300 for each offense. Each day that such violation continues shall constitute a separate offense.

§ 235-8.4. Zoning Board of Appeals.

There is hereby established a Zoning Board of Appeals of five members and four associate members to be appointed by the Selectboard, as provided in Chapter 40A of the General Laws, which shall act on all matters within its jurisdiction under this bylaw in the manner prescribed in Chapter 40A of the General Laws. The Zoning Board of Appeals shall have the following powers:

- A. Appeals. To hear and decide any appeal taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of Chapter 40A of the General Laws, or by any officer or board of the Town, or by any person aggrieved by any order or decision of the Inspector of Buildings or person or persons acting in that capacity, or other administrative official in violation of any provision of Chapter 40A of the General Laws or of this bylaw.
- B. Special permits. The Zoning Board of Appeals shall be the special permit granting authority (SPGA) with the authority to hear and decide all applications for special permits, except for those special permits where the Planning Board is expressly designated as the SPGA. Granting of a special permit for an adult entertainment use shall be pursuant to the requirements of § 235-6.20, Adult entertainment uses, in addition to all other special permit requirements hereunder. The Zoning Board of Appeals, or the Planning Board acting as the SPGA, shall not grant a special permit unless it finds that the benefits of the proposal to the Town will outweigh any adverse

effects on the Town or the vicinity, taking into consideration the stated district objectives (§ 235-3.2) and, where germane, the following matters:

- (1) Suitability of the proposed location for this proposal, taking the following into consideration:
 - (a) Nearby land uses, and whether they would be supported by or damaged by having the proposed use nearby.
 - (b) Uses of the site which would be displaced by or preempted by this use.
 - (c) Adequacy of roads, drainage, and other public services in relation to the location.
 - (d) Whether the site is more sensitive than are most similarly zoned sites to environmental damage from a proposal such as this, considering erosion, siltation potential, groundwater or surface water contamination, habitat disturbance, or loss of valuable natural vegetation.
- (2) Activity type, mix, and intensity, taking the following into consideration:
 - (a) Whether the proposal contributes to the diversity of services or housing opportunities available locally.
 - (b) Seasonal consequences, including addition to peak period congestion.
 - (c) Service to local, in preference to regional, markets and to year-round, in preference to seasonal, activities.
 - (d) For business developments, likelihood of year-round employment opportunities being created for residents, and the quality of those opportunities.
 - (e) For residential developments, how substantially, if at all, the proposal contributes to housing affordable for year-round residents.
- (3) Building and site design, including consideration of the following:
 - (a) Whether scenic views from public ways and developed properties have been considerately treated.
 - (b) Whether reasonable efforts have been made to minimize visibility of parking and service areas from public streets.
 - (c) Whether any traditional public access to or along the shoreline has been maintained.
- (4) Each application for a special permit shall be filed by the petitioner with the Town Clerk and a copy of said application, including the date and time of the filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the special permit granting authority (SPGA). Special permits shall be issued only following a public hearing to be held within 65 days of the date certified by the Town Clerk of the filing of the application after filing by the applicant of an application with the SPGA and with the Town Clerk, calculated from the date

certified by the Town Clerk. Special permits shall lapse within two years, and not including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

- (5) Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon issuance of special permit, provided the Zoning Board of Appeals finds that the proposed accessory use does not substantially derogate from the public good.

C. Variances.

- (1) To grant upon appeal or upon petition with respect to particular land or structures a variance from the terms of this bylaw where the Zoning Board of Appeals specifically finds that, owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and specifically affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this bylaw would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the bylaw.
- (2) Effect on variances within park and notice of same. Applicants for variances or special permit shall be promptly notified by the Zoning Board of Appeals that the Secretary of the Interior is authorized to withdraw the suspension of his authority to acquire, by condemnation, property which is made the subject of a variance or exception that, in his opinion, fails to conform or is in any manner opposed to or inconsistent with the purposes of the Cape Cod National Seashore. The Secretary of the Interior shall be given notice by the Zoning Board of Appeals of all applications or petitions made for variances or special permit to the bylaws for the Seashore District, and he shall be provided notice by the Planning Board of all applications for building permits involving the Seashore District: all such notices to be given within seven days of receipt of the applications or petitions. Subsequently, to meet the requirements of the Act of Congress of August 7, 1961, the Secretary shall be given notice by the appropriate board of any variance, or exception, or building permit granted or denied for within the Seashore District.

§ 235-8.5. Appeals of Zoning Board of Appeals decisions.

Any person aggrieved by a decision of the Zoning Board of Appeals or the Planning Board acting as special permit granting authority (SPGA) must appeal within 20 days after filing of the Board's decision with the Town Clerk to either the District Court, the Land Court or the Superior Court, in accordance with the provisions of MGL c. 40A, § 17.

§ 235-8.6. Amendments.

This bylaw may be amended from time to time at an Annual or Special Town Meeting in accordance with the provisions of MGL c. 40A, § 5.

§ 235-8.7. Severability.

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

§ 235-8.8. Interpretation; conflict with other laws.

In their interpretation and application, the provisions of this bylaw shall be held to be minimum requirements, adopted for the promotion of the public health, safety, or the general welfare. Whenever the requirements of this bylaw are at variance with the requirements of any other lawfully adopted rules, regulations or bylaw, the most restrictive or that imposing the higher standards shall govern.

§ 235-8.9. Effective date.

This bylaw shall take effect upon final approval of the Attorney General of the Commonwealth of Massachusetts, and its publication in accordance with MGL c. 40, § 32. Upon its effective date, it shall supersede the Zoning Bylaw voted by the Town October 18, 1966, and any amendments thereof previously in effect.

ARTICLE IX

Overlay Districts**§ 235-9.1. Wellhead Protection District.**

- A. Purpose. The purpose of this section is to protect the health, safety, and welfare of the community by ensuring that development and redevelopment in this district will not prohibit the siting of a well serving a public water system.
- B. Districts established.
 - (1) For the purposes of this section, there are hereby established in the Town of Wellfleet two Wellhead Protection Districts which are overlay districts superimposed on the zoning districts. The Wellhead Protection Districts consist of:
 - (a) District I - the land bounded by LeCount Hollow Road from 150 feet west of its intersection with Ocean View Drive to State Route 6; State Route 6 from LeCount Hollow road to Old County Road; Old County Road from State Route 6 to Cahoon Hollow Road; Cahoon Hollow Road from Old County Road to a point 150 feet west of its intersection with Ocean View Drive; a line 150 feet west of Ocean View Drive running from Cahoon

Hollow Road to LeCount Hollow Road, excluding any land that lies in a Commercial District on the effective date of this bylaw.

- (b) District II - the land within a 1/2 mile radius of the Coles Neck well.
 - (2) The Wellhead Protection Districts established by this section are shown on the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk.
 - (3) These overlay districts shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses.
- C. Boundaries. If the Wellhead Protection District boundary passes through a lot which cannot be subdivided, the entire lot shall be deemed to be within the Wellhead District. If the Wellhead Protection District boundary passes through a lot which may be subdivided, such lot shall be comprised of a portion of the Wellhead Protection District as delineated by the District boundary; and if such a lot is subsequently subdivided, any created lots will be treated in the same way as a lot which cannot be subdivided.
- D. Use regulations.
- (1) Allowed:
 - (a) All uses permitted in the underlying zoning districts except those uses specifically prohibited herein shall be allowed in a Wellhead Protection District. Nothing contained in the following list would prohibit uses customarily incidental to the principal use of land for residential purposes. New residential development, and maintenance, repair and alteration of existing structures are allowed with appropriate permits.
 - (b) Nothing contained in the following list would prohibit uses customarily incidental to the use of land for outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted; foot, bicycle and/or horse paths and bridges.
 - (c) For purposes of this § 235-9.1, "normal household use and household quantity of hazardous material or waste" means any or all of the following:
 - [1] 550 gallons or less of oil on site at any time to be used for heating of a structure or to supply an emergency generator; and
 - [2] 25 gallons (or the dry weight equivalent) or less of other hazardous materials on site at any time, including oil not used for heating or to supply an emergency generator; and
 - [3] A quantity of hazardous waste at the very small quantity generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.353.
 - [4] Change in ownership shall require conversion to a double-wall oil tank.
 - (d) For purposes of this § 235-9.1, "commercial" means requiring use, generation or storage of hazardous materials or waste in quantities greater than those allowed for normal household use and household quantities.

- (2) Prohibited:
- (a) Landfills and open dumps as defined in 310 CMR 19.006;
 - (b) Landfilling of sludge or septage as defined in 310 CMR 32.05;
 - (c) Automobile recycling, automobile graveyards and junkyards as defined in MGL c. 140B, § 1;
 - (d) Stockpiling and disposal of snow and ice from highways and streets located outside of the Wellhead Protection District that contain de-icing chemicals such as sodium chloride, chemically treated abrasives or other chemicals used for snow and ice removal;
 - (e) Sales, storage or transportation of liquid petroleum products of any kind, except those incidental to:
 - [1] Normal household use;
 - [2] The heating of a structure; or
 - [3] Required waste oil retention facilities;
 - (f) Storage of sludge or septage;
 - (g) Storage or disposal of road salt or de-icing chemicals unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
 - (h) Storage of animal manure except when associated with a permitted use, in accordance with the Board of Health standards for best management practices;
 - (i) Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21E, except the following licensed or permitted activities:
 - [1] Very small quantity generators (VSQG) as defined under 310 CMR 30.00;
 - [2] Waste oil retention facilities required by MGL c. 21, § 52A; and
 - [3] Water remediation treatment works approved under 314 CMR 5.00;
 - [4] Home occupations and service trades operating in accordance with VSQG codes and the Wellfleet Zoning Bylaws and Board of Health Regulations;
 - (j) Storage of pesticides, herbicides, fertilizers and soil conditioners, except for normal household use or for use in agriculture, horticulture, floriculture or viticulture on parcels of land of more than five acres, provided storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

- (k) The use, generation, storage, treatment or disposal of toxic or hazardous materials or wastes in quantities greater than those associated with normal household use;
- (l) The removal of soil, loam, sand, gravel or any other mineral substances within four feet of the historical high groundwater table elevation (as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey), unless the substances removed are redeposited within 45 days of removal on site to achieve a final grading greater than four feet above the historical high water mark, and except for excavations for the construction of building foundations or the installation of utility works;¹²
- (m) Underground fuel storage tanks except as required for the use of liquid propane for normal residential use, the heating of a structure or to supply an emergency generator;
- (n) Storage for resale of heating fuels, including but not limited to oil, coal, gas and kerosene;
- (o) Metal plating, finishing and polishing;
- (p) Chemical and bacteriological laboratories;
- (q) Commercial boat, motor vehicle, and aircraft cleaning, service and repair;
- (r) Commercial furniture stripping, painting and refinishing;
- (s) Treatment or disposal works that are subject to 314 CMR 5.00, Groundwater Discharge Permit Program, except the following:
 - [1] The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);
 - [2] The placement of an existing subsurface sewage disposal system(s) with wastewater treatment works with a design capacity no greater than the design capacity of the existing system(s);

12. Note: In approving Subsection (l), the Attorney General calls our attention to the protections accorded to agriculture under state law. MGL c. 40A, § 3, provides protection to agriculture and provides in pertinent part as follows:

No zoning. . . bylaw shall . . . prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture; . . . except that all such activities may be limited to parcels of more than five acres in area not zoned for agriculture, horticulture, floriculture, or viticulture.

General Laws c. 40A, § 3, states that all agricultural uses must be allowed as of right on land zoned for agriculture and on land that is greater than five acres in size; therefore, a municipality cannot restrict agricultural uses in those areas. A municipality is allowed to restrict agricultural uses on land less than five acres that is not zoned for agriculture. Thus, it would be inconsistent with state law to prohibit, require a special permit, or unreasonably regulate agricultural uses that enjoy the protections accorded under MGL c. 40A, § 3.

Depending on the circumstances, earth removal activities may qualify as normal and customary maintenance and improvement of agricultural land. Earth removal may be necessary for a number of agricultural purposes, e.g., leveling of land for growing areas and preparing land for farm structures. In those instances, it would be inconsistent with MGL c. 40A, § 3, to prohibit such earth removal activities. Thus, they remind the Town to apply Subsection (l) in a manner consistent with the protections accorded to agriculture under state law.

- [3] Treatment works approved by the Department of Environmental Protection (DEP) designed for the treatment of contaminated ground or surface waters;
- (t) Auto service or repair, trucking and bus terminals, gas stations, commercial laundry, dry cleaning establishments, car washes, airports, commercial accommodations, industrial and commercial uses which discharge process wastewater on-site; parking lots set apart primarily to accommodate off-site activities.
- (u) Individual sewage disposal systems that are designed to receive more than 110 gallons of sewage per quarter acre under ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater, provided that:
- [1] Replacement or repair of a system, which will not result in an increase in design capacity over the original design capacity of 310 CMR 15.00, whichever is greater, shall be exempted; and
- [2] In cluster subdivisions the total sewage flow shall be calculated based on the number of percable lots in the entire parcel;
- [3] Lots which are protected by the provisions of MGL c. 111, § 127P as of the effective date of this bylaw shall be permitted to install individual sewage disposal systems in accordance with the applicable provisions of the State Sanitary Code during the period of protection if any;
- [4] Alternative sewage disposal systems meeting the requirements of and approved by the Board of Health;
- (v) Any floor drainage systems in existing facilities, in facilities, in industrial or commercial process areas or hazardous material and/or hazardous waste storage areas which discharge to the ground without a DEP permit or authorization. Any existing facility with such a drainage system shall be required to either seal the floor drain (in accordance with the State Plumbing Code, 248 CMR 10.00), connect the drain to a municipal sewer system (with all appropriate permits and pre-treatment), or connect the drain to a holding tank meeting the requirements of all appropriate DEP regulations and policies;
- (w) Any other use which involves as a principal activity or use the generation, storage, use, treatment, transportation or disposal of hazardous materials.
- (3) Lot coverage. Unless the applicant demonstrates that all run-off is recharged on-site, no more than 15% of the total area of any lot shall be rendered impervious by the installation of buildings, structures and paved surfaces. If all recharge is disposed of on-site, no more than 50% of the total upland area of any lot shall be made impervious by the installation of buildings, structures, and paved surfaces.

- (4) Site clearing. A minimum of 30% of the total upland area of any lot shall be retained in its natural state. This shall not prevent the removal of dead, diseased or damaged trees.
- (5) Exemptions. The Zoning Board of Appeals may grant a special permit to exempt a use from the requirements of this section, provided that the applicant demonstrates that the proposed use at that location cannot adversely affect any developed or planned public water supply. Applications for such a special permit shall be referred to the Water Commissioners, Conservation Commission, Planning Board and Board of Health within seven days of their receipt for their review and comment prior to the conclusion of the Zoning Board of Appeals' hearing on the proposal. Failure by any of the above-named commissions or boards to respond to the Zoning Board of Appeals within 45 days shall be considered a confirmatory response.

§ 235-9.2. Main Street Overlay District. [Added 4-25-2006 ATM]

- A. Purpose and intent. This bylaw enables the development and redevelopment of Wellfleet's village center (a portion of Main Street) in keeping with its historic development patterns, including the size and spacing of structures and open spaces.
- B. Overlay district defined. The Main Street Overlay District shall extend along the south side of Main Street, one lot in depth, from Bank Street to Holbrook Avenue. The Main Street Overlay District established by this section is shown on the Town of Wellfleet Zoning Map, which is on file in the office of the Town Clerk. Within the Main Street Overlay District, special permits are required under this bylaw for all uses and structures required to obtain a special permit by the underlying Central District zoning district.
- C. Special permit granting authority. The special permit granting authority for this bylaw shall be the Zoning Board of Appeals.
- D. Special permit criteria. In addition to the special permit criteria listed in § 235-8.4B of this Zoning Bylaw, applicants for special permits in the Main Street Overlay District must meet the following requirements:
 - (1) Pedestrian access. Provision for safe and convenient pedestrian access shall be incorporated into plans for new construction of buildings and parking areas and must be designed in concert with landscaping plans noted below. New construction should be considerate of pedestrian access to buildings, sidewalks and parking areas and should be completed with considerations of pedestrian safety, handicapped access and visual quality.
 - (2) Landscaping and appearance. Landscape design plans should ordinarily be prepared by a landscape architect, although the Zoning Board of Appeals may accept a plan prepared by one other than a landscape architect if it believes the plan meets the design guidelines noted below and is in concert with the intent of this regulation.
 - (a) A landscaped buffer strip or some other type of screening may be required adjacent to adjoining properties. This buffer strip shall be planted with a

combination of grass, appropriate height shrubs, shade trees or other type of screening.

- (b) Exposed storage areas, machinery, garbage "dumpsters," service areas, truck loading areas, utility buildings and structures shall be screened from the view of abutting properties and streets using plantings, fences and other methods compatible with the goals of this regulation.
- (c) To ensure that landscaped areas are maintained, the Zoning Board of Appeals shall include as a provision of any special permit granted that a condition of said special permit is the maintenance of the landscaping as approved by the Zoning Board of Appeals.

E. Height, setback and building coverage within the Main Street Overlay District:

- (1) Height. The maximum height of any new or expanded existing structure shall be 28 feet.
- (2) Minimum yard requirements. The front yard setback of any new or expanded existing structure may be reduced to a zero line setback to continue the existing development pattern. The side yard setback shall be six feet, and the rear line setback shall be 15 feet.
- (3) Building coverage. Maximum building coverage within the Main Street Overlay District shall be 33%. Building coverage shall be calculated using the entire area of the lot (upland and lowland), exclusive of any areas on a street or way open to the public.

F. Parking requirements. Recognizing that parking requirements in the underlying zoning district may hamper development of village-style land use and development, the Zoning Board of Appeals is authorized to reduce or waive the parking requirements specified for the use or structure proposed. In determining the appropriate reduction, if any, the Zoning Board of Appeals may give consideration to the hours of usage of the proposed use or structure, hours of usage of other uses or structures within the Main Street Overlay District, amount of "shared" parking with other uses, the opinions of merchants, residents and municipal officials as to the adequacy or inadequacy of parking spaces within the specific area of the proposed use or structure, as well as other relevant information to assist the Zoning Board of Appeals in determining the need for additional parking for motor vehicles.

G. Allowable uses. Recognizing that village-style development entails a mixture of uses, the Zoning Board of Appeals is authorized to allow a mix of residential and nonresidential land uses within the Main Street Overlay District. Allowable uses shall be those listed in the underlying Central District within § 235-5.3 of this Zoning Bylaw and the following:

- (1) Conversion of dwelling unit.
- (2) Arcade.
- (3) Inn.
- (4) Restaurant, indoor.

- (5) Guesthouse, private.
 - (6) Guesthouse, public.
 - (7) Nursing home.
- H. Severability. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of Wellfleet's Zoning Bylaw.

§ 235-9.3. Medical Marijuana Overlay District (MMOD). [Added 4-28-2014 ATM]

- A. Establishment. The Medical Marijuana Overlay District (MMOD) is established as an overlay district, which is shown on the Zoning Map on file with the Town Clerk. Within the MMOD, all requirements of the underlying district(s) remain in effect, except where these regulations provide an alternative to such requirements. If the provisions of the MMOD are silent on a zoning regulation, the requirements of the underlying district shall apply. If the provisions of the MMOD conflict with the requirements of the underlying district, the requirements of the MMOD shall control. Land within the MMOD may be used either for (1) a registered marijuana dispensary (RMD), in which case the requirements set forth in this section shall apply; or (2) a use allowed in the underlying district, in which case the requirements of the underlying district shall apply.
- B. Purpose. To provide for the location of RMDs in accordance with the Humanitarian Medical Use of Marijuana Act, MGL c. 94C, App. § 1-1 et seq., in locations suitable for lawful RMDs and to minimize adverse impacts of RMDs on adjacent properties, residential neighborhoods, historic sites, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, security, modification and removal of RMDs.
- C. Definitions. Where not expressly defined in the Zoning Bylaws, terms used in the MMOD Bylaw shall be interpreted as defined in the Humanitarian Medical Use of Marijuana Act, MGL c. 94C, App. § 1-1 et seq., and the Commonwealth of Massachusetts Department of Public Health (MDPH) Regulations promulgated thereunder, 105 CMR 725.001 et seq., as they may be amended or superseded, and otherwise by their plain language.

REGISTERED MARIJUANA DISPENSARY (RMD) — Also known as a "medical marijuana treatment center," means 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, RMD refers to a site of dispensing, cultivation, and/or preparation of marijuana, which site is expressly designated in the Certification of Registration issued by the MDPH.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — As used in this § 235-9.3, the Town of Wellfleet Zoning Board of Appeals.

STATE LAW — Collectively, MGL c. 94C, App. § 1-1 et seq. and the MDPH Regulations promulgated thereunder, 105 CMR 725.001 et seq., as they may be amended or superseded, and any successor or re-codified version of any regulation issued by an agency of the Commonwealth of Massachusetts with jurisdiction for certifying or regulating the production and/or sale of marijuana for medical use.

D. Location.

- (1) The MMOD consists of certain portions of the land within the C and C-2 District, as follows:¹³
 - (a) Commercial District. The land described in the Town of Wellfleet Zoning Bylaw, District Descriptions, as Subsections (2) and (3); and
 - (b) Commercial 2 District. The land described in the Town of Wellfleet Zoning Bylaw, District Descriptions, as Subsection (1).
- (2) An RMD may be permitted in the MMOD pursuant to a special permit granted pursuant to this § 235-9.3 and § 235-8.4B of the Wellfleet Zoning Bylaws.
- (3) An RMD may not be located within 300 feet of the following:
 - (a) School, including a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university;
 - (b) Child-care facility;
 - (c) Playground;
 - (d) Youth center;
 - (e) Public beach or pond; or
 - (f) Other facility in which minors commonly congregate, excluding the Cape Cod National Seashore and the Cape Cod Rail Trail.
 - (g) Notwithstanding the above, the properties separated by U.S. Route 6 from an RMD shall be excluded from this list of protected uses.
- (4) The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses identified in Subsection D(3) to the nearest point of the property line of the proposed RMD.
- (5) A special permit issued pursuant to this section may, at the discretion of the SPGA, provide for reduction of the distance from protected uses pursuant to Subsection D(3) by no more than 25%, provided that:
 - (a) The applicant demonstrates that the RMD would otherwise be effectively prohibited within the municipality; and

13. Editor's Note: See the district descriptions in Appendix A, included as an attachment to this chapter.

- (b) The applicant demonstrates that the RMD will employ adequate security measures to prevent diversion of marijuana to minors or those who are not qualifying patients or customers pursuant to state law.

E. General requirements and conditions.

- (1) All RMDs shall be contained within a building or structure, except that no RMD shall be located inside a building containing a residential unit, including transient housing such as motels and cottages, or in buildings that contain the office of a medical doctor or doctor of osteopathy or other professional practitioner authorized by state law to issue a certification for a qualifying patient for the use of marijuana.
- (2) The hours of operation of an RMD shall be set by the SPGA, but in no event shall said RMD be open to the public between the hours of 8:00 p.m. and 8:00 a.m.
- (3) Except as specified in state law, no smoking, burning or consumption of any product containing marijuana or marijuana-related products shall be permitted on the premises or grounds of any RMD.
- (4) Signage for RMDs. In addition to meeting the requirements of state law and the Town of Wellfleet Zoning Bylaws, the following additional requirements and restrictions shall apply:
 - (a) A sign visible from the exterior of the building in which the RMD is located shall be displayed either by posting on the building exterior in close proximity to the entrance or by placement in a window in close proximity to the entrance with the text facing and legible from the exterior, which states: "Registration card issued by the MA Department of Public Health required." The required sign shall not exceed six square feet in area, shall be easily readable, and shall not be included in the signage calculation in Subsection E(4)(b).
 - (b) Exterior signage shall comply with Wellfleet Zoning Bylaws, except that:
 - [1] No RMD shall have a permanent or temporary freestanding accessory sign or off-premises signage;
 - [2] Permitted signage, excluding any state-required signage, shall be limited to 12 square feet in area;
 - [3] In accordance with state law, no RMD external signage shall be illuminated except for a period of 30 minutes before sundown until closing.
 - (c) Be in accordance with all other provisions of state law.
- (5) Fencing and gates shall be in accordance with state law and with all Town of Wellfleet Bylaws. To the extent practicable, fencing shall be consistent with the character of surrounding properties.

- (6) Landscaping shall be in compliance with Wellfleet Zoning Bylaws, except that in accordance with state law, RMDs shall maintain trees, bushes, and other exterior vegetation so that they do not allow for a person or persons to conceal themselves from sight.
- (7) Lighting shall be designed and maintained so as to protect adjacent properties and the night sky from intrusive lighting; however, in accordance with state law, the exterior perimeter of the RMD shall be sufficiently lit to facilitate surveillance.
- (8) Security and alarm systems for RMDs shall be in accordance with state law and Town of Wellfleet General Bylaws, and shall be adequate to prevent and detect diversion, theft, or loss of marijuana or unauthorized intrusion, utilizing commercial-grade equipment.
- (9) Pesticide and fertilizer storage and use shall be in accordance with state law and with all applicable state and local statutes, bylaws, and regulations.
- (10) Solid and liquid waste, including waste composed of or containing marijuana, finished marijuana, marijuana-infused product, or byproducts of marijuana processing shall be stored, secured, managed, and disposed of in accordance with state law and all other applicable statutes and bylaws and regulations of the Town.
- (11) In accordance with MGL c. 44, § 53G and regulations adopted by the Zoning Board of Appeals, the SPGA may engage, at the applicant's expense, professional and technical consultants, including legal counsel, to assist the SPGA Board with its review of any application pursuant to this bylaw. Failure of the applicant to pay for any such consultant review expense shall be grounds for denial of the application.

F. Special permit procedure.

- (1) The SPGA shall act in accordance with provisions, regulations, requirements, conditions and limitations set forth in this § 235-9.3 and in accordance with § 235-8.4B of the Wellfleet Zoning Bylaw, and with state law and any other applicable Massachusetts General Laws.
- (2) An applicant for the RMD special permit shall file with the Wellfleet Town Clerk all required forms, plans and supporting documentation along with an original and 12 copies and required fees. The Town Clerk shall stamp the application with the date received and shall immediately notify the SPGA of a submitted application packet.
 - (a) The SPGA may refer any application pursuant to this bylaw for review by other boards, departments or officers as it deems appropriate, including, but not limited to, the Inspector of Buildings, Fire Department, Planning Board, Police Department, Board of Health, the Conservation Commission, the Department of Public Works. Such boards, departments or officers shall review the application and shall submit their written recommendations, if any, to the referring authority within 35 days of receipt of referral of the application, or the application shall be deemed to be unopposed.

- (b) All plans and maps shall be prepared, stamped and signed by the appropriate registered design professional licensed to practice in the Commonwealth of Massachusetts, at a scale not greater than one inch equals 30 feet. Site plans shall include North arrow and locus map.
- (c) Applications shall include all additional materials and fees as required by the SPGA, including the following:
- [1] Twelve copies of the applicant's application to and Certificate of Registration as an RMD received from the MDPH;
 - [2] A single copy of all required licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies for the RMD;
 - [3] The name and address of each owner of any interest in the RMD or the property on which it is proposed to be located;
 - [4] If the applicant is a business organization, a statement under oath disclosing all of its owners, shareholders, partners, members, managers, directors, officers, or other similarly situated individuals and entities and their addresses. If one or more of the above are entities rather than persons, the applicant must disclose the identity of the owners of such entities until the disclosure contains the names of individuals;
 - [5] Evidence of the applicant's ownership of or right to use and control the site of the RMD for the RMD, as applicable, such as a deed or lease; for any property located within the Cape Cod National Seashore (CCNS), a copy of the notice sent by registered mail, return receipt requested, to the Superintendent of the CCNS;
 - [6] A detailed floor plan of the premises of the proposed RMD that identifies the square footage available and describes the functional areas of the RMD, including areas for the preparation of any MIP;
 - [7] Detailed site plans that include the following information:
 - [a] Compliance with the requirements in § 235-6.3B(2) (Other Uses) of the Wellfleet Zoning Bylaws for parking and loading spaces, for lot size, frontage, yards and heights and coverage of buildings, and all other provisions of this bylaw, to the extent not in conflict with any term of the registration of the RMD;
 - [b] Provision for convenience and safety of vehicular and pedestrian movement on the site and for the location of driveway openings in relation to street traffic;
 - [c] Provision for convenience and safety of vehicular and pedestrian movement off the site, if vehicular and pedestrian traffic off-site can reasonably be expected to be substantially affected by on-site changes;

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- [d] Analysis of the adequacy of the arrangement and the number of parking and loading spaces in relation to the proposed use of the premises, including designated parking for home delivery vehicle(s), as applicable;
 - [e] Proposed building elevations; design and appearance of structures, signs, screening and landscaping; and
 - [f] Provisions for adequate water supply, septic, surface and subsurface drainage and light;
- [8] A description of the security measures, including but not limited to lighting, fencing, gates, and employee security policies, approved by MDPH for the RMD;
 - [9] A copy of emergency procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies, approved by MDPH for the RMD;
 - [10] A copy of the policies and procedures for patient or personal caregiver home-delivery approved by MDPH for the RMD;
 - [11] A copy of the policies and procedures for the transfer, acquisition, or sale of marijuana between RMDs approved by MDPH;
 - [12] A copy of proposed waste disposal procedures;
 - [13] Proof of liability insurance that is in accordance with 105 CMR 725.105(Q);
 - [14] A description of proposed financial surety to satisfy the requirements of Subsection K(2); and
 - [15] Any waivers from MDPH issued for the RMD.
- (3) After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other Town boards and departments, the SPGA shall determine whether the application meets the standards, purpose and intent of § 235-9.3 and the standards and conditions of § 235-8.4B generally applicable to special permits, and if so determined, may approve the special permit with conditions consistent with this bylaw.
- G. Special permit conditions on RMDs. The SPGA may impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect groundwater quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this § 235-9.3 and the Wellfleet Zoning Bylaws. In addition to any specific conditions applicable to the applicant's RMD, a special permit granted under this bylaw shall include the following general conditions:
- (1) Hours of operation, including dispatch of home deliveries.
 - (2) The permit holder shall file a copy of any Incident Report required under state law with the Inspector of Buildings and the SPGA within 24 hours of creation by

the RMD. Such reports may be redacted as necessary to comply with any applicable state or federal laws and regulations.

- (3) The permit holder shall file a copy of any summary cease and desist order, cease and desist order, quarantine order, summary suspension order, order limiting sales, notice of a hearing, or final action issued by MDPH or the Division of Administrative Law Appeals, as applicable, regarding the RMD with the Inspector of Buildings and SPGA within 48 hours of receipt by the RMD.
 - (4) Each RMD permitted under this bylaw shall as a condition of its special permit file an annual report with the SPGA no later than January 31, providing a copy of all current applicable state permits, licenses, and registrations for the RMD and/or its owners, certificate of liability insurance that is in accordance with state law and demonstrate continued compliance with the conditions of the special permit.
 - (5) The permit holder shall provide to the Inspector of Buildings and Chief of the Police Department the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.
 - (6) The special permit shall be limited to the current applicant and shall lapse if the permit holder ceases operating the RMD.
 - (7) The special permit shall lapse upon the expiration or termination of the applicant's registration by MDPH.
 - (8) The permit holder shall notify the Inspector of Buildings and SPGA in writing within 48 hours of the cessation of operation of the RMD or the expiration or termination of the permit holder's registration with MDPH.
 - (9) As-built conditions, post-construction, shall be submitted to the Inspector of Buildings prior to issuance of an occupancy permit. Any changes or subsequent alterations to previously filed as-built conditions shall be submitted to the Inspector of Buildings upon completion of work.
- H. Off-site cultivation as authorized by RMD Certificate of Registration. In the case of cultivation of marijuana at a site other than the dispensary, where, 1.) the Certificate of Registration identifies the cultivation site, and 2.) the cultivation site meets the requirements of MGL c. 40A, § 3 for exemption from the use restriction in the zoning district in which the cultivation site is located, the cultivation of marijuana at such a site shall not require an additional special permit pursuant to Subsections F and G; but shall be considered within the area subject to the conditions imposed on the RMD special permit.
- I. Prohibition against nuisances. No use shall be allowed in the MMOD which creates a nuisance, including loitering, to abutters or to the surrounding area, or which creates any hazard, including, but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

- J. Modification and alteration. All modification, remodeling, expansion, reduction, or other physical, non-cosmetic alteration of an RMD made after issuance of the special permit shall require approval by the SPGA as provided in this § 235-9.3.
- K. Abandonment or discontinuance of use.
- (1) An RMD shall be required to remove all material, including plants, products, waste, equipment and other paraphernalia:
 - (a) Prior to surrendering its state-issued licenses or permits; or
 - (b) Within six months of ceasing operations, whichever comes first; and
 - (c) In accordance with state law and all other applicable federal, state, and local requirements.
 - (2) The SPGA shall require the applicant to post a bond at the time of construction in an amount adequate to pay the costs of removal of the RMD in the event the Town must remove the RMD . The value of the bond shall be based upon the ability to completely remove all the items noted in Subsection K(1) and properly clean the RMD at prevailing wages. The value of the bond shall be determined based upon the applicant's supporting information provided to the SPGA, consisting of three written bids to meet the noted requirements. Use of consultants by the SPGA may be required at the expense of the applicant when evaluating or comparing the bids. An incentive factor of 1.5 shall be applied to all bonds to ensure compliance and adequate funds for the Town to remove the RMD at prevailing wages. Notwithstanding the above, the bond amount is subject to review by the SPGA every three years.

ARTICLE X

Large-Scale Ground-Mounted Solar Photovoltaic Installations

[Added 4-22-2013 ATM]

The purpose of this bylaw is to provide a review process for proposed large-scale ground-mounted solar photovoltaic installations (LSGMSPI) and provide standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, repair and/or removal of LSGMSPI. This section also pertains to physical modifications that alter the type, configuration, or size of these installations or related equipment.

§ 235-10.1. Compliance with laws, bylaws, policies and regulations.

The construction and operation of all LSGMSPI shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All structures and fixtures forming part of a LSGMSPI shall be constructed in accordance with the State Building Code.

§ 235-10.2. Building permit and building inspection.

No LSGMSPI shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

§ 235-10.3. LSGMSPI site plan review.

LSGMSPI with 250 kW or larger of rated nameplate capacity shall require LSGMSPI site plan review by the Planning Board prior to issuance of a building permit to authorize construction, installation or modification as further provided in this section. Reviews shall be conducted to assure compliance with this Article X of the Zoning Bylaw, and with the C2 District objectives contained in § 235-3.2 of the Zoning Bylaw. In accordance with Section 22(c) of the Massachusetts Green Communities Act,¹⁴ LSGMSPI site plan review shall be expedited and completed within one year after the date at which the Planning Board has determined the LSGMSPI site plan review application is complete.

- A. General. All plans and maps shall be prepared, stamped and signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts, at a scale of one inch equals 40 feet.
- B. Application process and requirements.
 - (1) In accordance with MGL c. 44, § 53G, the Planning Board may engage, at the applicant's cost, professional and technical consultants, including legal counsel, to assist the Planning Board with its review of the application. Failure to comply with the section shall be grounds for denial of the application.
 - (2) Application submission. Applicants for LSGMSPI site plan review shall file with the Wellfleet Town Clerk all required forms, plans and supporting documentation along with 14 copies and required fees. The Town Clerk shall stamp the application with the date received and shall immediately notify the Chair of the Planning Board of a submitted application packet.
 - (3) Completeness review. The Planning Board shall, within 30 calendar days of the receipt of the application by the Town Clerk, determine whether the application is complete or incomplete and shall notify the applicant in writing by certified mail.
 - (4) Incomplete applications. If the Planning Board determines the application to be incomplete, the Board shall provide the applicant with a written explanation as to why the application is incomplete and request the information necessary to complete the application. Any additional information submitted by the applicant starts a new 30 calendar day completeness review.
 - (5) Waiver of provisions. Upon the applicant's written request submitted as part of the application, the Planning Board may waive strict compliance with any provision of this Article X if it deems it in the public interest and determines that the intent of this Article X has been maintained.

14. Editor's Note: See Acts of 2008, Ch. 169; and MGL c. 25A, § 10.

- C. Required documents. An application for LSGMSPI site plan approval shall include the following documents:
- (1) A site plan showing:
 - (a) North arrow and locus map;
 - (b) Property lines and physical features, including roads, delineation of any wetlands, and pre- and post-construction topography for the project site;
 - (c) Proposed changes to the natural vegetation and landscaping present at the site, as well as proposed grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
 - (d) Blueprints or drawings of the solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures;
 - (e) Provisions for parking locations on site for at least two service vehicles;
 - (f) An electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - (g) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - (h) Name, address, license verification and contact information for proposed system installer(s);
 - (i) Name, address, phone number and signature of the project applicant(s), as well as all property owner(s);
 - (j) The name, contact information and signature of any agent(s) representing the project proponent(s);
 - (2) Documentation of actual or prospective access and control of the project site that satisfies § 235-10.4;
 - (3) An operation and maintenance plan that satisfies § 235-10.5;
 - (4) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a Zoning Map with the parcel(s) identified is suitable for this purpose);
 - (5) Proof of proposed liability insurance that satisfies § 235-10.12;
 - (6) Description of financial surety proposed to satisfy the requirements of § 235-10.11C; and
 - (7) Evidence of utility company notification and acceptance of intent to install an interconnected customer-owned generator that satisfies § 235-10.6.

§ 235-10.4. Site control.

The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

§ 235-10.5. Operation and maintenance plan.

The project applicant shall submit a plan for the operation and maintenance of the LSGMSPI, which shall include measures for maintaining safe access to the installation and accessory structures, including but not limited to stormwater controls at the site, and shall provide details as to the proposed general procedures for operation and maintenance of the installation.

§ 235-10.6. Utility notification.

No LSGMSPI site plan approval shall be issued and no LSGMSPI shall be constructed until satisfactory evidence has been submitted to the Planning Board to demonstrate that the utility company that operates the electrical grid where the installation is to be located has deemed to have accepted the solar photovoltaic installation owner's or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

§ 235-10.7. Accessory structures.

All accessory structures to LSGMSPI shall be subject to Town of Wellfleet Zoning Bylaws concerning the bulk and height of structures, lot area, setbacks, and open space, parking and building coverage requirements, except that no accessory structure to LSGMSPI shall exceed 15 feet in height. All such accessory structures, including but not limited to equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to minimize visibility when viewed.

§ 235-10.8. Design standards.

- A. Fencing. Fencing shall be provided to control access to the LSGMSPI site and shall be consistent with the character of surrounding properties.
- B. Landscape and appearance. In accordance with C2 District objectives, the LSGMSPI shall be designed to minimize visual impact; the maximum amount of natural vegetation shall be preserved; details of construction and finish shall blend with the surroundings; additional screening shall be employed where practical and particularly to screen surrounding property.
- C. Lighting. Lighting of LSGMSPI shall comply with local, state and federal law. Lighting of accessory elements or structures shall be limited to that required for safety and operational purposes, and shall be shielded to avoid unnecessary visibility from

surrounding properties. Where feasible, lighting of the LSGMSPI shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

- D. Signage. There shall be no signs on LSGMPI except a sign identifying the owner or operator and a twenty-four-hour emergency contact phone number; no-trespassing signs; and any signs required to warn of danger. All signs shall comply with Article VII of the Wellfleet Zoning Bylaws.
- E. Utility connections. To the extent practical, as determined by the Planning Board, in consideration of soil conditions, shape and topography of the site and requirements of the utility receiving the power, all utility connections from or to the solar photovoltaic installation shall be installed underground; however, electrical transformers for utility interconnections may be above ground if required by the utility receiving the power.
- F. Height. Solar photovoltaic arrays shall not exceed 10 feet in height off the ground at their tallest orientation as measured at the highest point of the ground under the array. Accessory structures to LSGMSPI shall be subject to height requirements set in § 235-10.7 of this bylaw. **[Amended 4-23-2018 ATM by Art. 42]**

§ 235-10.9. Safety and environmental standards.

- A. Emergency services. The LSGMSPI owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief. The Planning Board or the Fire Chief may require the owner or operator to cooperate with designated Town or regional emergency service providers in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner and operator, if not the owner, shall identify a responsible person and contact information for providing response to public inquiries throughout the presence of the installation at the site, whether or not operational.
- B. Land clearing, soil erosion, stormwater control, and habitat impacts. Clearing of natural vegetation shall be limited to that necessary for the construction, operation and maintenance of the LSGMSPI or otherwise required by applicable laws, regulations, and bylaws. All stormwater control plans shall either maintain or diminish preexisting runoff conditions. Any road or other surface on the lot shall comply with Chapter 135, Drainage Control, of the Wellfleet General Bylaws.
- C. Hazardous waste. No hazardous waste shall be discharged on the site.
- D. Herbicide and pesticide use. Use of herbicides and pesticides shall be consistent with all applicable Town of Wellfleet bylaws and policies.
- E. Sound levels. The sound levels under normal operating conditions, measured at the boundary of the lot on which the installation is sited, shall not be more than five decibels greater than would otherwise exist in the absence of such a facility.

§ 235-10.10. Monitoring and maintenance.

- A. Solar photovoltaic installation conditions. The LSGMSPI owner and operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to,

painting, structural repairs, continued compliance with landscaping and screening requirements, control of vegetation, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief. The owner and operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), other than public ways.

- B. Modifications. All LSGMSPI external modifications requests made after the issuance of the original required building permit shall be forwarded to the Planning Board. All significant external modifications shall require LSGMSPI site plan review by the Planning Board.

§ 235-10.11. Abandonment or decommissioning.

- A. Removal requirements. Any LSGMSPI which has reached the end of its useful life or has been abandoned consistent with § 235-10.11B of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Wellfleet Town Clerk and the Chair of the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:
- (1) Physical removal of all LSGMSPI, structures, equipment, security barriers and transmission lines from the site;
 - (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and
 - (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.
- B. Abandonment. Absent notice to the Town Clerk of a proposed date of decommissioning or written notice of extenuating circumstances approved by the Planning Board, the solar photovoltaic installation shall be deemed abandoned within the meaning of this section when it fails to transmit power to the grid for more than one year. If the owner or operator of the LSGMSPI fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the grant of Planning Board approval for the facility shall be deemed to be the consent of the owner and operator for the Town to enter the property and physically remove the installation and restore the site at the sole expense of the owner/operator.
- C. Financial surety. Applicants for LSGMSPI projects shall provide a form of surety, either through escrow account, bond or otherwise, satisfactory to the Planning Board, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, in an amount not to exceed 125% of the projected cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs

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associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

§ 235-10.12. Proof of liability insurance.

The owner or operator of LSGMSPI shall provide the Town Clerk and the Planning Board with a certificate of insurance showing that the property has a minimum of \$2,000,000 in liability coverage, and that the Town of Wellfleet is an additional named insured thereon. Such a certificate shall be supplied on an annual basis upon the renewal of said insurance policy.

§ 235-10.13. Lapse of approval.

A building permit approval shall automatically lapse if the LSGMSPI is not installed and functioning within two years or the LSGMSPI is abandoned.

ZONING

235 Attachment 1

Town of Wellfleet

**Appendix A
District Descriptions**

The following descriptions are made to further delineate certain districts shown on this map:

RESIDENTIAL 2: Land included in an area bounded as follows:

On the south by the Town of Eastham;

On the west, by the State Highway, Route 6;

On the north, by the northerly boundary of lots 1 through 5 as shown on a plan made for Fred Hendrickson, said plan recorded in the Barnstable County Registry of Deeds, plan book 231, page 157;

On the east, by the boundary of the Cape Cod National Seashore.

CENTRAL DISTRICT: Lands included in an area bounded as follows: Commencing at a point on the southerly sideline of Mill Hill Road, said point being 100.00 feet easterly of the easterly sideline of Briar Lane; thence southerly by a line parallel to and 100.00 feet easterly of the easterly sideline of Briar Lane to the easterly sideline of Ryder Court; thence northerly by the easterly sideline of Ryder Court to a point lying 150.00 feet northerly of the northerly sideline of Main Street; thence easterly by a line parallel to and 150.00 feet northerly of the northerly sideline of Main Street as defined on a plan entitled "The Commonwealth of Massachusetts, Plan of Road in the Town of Wellfleet, Barnstable County, Discontinued as a State highway by the Department of Public Works, April 17, 1962, Scale 40 feet to the inch", recorded in the Barnstable County Commissioners' Office, volume 64, pages 4779 through 4784, to the easterly sideline of Squire's Pond Lane; thence

southerly by the easterly sideline of Squire's Pond Lane to a point lying 100.00 feet northerly of the northerly sideline of Main Street; thence easterly by a line parallel to and 100.00 feet northerly of the northerly sideline of Main Street as defined on said plan to the westerly sideline of School Street; thence

southerly by the westerly sideline of School Street to the northerly sideline of Main Street; thence

southerly across Main Street to the intersection of the southerly sideline of Main Street as defined on said plan and the westerly sideline of Whit's Lane; thence southerly by the westerly sideline of Whit's Lane and continuing on the extension of said line across East Commercial Street to the southerly sideline of East Commercial Street; Thence

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southerly and perpendicular to said southerly sideline of East Commercial Street to Mean High Water Mark; thence

southerly and westerly by an irregular line following the Mean High Water Mark to a point 300.00 feet westerly of the westerly intersection of Kingfish Boulevard and Mayo Beach Road; thence

northerly by a line perpendicular to said Mayo Beach Road across Mayo Beach Road to a point 200.00 feet northerly of the northerly sideline of Mayo Beach Road; thence

easterly by a line parallel to and 200.00 feet northerly of the northerly sideline of Mayo Beach Road to a point lying 200.00 feet westerly of the westerly sideline of Commercial Street; thence

northerly by a line parallel to and 200.00 feet westerly of the westerly sideline of Commercial Street to the northerly sideline of Holbrook Avenue'; thence

southeasterly by the northerly sideline of Holbrook Avenue to a point lying 100.00 feet westerly of the westerly sideline of Commercial Street; thence

northerly by a line parallel to and 100.00 feet westerly of the westerly sideline of Commercial Street to a point lying 100.00 feet southerly of the southerly sideline of Bank Street; thence

northwesterly by a line parallel to and 100.00 feet southerly of the southerly sideline of Bank Street to a point lying 100.00 feet southerly of the southerly sideline of Main Street; thence westerly by a line parallel to and 100.00 feet southerly of the southerly sideline of Main Street to the westerly sideline of Holbrook Avenue; thence southerly by the westerly sideline of Holbrook Avenue to a point lying 150.00 feet southerly of the southerly sideline of West Main Street; thence

westerly by a line parallel to and 150.00 feet southerly of the southerly sideline of West Main Street to the easterly sideline of Howland Lane; thence

northerly by the easterly sideline of Howland Lane to the southerly sideline of West Main Street; thence

northerly across West Main Street by a line perpendicular to Main Street to a point lying 150.00 feet northerly of the northerly sideline of West Main Street; thence easterly by a line 150.00 feet northerly of the northerly sideline of West Main Street to a point lying 100.00 feet westerly of the westerly sideline of Briar Lane; thence northerly by a line parallel to and 100.00 feet westerly of the westerly sideline of Briar Lane to a point lying on the extension of the southerly sideline of Mill Hill Road; thence easterly across Briar Lane by said extension and by the southerly sideline of Mill Hill road to the point of beginning.

Lands included in an area bounded as follows: Commencing at a point lying on the northerly sideline of Main Street, formerly Route 6A, said monument lying 21 and 89/100 feet (21.89') southeasterly of the point of tangency lying opposite station 324+04.48 as shown on a plan entitled, "Plan of Road in the Town of Wellfleet, Barnstable County, Discontinued as State highway by the Department of Public Works, April 17, 1962, scale 40 feet to the inch, thence

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N 13 degrees - 25' - 46" E a distance of 150 and 07/100 feet (150.07') to a concrete bound; thence

N 08 degrees - 11' - 32" E a distance of 161 and 90/100 feet (161.90') to a concrete monument; thence

N 08 degrees - 09' - 50" E a distance of 170 and 42/100 feet (170.42') to a point on the southerly sideline of Long Pond Road, said point lying 50 and 74/100 feet (50.74') northeasterly of the point of curvature opposite station 17+01.09 as shown on the 1949 State Highway Alteration Plan; thence

easterly by the southerly sideline of Long Pond Road to the intersection of said southerly sideline with the westerly sideline of Route 6; thence southerly by the westerly sideline of Route 6 to the northerly sideline of Main Street; thence

northwesterly by the northerly sideline of Route 6 to the point of beginning.

COMMERCIAL:

(1) Land inclusive in an area bounded on the south by the Town of Eastham, on the west by West Road, on the east by Route 6 and on the north by Gill Road.

(2) Lands included in an area bounded as follows: Commencing at the intersection of the westerly sideline of Route 6 and the northerly sideline of Lieutenant's Island Road; thence westerly by the northerly sideline of Lieutenant's Island Road to a point lying 300 feet westerly of the westerly sideline of Route 6; thence northerly by a line parallel to and 300.00 feet westerly of Route 6 to the southerly sideline of Old Wharf Road; thence

easterly by the southerly sideline of Old Wharf Road to the westerly sideline of Route 6; thence southerly by the westerly sideline of Route 6 to the point of beginning.

(3) Land inclusive in an area beginning at a point at the intersection of Route 6 and 6A, then following the easterly side of Route 6A until it rejoins Route 6, thence proceeding along the easterly and northerly side of Route 6 to a point 300 feet west of the intersection of Route 6 and Old County Road, thence; northerly on a line perpendicular from Route 6 for 300 feet, thence; easterly on a line parallel and 300 feet from Route 6 to the railroad right-of-way, thence southeasterly along said railroad right-of-way to a point which is perpendicular from said right-of-way to the southerly point of the intersection of Route 6A and Route 6, thence easterly along said perpendicular to the point of beginning.

(4) Land inclusive in an area beginning at the intersection of Cove Road and Route 6, thence southerly 950 feet along Route 6 to a point, thence westerly on a line perpendicular from Route 6 for a distance of 500 feet, thence northerly on a line parallel to, and 500 feet from, Route 6 until said line meets Cove Road, thence easterly along Cove Road to the point of beginning.

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- (5) Land inclusive in the area beginning at the intersection of School Street and Route 6, thence along the southern and western side of School Street to Long Pond Road, thence along the northern side of Long Pond Road to a point 300 feet east of the intersection of Route 6, and Long Pond Road, thence southerly along the line parallel and 300 feet from Route 6 to the railroad right-of-way, thence northwesterly along said right-of-way to Route 6, thence northerly along Route 6 to the point of beginning.
- (6) Lands included in an area bounded as follows: Commencing at a point on the northerly sideline of Pine Point Road, said point lying 300.00 feet westerly of the westerly sideline of Route 6; thence northerly by a line parallel to and 300.00 feet westerly of the westerly sideline of Route 6 to the centerline of the east arm of Duck Creek; thence easterly by the centerline of the east arm of Duck Creek to the westerly sideline of Route 6 approximately opposite station 269 as shown on the 1949 State Highway Alteration Plan; thence southerly by the westerly sideline of Route 6 to the northerly sideline of Pine Point Road; thence westerly by the northerly sideline of Pine Point Road to the point of beginning.

COMMERCIAL 2:

- 1) Land included in an area bounded as follows:

On the south, by the northerly boundary of lots 1 through 5 as shown on a plan made for Fred Hendrickson, said plan recorded in the Barnstable county Registry of Deeds, plan book 231, page 157;

On the west, by the easterly sideline of the State Highway, Route 6;

On the north, by the boundary of the Cape Cod National Seashore;

On the east, by the boundary of the Cape Cod National Seashore.

- 2) Land included in an area bounded as follows:

On the south, by the boundary of the Cape Cod National Seashore;

On the west, by the easterly sideline of the State Highway, Rte 6;

On the north, by Blackfish Creek;

On the east, by the boundary of the Cape Cod National Seashore.

- 3) Land included in an area bounded as follows:

On the south, by the northerly sideline of Designers road;

On the east, by the easterly sideline of the State Highway, Rte 6;

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On the north, by the southerly boundary of land owned by the commonwealth of Massachusetts, formerly land of the Penn Central Transportation Corporation;

On the east, by the westerly sideline of the Old King's Highway (also known as the Old County Road) as shown on the March, 1970 layout made for the Town of Wellfleet).

- 4) Land included in an area bounded and described as follows:

Beginning at a point on the westerly sideline of the State Highway, Route 6, at its intersection with the northerly sideline of Kelley Way; thence

Westerly by the northerly sideline of Kelley Way to the southwest corner of Lot 8 as shown on a plan made for the Oliver Real Estate Trust and Reven A. Oliver, said plan recorded in the Barnstable County Registry of Deeds, plan book 538, page 96; thence

Northwesterly by the westerly boundaries of lots 8 and 7 as shown on said Oliver plan, a distance of 349.54 feet to a point; thence

Northwesterly a distance of 1,472 feet, more or less, to a point on the northerly boundary of lot 7 as shown on L.C.P. #17425N, said point being 500.00 feet west of the westerly sideline of the State Highway, Route 6; thence

Westerly by the northerly boundary of lots 7, 6, 46 and 45 as shown on L.C.P. #17425N and #17425U to the easterly sideline of Cove Road; thence

Northerly by the easterly and southerly sideline of Cove Road to a point on the southerly side of Cove Road, said point being 500.00 feet westerly from the westerly sideline of the State Highway, Route 6; thence

Southeasterly on a line parallel to and 500.00 feet westerly from the westerly sideline of the State Highway, Route 6 to a point; thence

Northeasterly on a line perpendicular to the last mentioned course to a point on the westerly sideline of the State Highway, Route 6, said point being 950.00 feet southerly from the intersection of the southerly sideline of cove road with the westerly sideline of said route 6; thence Southeasterly by the westerly sideline of said Route 6 to the point of beginning.

- 5) Land included in an area bounded as follows:

On the north, by the boundary of the Cape Cod National Seashore; On the northeast, by the westerly sideline of Pole dike road; On the east, by L.C.C. #37990; On the southwest by L.C.C. #32885; Being land shown on a plan made for the Town of Wellfleet, and recorded in the Barnstable County Registry of Deeds, plan book 283, page 64.

- 6) Land included in an area bounded as follows:

On the south, by Coles Neck road;

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- On the west, by lots 26 and 27 as shown on L.C.P. #29786F;
- On the south, by lots 23, 24, and 25 as shown on L.C.P. #29786F;
- On the northwest, by the easterly sideline of Whitetail Lane;
- On the north, by lot 37 as shown on L.C.P. #29786G;
- On the west, by lots 36 and 37 as shown on L.C.P. #29786G;
- On the north, by the boundary of the Cape Cod National Seashore;
- On the east, by the easterly boundary of lot 3 as shown on L.C.P. #29786B;
- On the south, by Coles Neck Road;
- On the west, by lot 8 as shown on L.C.P. #29786C;
- On the east, by lot 6 as shown on L.C.P. #29786C.

Unless otherwise noted, district boundaries outside of and parallel to streets are measured from the street lines. North axis shown refers to true north. Districts are not shown to exact scale. Accompanying distances identified on this map shall be used in determining district dimensions.

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Town of Wellfleet

Appendix B

MGL, c. 40A, § 6

Existing structures, uses, or permits; certain subdivision plans: application of chapter

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections 29 through 33, inclusive, of chapter 93, and to chapter 93D.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least 5,000 square feet of area and 50 feet of frontage. Any increase in area, frontage, width, yard or depth requirements of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January 1st, 1976, whichever is later, to a lot for single and two-family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January 1st, 1976, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least 7, 500 square feet of area and 75 feet of frontage, and provided that said five-year period does not commence prior to January 1st, 1976, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership.

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The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January 1st, 1976, for seven years from the date of endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to section 81P of chapter 41 has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of the subdivision control law. Such appeal shall stay, pending an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to the extent aforesaid, the ordinance or by-law made then applicable by such waiver.

DIVISION 2

REGULATIONS

Chapter 300

SUBDIVISION REGULATIONS

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- § 300-5.1. General.
- § 300-5.2. Subdivision layout.
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- § 300-6.1. General.
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§ 300-6.4. Required inspections.

§ 300-7.2. Selection and administrative appeal.

§ 300-6.5. Inspections do not create responsibility.

§ 300-7.3. Funding.

§ 300-7.4. Reporting.

§ 300-7.5. Remedy.

ARTICLE VII

Employment of Outside Consultants

§ 300-7.1. General.

[HISTORY: Adopted by the Planning Board of the Town of Wellfleet as amended 5-18-2016. Subsequent amendments noted where applicable.]

ARTICLE I

General Provisions

§ 300-1.1. Adoption and effective date.

The Subdivision Control Law of Massachusetts (MGL c. 41, §§ 81K through 81GG, inclusive) is in effect in the Town of Wellfleet, having been adopted on February 16, 1955. Under authority vested in the Wellfleet Planning Board by MGL c. 41, § 81Q, the Board hereby adopts these rules and regulations governing the subdivision of land, which shall be effective on and after April 20, 2016 until modified or amended by the Board.

§ 300-1.2. Applicability.

No person shall make a subdivision of any land within the Town, or proceed with the improvement, clearing or sale of lots in a subdivision, or the construction of ways, or the installation of municipal or private services therein, unless and until a definitive plan of such subdivision has been submitted to and approved by the Board, as hereinafter provided.

§ 300-1.3. Purpose.

These regulations have been adopted for the purpose of protecting the safety, convenience and welfare of the inhabitants of Wellfleet by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein. In achieving these purposes, the powers of the Board shall be exercised with due regard for:

- A. The provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel;
- B. Lessening congestion in such ways and in the adjacent public ways;
- C. Reducing danger to life and limb in the operation of motor vehicles;
- D. Securing safety in the case of fire, flood, panic and other emergency;

- E. Ensuring compliance with the Wellfleet Zoning Bylaws;¹
- F. Securing adequate provision of water, sewerage, drainage, underground utility service, fire, police and other municipal equipment, streetlighting, and other requirements, where necessary, in a subdivision; and
- G. Coordinating the ways in a subdivision with each other and with the public ways in the Town and with the ways in neighboring subdivisions.

§ 300-1.4. Definitions.

- A. All definitions of words will be as contained in the Wellfleet Zoning Bylaw² unless specifically defined below. As used in this document, words in singular include the plural and those in the plural include the singular. The word "may" is permissive; the words "shall" or "will" are mandatory.
- B. For the purpose of these Rules and Regulations, the following words used herein are hereby defined as follows:

ABUTTER — The owner of the property that is contiguous to the subject property, including those across streets and ways, and shall include abutters to abutters whose property is within 300 feet of the subject property.

APPLICANT — An owner, agent, representative or assignee who is authorized to propose and/or develop the proposed subdivision.

BOARD — The Planning Board of the Town of Wellfleet.

SUBDIVISION — As defined in MGL c. 41, § 81-L, as amended.

§ 300-1.5. Waiver of compliance.

Strict compliance with the requirements of these Rules and Regulations may be waived when, in the judgment of the Board, such action is in the public interest, and not inconsistent with the Subdivision Control Law. The application for approval of a definitive plan must be accompanied by a written request for waiver of strict compliance with these rules, the regulation sought to be waived, the nature and location of the waiver sought, and a statement by the Applicant's surveyor or engineer that such waiver is consistent with each of the purposes set forth in § 300-1.3 of these Rules and Regulations.

§ 300-1.6. Amendments.

These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing.

1. Editor's Note: See Ch. 235, Zoning.

2. Editor's Note: See Ch. 235, Zoning.

ARTICLE II

Submission and Approval of Plans**§ 300-2.1. General.**

Only those plans which constitute subdivisions, as that term is defined in § 300-1.4, require the approval of the Board. However, all plans, whether "subdivisions" within the meaning of the law, or not, must be reviewed by the Board before any approval is given, or before an endorsement is made that the plan does not constitute a subdivision and therefore does not require approval. The Register of Deeds of Barnstable shall not record any plan showing a division of a tract of land into two or more lots, and/or ways, whether existing or proposed, providing access thereto, unless (1) such plan bears an endorsement of the Planning Board that such plan has been approved by the Planning Board, and a certificate by the Town Clerk is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the 20 days next after receipt and recording of notice from the Planning Board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or (2) such plan bears an endorsement of the Planning Board that approval of such plan is not required, or (3) the plan is accompanied by a certificate of the Town Clerk that it is a plan which has been approved by reason of the failure of the Planning Board to act thereon within the time prescribed, or that it is a plan submitted pursuant to MGL c. 41, § 81P and that it has been determined by failure of the Planning Board to act thereon within the prescribed time that approval is not required. In order to obtain a permit for the erection of a building on a lot, a way giving access to such lot must appear on a plan recorded at the Barnstable Registry of Deeds or entitled to be recorded under MGL c. 41, § 81X.

§ 300-2.2. Submission completeness.

No plan for review, whether for approval or for endorsement of approval not required, shall be accepted as a submittal unless and until all information necessary for such review, as described herein under the applicable provisions of submission requirements, are fully provided, unless waived in writing by the Board. At the time of submission, a determination shall be made by the Planning Board, or its designee, using these regulations, that the submission materials are either complete or incomplete. If the submission has been determined to be incomplete, the plan shall be returned to the Applicant either in person or by certified mail with a letter indicating that insufficient information has been provided making it impossible for the Board to adequately review the plan, to approve the plan or endorse the plan as "Approval Not Required." A copy of the transmittal letter shall be provided to the Town Clerk and submitted for the record at the next Planning Board meeting.

§ 300-2.3. Plans believed not to require approval (ANR).

The following provisions apply to all plans for which "Approval Not Required" endorsement is desired.

- A. "Approval Not Required" plan submission requirements. Any person may submit a plan seeking endorsement that the plan does not require approval under the Subdivision Control Law by providing the Board with the following:

- (1) An original plan and 13 prints of the plan showing:
 - (a) The area, frontage and dimensions of the lot or lots requiring endorsement and any contiguous lots in common beneficial ownership whose dimensions are altered by the plan;
 - (b) The date of the plan, scale, North point;
 - (c) The names of the record owner and the Applicant, and the name, seal and signature of the registered surveyor;
 - (d) Abutting properties with the names of owners from the most recent tax list and showing all relevant abutting lot lines; however, in the case of land-courted land, the plan shall conform to land court rules and shall separately show current ownership;
 - (e) Zoning classification data, wetlands, Areas of Critical Environmental Concern, existing and proposed boundary monuments, to the extent practical, set at the corner of each lot, tidal areas and floodplains;
 - (f) The Assessor's map and parcel number as it is recorded on the official Tax Maps of Wellfleet and recently recorded plans for the parcel;
 - (g) The name(s) of the way(s) on which the lots front, or to which the lots are contiguous;
 - (h) The physical condition of the way(s) shown on the plan, including actual width, surface condition and available drainage;
 - (i) An area set aside for the signatures of Board members, file number and date of endorsement preceded by the words "Approval under the Subdivision Control Law Not Required, Wellfleet Planning Board";
 - (j) A locus plan containing sufficient information so that the land can be readily located, including streets bounding on or near the property;
 - (k) Each plan shall contain a note or notes as to the compliance of each lot shown thereon with the lot area and frontage requirements as provided in the Wellfleet Zoning Bylaws.³
- (2) A properly executed Form A application as shown in the Appendix.⁴
- (3) Necessary evidence to show that the plan does not require approval and proper positive documentation that every lot within the divided tract has frontage either on a public way or a way which the Town Clerk certifies is maintained and used as a public way or a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law; or a way in existence on February 2, 1950, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in

3. Editor's Note: See Ch. 235, Zoning.

4. Editor's Note: The subdivision forms are available from the Town offices or on the Town website: www.wellfleet-ma.gov.

relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. All plans seeking Approval Not Required endorsement shall be accompanied by adequate evidence that there is practical interior access to house sites.

- B. "Approval Not Required" plan filing procedures. Persons seeking endorsement of plans "Approval Not Required" shall submit a sufficient number of such plans, either by registered mail or in person, to the Wellfleet Planning Board at the Town Hall, 300 Main Street, Wellfleet, MA 02667. In order to be included in the agenda for consideration at a Planning Board meeting the plan must be submitted to the Planning Board office before noon of the seventh day before the meeting. Any plans received after the deadline will automatically be carried over to the agenda for the following meeting, unless the Chair, with staff's recommendation, determines there are special circumstances that warrant a late submittal. The Applicant shall pay a fee as stated in these regulations. The Applicant shall also file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination.
- C. "Approval Not Required" plan action.
- (1) If the Board determines that the plan does require approval, it shall, without a public hearing and within 21 days of submission, notify the Applicant and the Town Clerk of the determination.
 - (2) If the Board fails to take action within 21 days of submission, the plan is automatically deemed not a subdivision plan and the Board shall forthwith make such endorsement. On its failure to do so forthwith, the Town Clerk shall issue a certificate to the same effect.
- D. Ways in existence. Existing ways will be determined by the Board to provide adequate access to qualify a plan as not constituting a subdivision only when the layout, design and construction meet the standards of these Rules and Regulations.

§ 300-2.4. Pre-submission review (sketch plan) of subdivision proposal.

Prior to investing in extensive professional design efforts for subdivision plans, it will often prove useful to review the proposed development of a parcel of land with the Board in an informal manner, in order that general approaches, and potential problems can be freely explored. Pencil sketches and other illustrations, which need not be professionally prepared, will assist the discussion, and might show some, but not all of the information shown on a Preliminary Plan. In some cases, pre-submission review may eliminate the advisability of submitting a Preliminary Plan. However, the pre-submission review provision is strictly a voluntary procedure left to the discretion of the Applicant. The pre-submission review has no legal status whatsoever.

§ 300-2.5. Preliminary plan.

A Preliminary Plan of a Residential Subdivision may, and a Preliminary Plan of a Nonresidential Subdivision shall, be submitted by the Applicant, in sufficient numbers for discussion and approval, modification or disapproval by the Planning Board and other boards

or commissions having jurisdiction over the lands involved. The submission of such a Preliminary Plan will enable the Applicant, the Planning Board, and other municipal agencies to discuss and clarify the problems of such a subdivision before extensive engineering costs are incurred in the preparation of the Definitive Plan.

A. Submission requirements for Preliminary Plans shall show:

- (1) The subdivision name, boundaries, any existing boundary markers, any significant features existing on the property, North point, date, scale, legend and title "Preliminary Plan";
- (2) The names of the record owner and the Applicant and the names of the designer, engineer or surveyor;
- (3) The names and addresses of record of all abutters, as determined from the most recent tax list;
- (4) The existing and proposed line of streets, ways, easements, any public or common areas and lots shown in a general manner;
- (5) A schematic representation of the proposed system of drainage, including adjacent existing natural waterways;
- (6) The approximate boundary lines of proposed lots, with approximate areas and dimensions;
- (7) The names, approximate location and widths of adjacent streets;
- (8) The topography of the land in a general manner, including areas of the tract suspected to be flood prone and/or wetlands;
- (9) A vicinity map of the plan showing the location of the parcel as it relates to areas of the community within at least 1/2 mile of the tract boundaries (suggested scale: one inch equals 2,000 feet);
- (10) The zoning classification, including overlay districts, if any, of the land to be subdivided;
- (11) Proposed sewage and water systems, if applicable, will be shown in a general manner.

B. Filing procedures for Preliminary Plans. An application for consideration of the Preliminary Plan, Form B,⁵ shall be accompanied by a sufficient number of prints of the plan and a filing fee as provided in these regulations. The Applicant shall also file a sufficient number of copies with other boards and commissions having jurisdiction over the lands involved. The Applicant shall give written notice to the Town Clerk of Wellfleet by delivery or by registered mail, postage prepaid, that the Applicant has submitted such a plan.

C. Plan action for Preliminary Plans. Within 45 days after submission of a Preliminary Plan, the Board shall either approve the plan with or without modifications, or the

5. **Editor's Note:** The subdivision forms are available from the Town offices or on the Town website: www.wellfleet-ma.gov.

Board shall disapprove the plan. In the case of disapproval, the Board shall state its reasons therefor. The Board shall notify the Town Clerk of its action in writing. The action of the Board shall be on two copies of the Preliminary Plan, referenced and attached to any conditions. One copy shall be returned to the Applicant and the other retained by the Board. Approval of the Preliminary Plan does not constitute approval of the subdivision for recording but does facilitate the procedure in securing approval of the Definitive Plan. The Rules and Regulations Governing the Subdivision of Land in effect at the time of its submission shall govern the Definitive Plan evolved from such Preliminary Plan, provided that the Definitive Plan is duly submitted within seven months from the date of submission of the Preliminary Plan and said Definitive Plan is ultimately approved. Such exemptions shall endure for eight years from the date of Definitive Plan approval.

§ 300-2.6. Definitive plan of subdivision.

The Definitive Plan of a subdivision shall conform substantially to the Preliminary Plan as approved but may constitute only that portion which is proposed to be recorded and developed at the time. The Subdivision Rules and Regulations and zoning in effect at the time of the submission of the Preliminary Plan shall govern the Definitive Plan if it is duly submitted within seven months. Applicants are strongly urged to schedule a pre-submission conference and site tour with the Planning Board and its staff to identify as early as possible any items requiring special attention.

- A. Submission requirements. An Applicant seeking approval of a Definitive Plan of a subdivision shall file with the Board the following:
- (1) All prior subdivision approvals associated with this land;
 - (2) The drawings of the Definitive Plan and a sufficient number of prints thereof, which shall be distributed to the Planning Board and for review to the following agencies: Conservation Commission, Department of Public Works, Fire Department, Police Department, the Board of Health and the Water Commissioners;
 - (3) A street network plan showing, at a minimum, proposed, existing, and adjacent streets, names and locations of abutters, North arrow, and any adjacent features;
 - (4) A properly executed application in the form (shown as Form B in the Appendix⁶) which form may be changed from time to time by the Planning Board;
 - (5) A list of the names and mailing addresses of all abutters, certified as complete by the Tax Assessor, plus a set of gummed mailing labels bearing these names and addresses plus a set of certified mailing materials, i.e., both (1) Receipts for Certified Mail and (2) Domestic Return Receipts, all appropriately and completely prepared for mailing;
 - (6) A filing fee as provided in the Planning Board Fee Schedule;

6. Editor's Note: The subdivision forms are available from the Town offices or on the Town website: www.wellfleet-ma.gov.

- (7) In addition to the filing fee, applications shall be accompanied by a check in accordance with Subsection K located herein, to be deposited into a Road Inspection Escrow Account within the Town Treasury, to be kept separate from other funds, the proceeds of which shall be drawn upon from time to time by the Board to pay for costs associated with the inspection of the Applicants and required public improvements;
- (8) A proposed covenant or bond in accordance with Subsection F, Performance guarantee;
- (9) Notice to Town Clerk. The Applicant shall give written notice to the Town Clerk by delivery or by registered mail, postage prepaid, that he has submitted such a Definitive Plan, accompanied by a copy of the application, within 48 hours of submission. If the notice is given by delivery, the Town Clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the Town Clerk as true, unless contrary is made to appear. If sent by registered mail, the date of the mailing shall be the date of submission of the Definitive Plan;
- (10) The Definitive Plan shall be considered submitted only when all plan requirements specified in Subsections A and B of this section are included, unless waived in writing by the Board, as provided in § 300-1.5;
- (11) The Planning Board shall require the submission of storm drainage runoff flow calculations in order to evaluate the drainage plan, including a statement by a professional engineer that all drainage structures shall be sized to properly handle the runoff for a twenty-five-year storm;
- (12) If, in the opinion of the Planning Board, the size, scale or location of the subdivision may result in a significant impact on the surrounding road system, the Board may require the Applicant to submit a traffic study. The study shall be prepared by a professional engineer specializing in traffic analysis, and identify, at a minimum, the following:
 - (a) Internal vehicular circulation patterns.
 - (b) Estimated daily and peak hour vehicle trips.
 - (c) The measured daily and peak hour traffic flows, both weekday and weekend (non-holiday), measured during the period between June 15 and September 15, or other times as the Board may deem appropriate, on public and private roads and key intersections expected to be impacted by the project.
 - (d) Proposed composite daily and peak hour traffic on public and private roads and key intersections: a documentation of impacts on level of service.
 - (e) Suggested remedial measures to mitigate the expected impacts of the proposed subdivision. Applicants are urged to meet with the Planning

Board or planning staff prior to preparation of the study to identify the study area and the appropriate elements of the traffic study.

- (13) The Applicant shall submit a proposed Homeowners' Association Agreement that will be registered with the Subdivision Plan, clearly stating the responsibilities of the homeowners for the upkeep of the roads and common facilities, in accordance with Subsection M.
- B. Contents of the Definitive Plan. A Definitive Plan of a subdivision shall be drawn by a registered land surveyor at a scale of one inch equals 40 feet, or such other scale as the Board may accept to show details clearly and adequately, but no smaller than one inch equals 100 feet. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision. The Definitive Plan shall show the following:
- (1) Subdivision name, if any; boundaries, existing and proposed boundary markers, North point, date, scale, legend and title "Definitive Plan";
 - (2) The names of the record owner(s) and the Applicant(s) and the Applicant's engineer and/or surveyor, and the seal and signature of said engineer or surveyor;
 - (3) The names of all abutters, as determined from the most recent local tax list;
 - (4) Each lot shall indicate which portions are buildable and shall exclude wetlands and setbacks from rivers, streams, vernal pools and protected areas. This information shall appear on every sheet in the plan;
 - (5) The existing and proposed lines of streets, ways and easements and their widths; sidewalks, footpaths, bridle and bicycle paths and their widths; and any public or common areas within the subdivision. The proposed names of ways shall be shown; however, they shall not be final until they have been approved by the Board;
 - (6) Sufficient data to determine readily the location, bearing, and length of every street and way line, lot line, boundary line. At least one bound on the subdivision shall show the x and y coordinates relating to the Massachusetts Coordinate System;
 - (7) The location of all permanent monuments properly identified as to whether existing or proposed;
 - (8) Boundary lines of lots, lot areas and lot numbers;
 - (9) Names, location and widths of adjacent streets and streets approaching the subdivision;
 - (10) On a separate sheet, the Applicant shall show the topography of the land (existing and proposed) at two-foot contour intervals; location of areas of the tract suspected to be flood prone and/or wetlands, and existing and proposed watercourses and ponds. Elevations must refer to a known benchmark using the half-tide datum plan established by the U.S. Geological Survey or the National Geodetic Survey;

- (11) A vicinity map showing the location of the parcel as it relates to areas of the community within at least 1/2 mile of the tract boundaries (suggested scale: one inch equals 2,000 feet). The vicinity map shall reference the number of the map and parcel as it is recorded on the official Assessors' maps of Wellfleet;
 - (12) A signature block to record the action of the Board shall be located above the title block in the same lower right area of each sheet;
 - (13) Location of curbs, gutters and berms;
 - (14) A typical cross section of road(s) within and outside the subdivision proposed to be constructed or improved shall be shown on a separate sheet;
 - (15) Proposed system of storm drainage, including natural waterways, man-made systems, drainage easements, both within and adjacent to the limits of the subdivision shall be shown on a separate sheet;
 - (16) Profiles of proposed streets and utilities may be made on a separate sheet and shall show existing center lines, existing side lines, proposed center lines with elevations every 50 feet, except that in vertical curves elevations shall be shown at every twenty-five-foot interval; all existing intersecting walks and driveways, if any, shall be shown on both sides as well as the location of existing and proposed drainage lines and their appurtenances; sizes of all pipes shall be shown as well as inverts of all pipes at each man-hole or catch basin, together with invert elevation and rim elevation of each man-hole or catch basin; all center lines, street lines and curblines with elevations every 25 feet of streets for 200 feet either side of each intersection on a connecting street shall be shown. Plans, profiles and cross sections of access roads to be improved shall be prepared at the same scale and in the same format as those drawn for proposed streets;
 - (17) Each plan shall contain a note or notes as to the compliance of each lot shown thereon with the lot area requirements as provided in the Wellfleet Zoning Bylaw.⁷
- C. Review by Board of Health.
- (1) At the time of filing of the Definitive Plan, the Applicant shall also file with the Board of Health a sufficient number of copies of the Definitive Plan and comply with other Board of Health requirements, including percolation tests and test excavations.
 - (2) The Board of Health shall, within 45 days after filing of the plan, report to the Planning Board in writing, with their recommendation of approval or disapproval of said plan. If the Board of Health disapproves said plan, it shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public's health. The Planning Board will not act on the application until after the Board of Health has acted or after 45 days.
- D. Review by other officials. Before the Definitive Plan is submitted, the Applicant shall consult with and obtain written statements that the proposed improvements shown on a

7. Editor's Note: See Ch. 235, Zoning.

separate Utility Plan or Road Plan and Profiles are laid out to the satisfaction of the following authorities and for the facilities listed below:

- (1) If applicable, the Chief of the Fire Department as to the location of hydrants, adequacy of water flow at the hydrant, the layout of a fire alarm system, including location of boxes and location and installation of emergency water supply systems for firefighting in the subdivision, or nearby.
 - (2) The Department of Public Works as to the requirements for provision for connections to and compatibility with the sewer system and, if required, the layout and design of the necessary connecting mains, laterals, manholes, and stubs for such system. In such cases, review by the DPW Superintendent will include the profiles of the streets.
 - (3) The Board of Water Commissioners, if appropriate, as to the location and size of water mains, including service to the fire hydrants.
 - (4) The Conservation Commission as to the requirements under the Wetlands Protection Act (MGL c. 131, §§ 40 and 40A), the ACEC and the Rivers Act.
- E. Staking of subdivision. In order to facilitate on-site review by the various reviewing agencies, the Applicant shall, before the time of filing of the Definitive Plan, stake and brush cut to a maximum of five feet the center line of all proposed ways in the subdivision. Each stake shall be a maximum of 50 feet from the prior stake and shall identify the location it represents on the plan.
- F. Performance guarantee. Before endorsement of its approval of a Definitive Plan, the Planning Board shall require that the construction of ways and the installation of municipal and private utility services be secured by one of the four methods listed below, or a combination of methods which, from time to time, may be varied by the Applicant upon approval of the Board. Any form of the performance guarantee under Subsection F(1) and (4) below shall be as agreed by the Board and shall be contingent upon the completion of said improvements within two years of the date of the Agreement. At the discretion of the Board, a time extension may be granted for a period not to exceed one year; provided such an extension may be conditioned upon an increase in the amount of such bond or security as determined by the Board. The failure of the Applicant to complete the required construction of ways and installation of municipal services within two years from the date of the Agreement may be grounds for the rescission of the approval of the plan.
- (1) By a bond, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the Planning Board shall require that the Applicant specify the time within which such construction shall be completed. The bond shall be at least three times the estimated costs to complete the work required, with a minimum value of \$50,000.
 - (2) By a deposit of money or negotiable securities sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal and private utility services required for lots in the subdivision shown on the plan, and the Planning Board shall require that the Applicant specify the time within which such construction shall be completed.

The deposit shall be at least three times the estimated costs to complete the work required, with a minimum value of \$50,000.

- (3) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provided that no lot shall be built upon until such ways and services have been provided to serve each lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board. A suggested, but not required, form of the covenant is given by Form C in the Appendix;⁸ which form may be changed from time to time by the Planning Board. If the Applicant elects to secure by covenant, the Applicant will file a status report with the Planning Board on every third anniversary of the approval. Failure to file that report may be cause for rescission of the approval. Any covenant given under the preceding paragraph shall be either inscribed on the plan or contained in a separate document, referred to on the plan.
- (4) By delivery to the Planning Board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the Applicant by the lender, which agreement shall be executed by the Applicant and the lender and shall provide for the retention by the lender of funds sufficient in the opinion of the Planning Board and otherwise due the Applicant to secure the construction of ways and the installation of services. Said agreement shall also provide for a schedule of disbursements which may be made to the Applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the Applicant, any funds remaining undisbursed shall be available for completion.
- G. Public hearing. Before approval, modification and approval or disapproval of the Definitive Plan; a public hearing shall be held by the Board after proper advertisements and notification of Abutters as provided by MGL c. 41, § 81T of the Subdivision Control Law.
- H. Plan action.
- (1) After the public hearing, the Board shall approve, or, if such plan does not comply with the Subdivision Control Law, these Rules and Regulations or recommendations of the Board of Health, shall modify and approve, or disapprove the Definitive Plan. In the event of disapproval, the Board shall state in detail wherein the plan does not conform to the Rules and Regulations and recommendations of the Board of Health and shall revoke its disapproval and

8. Editor's Note: The subdivision forms are available from the Town offices or on the Town website: www.wellfleet-ma.gov.

approve a plan which, as amended, conforms to such Rules and Regulations or recommendations.

- (2) In the case of a nonresidential subdivision where a Preliminary Plan has been duly submitted and acted upon or where 45 days have elapsed since submission of the said Preliminary Plan, and then a Definitive Plan is submitted, and failure of the Planning Board either to take final action or to file with the Town Clerk a certificate of such action regarding the Definitive Plan submitted by an Applicant within 90 days after such submission, or such further time may be agreed upon at the written request of the Applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the Planning Board with the Town Clerk.
- (3) In the case of a subdivision showing lots in a residential zone, where a Preliminary Plan has been acted upon by the Planning Board or where at least 45 days have elapsed since submission of the Preliminary Plan, and a Definitive Plan is submitted, the failure of the Planning Board to take final action or to file with the Town Clerk a certificate of such action on the Definitive Plan within 90 days after such submission, or such further time as may be agreed upon at the written request of the Applicant, shall be deemed to be an approval thereof. Notice of such extension shall be filed forthwith by the Planning Board with the Town Clerk.
- (4) In addition to filing a certificate of its action with the Town Clerk, a copy of which shall be recorded by the Town Clerk, in a book kept for this purpose, the Board shall also send notice of such action by registered mail, postage prepaid, to the Applicant at the address stated on the application.
- (5) In the case of approval of a plan by action of the Board, after the expiration of 20 days without notice of appeal to the Superior Court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the Board shall cause to be made upon the plan a written endorsement of its approval. The Applicant shall have submitted to the Board a set of plans appropriately prepared for said endorsement and shall have included with these plans a road layout plan. In case of the approval of such plan by reason of the failure of the Board to act within the time prescribed, the Town Clerk shall, after the expiration of 20 days without notice of appeal to the court, or, if appeal has been taken, after receipt of certified records of the court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the Board failed to take action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the Board, or, in the case of the certificate, by the Town Clerk, to the person who submitted such plan.

I. Modification, amendment, or rescission of approved plans.

- (1) The Board, on its own motion or on the petition of any interested person, has the power to modify, amend, or rescind its approval of a plan, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the Subdivision Control Law and these Rules and Regulations

relating to the submission and approval of a plan shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan that has been changed under this section.

- (2) No modification, amendment or rescission of the approval of a plan or change in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon.
 - (3) So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan, nor change in a plan under this section, shall take effect until:
 - (a) The plan as originally approved, or copy thereof and a certificate copy of the vote of the Board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded;
 - (b) An endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded; and
 - (c) Such vote is indexed in the grantor index under the names of the owners of record of the land affected.
 - (d) So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until such modification, amendment or change has been verified by the Land Court pursuant to MGL c. 185, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to MGL c. 185, § 114.
- J. Appeal by any person. Any person, whether or not a party to the proceedings, aggrieved by a decision of the Board of Appeals or by the Planning Board concerning a plan of a subdivision, or by failure of such a plan within the required time, or any municipal officer or board, may appeal to the Superior Court sitting in equity for Barnstable County, provided that such appeal is entered within 20 days after such decision has been recorded in the office of the Town Clerk or within 20 days after the required time aforesaid, as the case may be, and notice of such appeal is given to the Town Clerk so as to be received within 20 days.
- K. Inspection of improvements.
- (1) General procedure and inspection escrow funds.
 - (a) Prior to the endorsement of a plan as approved, and prior to the return of such plan to the Applicant, the Applicant shall be required to deposit with the Treasurer of the Town an amount equal to \$10 times the number of linear feet of proposed or reconstructed ways located within and outside of the boundaries of the subdivision, with a minimum deposit of \$5,000. The Planning Board shall direct the Treasurer to expend such funds to pay for

all reasonable design review, construction inspection services and subdivision modification design reviews by its engineer or other professional persons required to assist the Planning Board in its determination as to the adequacy of the Definitive Plan with regard to the Subdivision Control Law and these Rules and Regulations and as to the adequacy of the subdivision construction and any design modifications to the plan and changes made in the field.

- (b) However, no such payment shall be directed until 14 days after a photocopy of the bill purporting to represent charges for such services and review has been sent, by certified mail, to the Applicant. The balance of this account shall at no time be less than 1/2 the initial deposit, and the Applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit upon notice from the Board, by first class mail, that the amount on deposit has been decreased by the expenditures described herein to an amount at or near 1/2 the initial deposit. The account shall be closed and the remaining funds returned to the Applicant when, in the opinion of the Board, all work required by the approved plan, any conditions placed upon such approval, and any subsequently approved modifications and these rules, and all inspections required by these rules, have been completed.
 - (c) The failure of the Applicant to make the initial deposit, and to maintain the account in accordance with this section, shall be grounds for rescission of the approval of the plan and for disapproval.
- (2) The full cost of any special non-scheduled inspections deemed necessary by the failure of construction to proceed entirely in accordance with the approved plan, or as a result of any question concerning the accuracy of any data provided by the Applicant at any time, shall be borne by the Applicant.
 - (3) In the event the Planning Board denies approval of a plan, the account shall be closed and the unexpended funds returned to the Applicant within 21 days from the date the subdivision plan was denied an approval.
 - (4) The Planning Board in its discretion may waive or refund the inspection fee in whole or in part to the extent the Board determines that professional or other services were not required in consideration of the Definitive Plan.
- L. "As Built" plans, profiles and cross-sections.
- (1) Prior to release from the performance guarantee of the last 20% of the lots in a subdivision, the Applicant shall submit "As Built" plans and profiles, and cross-sections showing the actual constructed interior and access road(s), including any curbing, shoulders, sidewalks/bicycle paths, drainage facilities, invert and top of frame elevations for drainage structures, utility service connections (including sewer, water, electric, etc.), utilities (including sizes, materials, and locations), "as built" contours for detention and retention basins with contour intervals matching those depicted on the subdivision plan, landscaping installed as per the Definitive Plan approval, and other appurtenances as may have been required to be constructed. All As-Builts of all drainage facilities and utilities shall be

completed, inspected and submitted before backfilling of such facilities shall proceed.

- (2) "As Built" plans, profiles and cross-sections shall be prepared at the same scale and in the same format as those which accompanied the Definitive Plan. Plans and profiles shall be prepared using data points no less frequently than every 50 feet, except within 50 feet on either side of any catch basins, in which case data points shall be every 25 feet. Plans and profiles shall also show the locations of structures, such as drainage facilities, water lines, sewer lines, electrical, telephone and cable TV lines and their appurtenances, and all concrete monuments as specified in § 300-4.2.
- (3) Cross-section of the right-of-way showing paving surface, curbing, shoulders and sidewalks/bicycle paths shall be submitted for section every 200 feet as measured from the center line of adjoining streets. Nine elevation points shall be shown across the right-of-way, including center line of road, five feet off center line in both directions, both edges of surface, edge of right-of-way, top of slope or toe of slope and edge of shoulders. Two-inch or greater core samples shall be taken and reported along with each cross-section to determine thickness of paving material, said samples to be determined by the Planning Board.
- (4) "As Built" plans, profiles and cross-sections shall be prepared by, bear the stamp of, and be signed by a Registered Land Surveyor or Registered Engineer, and shall include the statement: "I hereby certify that the plans, profiles and cross sections included herein were prepared as the result of survey work performed on the ground and represent conditions in the field as they existed on (date)." If the "As Built" Plan indicates changes from the original approved plan, it shall be at the discretion of the Planning Board as to corrective actions.

M. Homeowners' Association requirements: roadway maintenance and open space management.

- (1) The Planning Board shall require the formation of a Homeowners' Association for subdivisions containing common open areas and/or ways which will remain private, the purpose of which is to maintain said private ways and open spaces in good condition for the protection of the lot owners in the subdivision.
- (2) In cases where a homeowners' association is required, the form and content of which shall be subject to the review and approval of the Planning Board, which shall provide for the following:
 - (a) Establishment of a maintenance trust fund to be drawn upon from time to time by the association to perform needed maintenance to and reconstruction of private roads, as well as maintenance of common open spaces in the subdivision. Said fund shall consist of two parts.
 - [1] A maintenance endowment shall be established by the developer in the amount of \$500 per lot, prior to the release of any lot in the subdivision.
 - [2] Annual maintenance deposits shall consist of interest generated by the endowment and annual assessments made to association members, the

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amount of such annual assessment to be established by majority vote of the Association,

[3] Said maintenance trust fund shall not fall below the initial balance.

- (b) The Homeowners' Association shall own all open spaces, common property, and laid-out roads.
- (c) The Homeowners' Association shall be binding on all owners of the lots within the subdivision.

ARTICLE III

Subdivision Layout Design Standards**§ 300-3.1. Zoning.**

All lots intended for building of dwellings that are shown on the plan shall comply with area, frontage and other requirements of the Wellfleet Zoning Bylaws.⁹

§ 300-3.2. Public open spaces.

The Planning Board may require reservation of open space for up to three years to give the Town the opportunity to purchase it for park or recreation purposes. The Planning Board shall not require reservation of more than 15% of the gross area of the subdivision for such purposes and shall not require reservation in subdivisions smaller than four acres, except in extraordinary circumstances.

§ 300-3.3. Flood prone areas.

All subdivisions shall be designed with due regard to the prevention of loss of life and property due to flooding.

§ 300-3.4. Protection of natural features.

Due regard shall be shown for all natural features, such as large trees, watercourses, scenic points, historic locations and similar community assets which, if preserved, will add attractiveness and value to the neighborhood.

§ 300-3.5. Further subdivision.

In case a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the logical and economic extension of streets, utility easements, drainage ways and public areas into such parcels.

9. Editor's Note: See Ch. 235, Zoning.

§ 300-3.6. Reverse lot frontage.

The Board may require that access to a proposed lot not be from existing major thoroughfares.

§ 300-3.7. Street system.

The street system shall comply with the following requirements for locations and alignments:

- A. Streets shall be continuous and in alignment with existing streets as far as practicable.
- B. Provisions shall be made for the proper projection of streets if adjoining property is not subdivided.
- C. Streets shall be designed to provide the most direct and convenient access to the site for normal traffic and emergency vehicles, while still respecting the natural contours of the land as far as possible.

ARTICLE IV

Design Standards and Required Improvements**§ 300-4.1. General.**

Subdivision plans shall comply with the following minimum design standards. Applicants are encouraged to exceed these minimum standards whenever possible. It is difficult to create design standards appropriate to all types and sizes of subdivisions. While the standards included here are applicable to the vast majority of cases, there may be limited instances where different standards may apply, particularly for commercial and large-scale development. For this reason, Applicants are urged to discuss their proposals with the Planning Board staff and Board members early in the concept stage of planning, before money is spent on the final design, in order to determine if any different or additional standards would apply due to the unique character of the proposal.

§ 300-4.2. Monuments.

- A. Monuments shall be installed on both sides of the street:
 - (1) At all intersections;
 - (2) At all points in change of direction or curvature; and
 - (3) No less frequently than one monument every 500 feet for straight sections.
- B. Monuments shall be installed at each lot corner.
- C. All monuments shall be of reinforced concrete, five inches by five inches by 30 inches. Monuments to be set shall be shown on "As Built" plans as a solid box.

§ 300-4.3. Roads.

- A. Right-of-way width shall be not less than 40 feet. All roadways shall be paved to a width of 20 feet, which shall include a paved berm. Said berm shall be a minimum of 18 inches on roads with grades in excess of 3%, and in other locations as deemed necessary by the Planning Board.
- B. All roads shall be designed so that they will provide safe vehicular travel. Due consideration shall be given by the Applicant to the attractiveness of the street layout.
- C. Provision shall be made for the proper projection of roads, or for access to adjoining property which is not yet subdivided. Reserve strips prohibiting access to roads or adjoining property shall not be permitted, except where, in the opinion of the Planning Board, such strips are in the public interest.
- D. Street jogs with center line offsets of less than 125 feet should be avoided. The minimum center line radii of curved streets shall be 125 feet. Greater radii may be required for principal streets.
- E. There shall be access to all lots via streets and portions of streets, no part of which shall be less than 10 feet elevation.
- F. Center line grades of streets shall be not less than 0.5%. Center line grades shall not be more than 10.0% for principal streets.
- G. No street shall intersect any other street at less than 60°.
- H. Property lines at street intersections shall be rounded with a radius of not less than 20 feet.
- I. Changes in grading exceeding 1/2 of 1% shall be connected by vertical curves of sufficient length.
- J. Sight distances for subdivision roads intersecting other roads may not be less than 300 feet.

§ 300-4.4. Dead-end streets.

- A. Dead-end streets shall not be longer than 1,000 feet unless, in the opinion of the Board, a greater length is necessitated by topography or other local conditions.
- B. The road layout on dead-end streets shall be provided at the closed end with a turnaround having an exterior layout radius of at least 45 feet. The roadway shall have an exterior radius of at least 35 feet. An island suitably landscaped with grass, ground cover, trees, natural rock and/or elements blending with the surroundings shall be provided in the center of the turnaround with a radius of at least 15 feet.
- C. An island shall not be required in a temporary turnaround; however, the turnaround shall be paved. When the dead-end street is extended, the turnaround easement shall terminate and the Applicant shall be required to remove, re-grade and restore the turnaround area to the satisfaction of the Planning Board.

§ 300-4.5. Storm drainage.

- A. Storm drains, culverts, and related facilities shall be designed to permit the unimpeded flow of all natural watercourses, to ensure adequate drainage of all low points along streets, to control erosion, and to intercept stormwater run-off along streets at intervals reasonably related to the extent and grade of the area drained.
- B. All drainage structures shall be sized to handle a twenty-five-year storm.
- C. Generally, catch basins or other provisions for drainage will be required on both sides of the road at intervals not over 400 feet, and at all sags or low points along roads.
- D. Open drainage systems of swales, ridges, and slopes shall be designed to fit the natural contour of the land as much as possible. Disturbed land shall be landscaped to conform to the surrounding area and planted to control erosion and siltation. In no case shall side slopes in disturbed areas be greater than 25%. Swales and drainage channels shall have a minimum grade of 0.5% and a maximum grade of 5%, although for small areas draining not more than 0.5 acre, grades of up to 10% are permissible. The ground shall be sloped so that there is no stagnant water or artificial pools on the site attributable to the open drainage system. Drainage channels and swales shall be provided with easements which shall also permit access by the Town of Wellfleet for maintenance purposes. Drainage channels and swales shall be shown on all plans.
- E. Where the Planning Board determines that the public interest and best interest of the Town and the subdivision will be served by extension of the drainage system outside the boundaries of the subdivision, the Planning Board may require the Applicant, at his own expense, to continue the layout and construction of the drainage system to a point outside the boundaries of the subdivision where the drainage system may be connected to, and be compatible with, either a natural waterway or an existing public drainage system.

§ 300-4.6. Utility easements.

If applicable, easements for utilities, bicycle paths and pedestrian paths shall be provided and recorded as required and shall be at least 20 feet wide for water mains, sanitary sewers and storm drains, 10 feet wide for underground electrical, telephone and cable TV lines, and 15 feet wide for bicycle and pedestrian paths. Slope easements and site and/or scenic easements may be required where deemed necessary. Where a subdivision is traversed by a watercourse, drainage way, channel, other stream or wetland, the Board may require the provision of an easement of adequate width to conform substantially to the line of such watercourse, drainage way, channel, stream or wetland and to provide for the possibility of flood, protection of banks, future maintenance or construction and other necessary purposes.

§ 300-4.7. Adequate access to site.

No subdivision shall be approved which does not have adequate access to the site. The Applicant shall show to the satisfaction of the Board:

- A. Adequate vehicular access to the subdivision has been provided by a way, or ways, having sufficient width, suitable grades and adequate construction to provide for

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vehicular traffic and to ensure direct ingress and a rapid response time for emergency vehicles. The Board may require that secondary access be provided for reasons of public safety and convenience.

- B. Adequate utility access from existing utility lines to the subdivision designed to deliver underground utility service to serve the land and buildings erected or to be erected thereon.
- C. The legal right to pass and re-pass over such access way or ways and the legal right to install underground utilities in the proposed location.

§ 300-4.8. Guard rails and posts.

Guard rails or posts shall be installed where necessary.

§ 300-4.9. Street signs.

Street signs conforming in design to the pattern in use by the Town and bearing the names of the intersecting streets as indicated on the Definitive Plan shall be installed at all intersections of streets in the subdivision. Street names shall appear on both sides of the sign if placed on a post.

§ 300-4.10. Utility lines.

Utility lines shall be placed underground in accordance with the Massachusetts Department of Public Utilities' regulations. All lines shall be placed in conduits in all locations where these lines pass under roadway surfaces.

§ 300-4.11. Landscaping.

- A. A landscape plan for the purposes of restructuring the area after construction shall be presented as part of each subdivision plan. This plan shall clearly show:
 - (1) The location and size of all proposed trees and other plantings; and
 - (2) The location and size of all existing trees and other vegetation on the site which is to be preserved.
- B. The following standards shall apply:
 - (1) Existing vegetation shall be preserved wherever possible on every site. All existing trees over twenty-inch caliper, as well as any tree which has been flagged by the Planning Board or its designee, shall be shown on the landscape plan.
 - (2) New tree plantings shall be of a type which is resistant to breakage and is long-lived, clean, and appropriate to the local landscape and growing conditions.
 - (3) Trees and plants which are invasive shall be avoided.

- (4) The Applicant shall be responsible to ensure the survival of all new trees and plantings for a period of one year from the date of their installation. A security, in an amount deemed sufficient by the Board, shall be held by the Board and released upon its certification that the landscaping requirements, including survival of all new plantings, have been met.

§ 300-4.12. Fire alarm systems and emergency water supply systems for fire-fighting.

- A. Subdivisions of 15 lots or greater not served by a public water system shall be provided with an emergency water supply system or, where a natural pond exists, a dry hydrant system.
- B. The location, installation and final testing for said systems shall be subject to the approval of the Wellfleet Fire Department and shall be of a design capacity as the fire load for the development may require. A natural pond proposed to be used as a backup source for water for fire-fighting shall have adequate access to such pond to accommodate the weight and size of a fire pumper truck.

§ 300-4.13. Bridges.

All bridges shall be built according to Massachusetts standards.

ARTICLE V

Specifications for Construction of Required Improvements

§ 300-5.1. General.

- A. All improvements specified or implied on the Definitive Plan shall be designed and constructed by the Applicant in accordance with the provisions of this article of the Rules and Regulations or as directed by the Board. Items not specifically mentioned herein shall be constructed in accordance with the Standard Specifications for Highways and Bridges of the Massachusetts Department of Public Works,¹⁰ and including revisions thereto (hereinafter referred to as the "Mass. DPW Specifications"), unless specifically directed otherwise by the Board.
- B. All work performed by the Applicant as a consequence of these Rules and Regulations will be subject to the review and acceptance or approval of the Board. The Board may employ a registered professional engineer to act as its agent for the inspection and supervision of the work, and if so employed, the costs shall be paid by the Applicant. In order for the Board to properly inspect the work as it progresses, the Applicant shall keep the Board, or its Agent, informed of the progress of the work, and shall at any time provide safe and convenient access to all parts of the work for inspection by members of the Board or its Agent or such persons as the Board may designate. No work will be approved which has been covered prior to inspection by subsequent work. Reference should be made to Article VI for specific inspections required by the Board.

10. Editor's Note: Now the Massachusetts Department of Transportation (MassDOT).

§ 300-5.2. Subdivision layout.

The subdivision, including all way lines and drain lines and municipal services, shall be laid out as to line and grade by a registered land surveyor. Any work which, in the opinion of the Board, has not been properly laid out or does not conform to the plans may be checked by a registered land surveyor employed by the Board. If the Board determines that such work does not conform to the plan, the Applicant shall pay all costs which the Board incurs as a consequence of checking the work. The Board may require the removal and correct replacement of any work which has been incorrectly laid out.

§ 300-5.3. Road preparation and construction.

- A. The entire width of the traveled way plus four feet on each side shall be cleared of all stumps, brush, roots, boulders, trees and like material, not intended for preservation. All such materials shall be disposed of outside of the subdivision, unless authorized or required by the Board.
- B. All material not suitable as foundation material (see below) shall be removed from an area four feet wider than the paved width to provide for a two-foot shoulder on each side of the paved area, and to a depth of at least three inches below the finished grade. Peat, silt, loam, or similar yielding material or clay, shall be removed to a firm foundation. Sub-drains shall be installed if deemed necessary by the Highway Surveyor.
- C. Traveled ways shall be provided with a foundation consisting of at least six inches' compacted thickness of reprocessed asphalt. All fill material which may be required within the roadway shall be of clean sand or gravel, and shall be placed in lifts not to exceed 12 inches, and compacted.
- D. The pavement shall be paved in two courses of Class 1 bituminous concrete. The pavement shall be placed with a 2-1/2-inch binder course and a 1-1/2-inch top course. No pavement work shall be done during rainy weather, upon saturated surfaces, where water is standing, where the temperature is lower than 40° F., or where frost is in the ground.
- E. Pitched shoulders shall extend two feet immediately outside the treated surface. No shoulder slopes resulting from grading of streets shall exceed one foot vertical to three feet horizontal in fill, one foot vertical to two feet horizontal in cut, or one foot to three quarters of a foot in ledge. The two-foot shoulder shall be spread with four inches of loam, and seeded with grass seed. The remaining area disturbed during the construction program shall be cleared of rocks, stones, or other debris and also spread with four inches of loam, and seeded with grass seed. The plane of the loam on the strip between the sideline of right-of-way and the shoulder shall be two inches above the plane of the loam and the seeded shoulder. The Planning Board may require flatter slopes if safety is considered to be an overriding concern. Slope easements or retaining walls shall be employed where slopes cannot be contained within road sidelines. Land between the outside of the layout and the street pavement, and driveway entrances, shall be so graded as to prevent surface water on the street from draining onto private land, except as designed ponding areas.

- F. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to retard siltation.

§ 300-5.4. Slope stabilization and erosion control.

- A. Adequate erosion protection measures (vegetative and/or structural) shall be made to prevent surface water from eroding cut and fill side slopes, road shoulders and other areas brought to final grade and to avoid sedimentation in nearby wetlands and ponds. The Applicant shall describe in the application his plan for minimizing erosion and also a proposed method for controlling airborne dust during construction and before landscaping and ground cover has rooted and grown sufficiently to retard erosion.
- B. Erosion protection measures may include the use of mulches and temporary or permanent cover crops. Types of mulch material effective for erosion control are shredded or chopped cornstalks, hay, straw and wood chips. Mulch areas damaged after heavy rainfalls, severe storms and construction activity shall be repaired as soon as discovered.
- C. Where plantings are on areas subject to mulch removal by wind or water flows or where side slopes are steeper than 3:1 or higher than 10 feet above the road level, the mulch shall be anchored. Anchoring methods may include tucking the mulch into the soil with a straight-blade disk, stapling netting (cotton or paper) over the mulch or driving pegs into the mulched area at intervals of about four feet and interlacing them with twine.
- D. The Board may require temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes and land grading, where applicable, or such other mechanical measures as are necessary to intercept and divert surface water runoff. Retaining walls may be required where side slopes are steeper than 3:1.

ARTICLE VI

Inspections

§ 300-6.1. General.

- A. All work performed as a consequence of these Rules and Regulations shall be subject to the review of the Board, which shall approve and accept or disapprove and reject each phase, or portion, of such work and at completion shall recommend the acceptance of all work or disapproval of the work with reasons therefor. The Board may employ a registered professional engineer to act as its agent in the inspection of the work to insure compliance with these Rules and Regulations and to report to the Board his recommendations as to approval or disapproval of the work. Such engineer will make certain inspections as prescribed herein in order to check the adequacy of the work at various stages prior to such work being covered by subsequent work. The Board, its engineer, and such other persons as the Board may designate, shall have the right to inspect the work at any time. The Applicant shall at any time provide safe and convenient access to all parts of the work for inspection by the Board or its authorized agents.

- B. All work which has been disapproved or is not acceptable to the Board shall be removed and replaced or otherwise corrected to the point of complying with the requirements of the Board for acceptance. Any work which has been covered by subsequent work prior to acceptance, or is otherwise not available or obscured to the point of rendering inspection of the work difficult, shall be considered to be not acceptable to the Board. Such subsequent work shall be removed as directed by the Board or its Agent to insure availability of the work to be inspected as required herein. The release of the performance guarantee shall depend upon the acceptance of all work prescribed herein and as shown on the Definitive Plan.
- C. At points indicated in § 300-6.4, the construction of the required improvements shall be inspected by the Board or its Agent. Unless approval of the work completed, including approval of materials used, to each such point has been given in writing, no further work shall be commenced. Such inspections may include the taking of certain samples for laboratory analysis or testing. In such cases, the Applicant shall insure that the Board or its Agent is in no way hindered or obstructed in the course of obtaining such samples. Where such samples are removed from the completed work, the Applicant shall replace and restore such work, to the satisfaction of the Board or its Agent, to its condition prior to the taking of the sample.

§ 300-6.2. Notification of required inspections.

- A. The Planning Board or its designated agent shall be notified at least 48 hours before the completion of each of the stages listed in § 300-6.4, in order that they may arrange for proper inspection and approval of the work done. Each stage must be approved by the Planning Board or its Agent before work on the subsequent stage can be started. If the work is not disapproved for cause within five business days, it will be deemed approved.
- B. In the event the Board or its Agent makes an inspection of the work at the time designated and finds that such work is not at the proper stage of completion or that the work has been covered or otherwise obscured, the Board or its Agent shall notify the Applicant as to the additional steps the Applicant shall take to complete the work to the point required, or to the extent the work shall be uncovered or exposed to full view. The Applicant shall notify the Board or its Agent again when the work is ready as prescribed in Subsection A.
- C. The Applicant shall be liable for costs and fees incurred by the Board as a result of requests by the Applicant for an inspection of the work which, in the opinion of the Board, was not an acceptable stage of completion for such inspection.
- D. To defray the cost of each re-inspection of the same improvement caused by the failure of such improvement to meet the applicable specifications, the Applicant shall at the time of each request for each subsequent inspection pay the Town of Wellfleet the full amount reasonably necessary to cover the costs of such re-inspections.

§ 300-6.3. Lines and grades.

Prior to the inspection of any phase of the work, it shall be the Applicant's responsibility to provide sufficient line stakes and grade stakes to insure that a proper inspection may be made. These horizontal and vertical control stakes must be laid out to conform to the lines and grades shown on the approved Definitive Plan or any approved amendment thereto.

§ 300-6.4. Required inspections.

The following inspections of the required improvements shall be required by the Board; such inspections are to be conducted in a timely manner.

- A. Inspection No. 1: Excavation Prior to Sub-Grading. An inspection shall be made of the work upon completion of all clearing, grubbing and excavation and all work incidental thereto as may be required. No fill shall have been placed at the time of this inspection.
- B. Inspection No. 2: Subsurface Grading and Filling. An inspection shall be made of the compacted fill as may be required to bring the roadways to their proposed grades. The Applicant shall notify the Board or its Agent as to his source of fill as soon as such information is known so that it may be determined if samples and analysis are required. The Applicant is advised not to proceed with the filling operation until such time as the Board or its Agent notifies the Applicant that the proposed fill is acceptable. If the Applicant proceeds with the fill prior to such notice, he does so at his own risk.
- C. Inspection No. 3: Drainage Facilities and Utilities. An inspection will be made of the completed drainage facilities and all utilities, and all As-Builts shall be completed, inspected and submitted before backfilling shall proceed. At the same time or such other time as the work may be available, an inspection will be made of the completed municipal services (without backfill) as required by the Definitive Plan. The inspection of the required municipal services will be made by the agency responsible for the particular service. Each agency so involved will notify the Board or its Agent of the approval of such work. Backfill of any portion of the municipal services shall not be made until after receipt of notification of approval or acceptance by the Board or its Agent, or the agency responsible.
- D. Inspection No. 4: Roadway Foundation. An inspection will be made of the compacted roadway foundation.
- E. Inspection No. 5: Pavement Surface Course. An inspection will be made of the completed roadway pavement. Samples of the mix may be taken by the Board or its Agent for the purposes of determining if the roadway specifications and pavement thickness meet the requirements of the approved roadway section as contained within § 300-5.3.
- F. Inspection No. 6: Final. An inspection will be made of all work as required on sidewalks, curbing, landscaping, seeding, side slopes, monuments, bounds and cleanup.

§ 300-6.5. Inspections do not create responsibility.

Any inspection done, or not done, by the Planning Board, or its representative, does not create a liability for the work by the Planning Board.

ARTICLE VII

Employment of Outside Consultants**§ 300-7.1. General.**

The Planning Board may determine that the size or complexity of a proposed subdivision or its impacts warrant the services of outside consultants (including but not limited to engineers, planners, lawyers, hydrogeologists, or others) for plan review, impact analysis, inspections, or other technical assistance in relation to the proposal. Such professionals shall be selected and retained by the Planning Board as provided in MGL c. 44, § 53G, with the reasonable costs for their services to be paid by the Applicant.

§ 300-7.2. Selection and administrative appeal.

The Applicant shall be notified in writing with the name of the selected consultant(s) at least seven calendar days prior to initiation of the consultant's efforts, unless this notice period is waived in writing by the Applicant. The Applicant may administratively appeal the selection of the consultant(s) to the Selectboard. The grounds for such an appeal shall be limited to claims that the proposed consultant has a conflict of interest or does not possess the minimum required qualifications. Such an appeal may be initiated by the Applicant filing notice with the Town Clerk within five working days after the Board's date of notice of its selection. The consultant shall not begin its services until any appeal has been decided or 30 calendar days have elapsed without a decision by the Selectboard, in which case the selection of the Planning Board shall stand. Required time limits for action by the Board upon an application shall be automatically extended by the duration of the administrative appeal.

§ 300-7.3. Funding.

The Applicant shall file with the Board an amount of money equal to the estimated cost for the services of the consultant(s), as determined by the Board. The cost will be estimated so as to be generally proportional to the size and complexity of the project, and the number of reviews and meetings required. The funds shall be deposited by the Town Treasurer into a special interest-bearing account as provided by MGL c. 44, § 53G. The funds in the special account, including accrued interest, shall be expended at the direction of the Board without further appropriation. If the unexpended balance falls below 30% of the initial estimate, or the estimate is raised to pay for additional services deemed necessary by the Board, the account shall be restored to its original level or such lower level as determined to be reasonable and necessary by the Board. Upon completion of the project and final payment of the outside consultant(s), any unexpended balance, including accrued interest, shall be repaid to the Applicant or the successor in interest.

§ 300-7.4. Reporting.

The Town Accountant shall submit annually a report of all such special accounts to the Planning Board and Selectboard for their review. The annual report shall be published in the Town Report and a copy submitted to the state Director of the Bureau of Accounts. A final report of the special account for a project shall be submitted to the Applicant or his successor in interest.

§ 300-7.5. Remedy.

Failure of an Applicant to pay fees required hereunder (or any other fees required in other parts of this chapter) shall be grounds for the Board to continue hearings, disapprove the application, refuse to release Performance Guarantees, revoke prior approvals, or take other action.

DERIVATION TABLE

Chapter DT

DERIVATION TABLE

**§ DT-1. Derivation Table of former
Bylaws to 2022 Code.**

In order to assist Code users in the transition to the new Code's organization, the Derivation Table indicates where chapters, articles and/or sections of the former Bylaws have been included in the 2022 Code, or the reason for exclusion.

§ DT-1. Derivation Table of former Bylaws to 2022 Code.

Article/Section from Former Bylaws	Location in 2022 Code
Article I, Town Meeting	Ch. 66, § 66-1
Article II, Government of Town Meetings	Ch. 66, § 66-2 - § 66-7
Article III, Town Affairs	
Sec. 1	Ch. 7, § 7-1
Sec. 2	Ch. 7, § 7-2
Sec. 3	Ch. 25, Art. I, § 25-1
Sec. 4	Ch. 7, § 7-3
Sec. 5	Ch. 25, Art. I, § 25-2
Sec. 6	Ch. 13, Art. I
Sec. 7	Ch. 70, § 70-1 - § 70-4
Sec. 8	Ch. 70, § 70-5
Sec. 9	Ch. 25, Art. I, § 25-3
Sec. 10	Ch. 25, Art. I, § 25-4
Sec. 11	Ch. 25, Art. I, § 25-5
Sec. 12, Solid Waste Disposal Fees	Ch. 147, Art. I
Sec. 13	Ch. 25, Art. I, § 25-6
Sec. 14	Ch. 7, § 7-4
Article IV	(Number not used)
Article V, Transportation	Ch. 59, Art. II
Article VI, Board of Finance	Ch. 59, Art. I
Article VII, General	

Article/Section from Former Bylaws	Location in 2022 Code
Secs. 1-17	Ch. 204, § 204-1 - § 204-15
Sec. 18	(Repealed)
Sec. 19	Ch. 107, § 107-1
Sec. 20	Ch. 107, § 107-2
Sec. 21	Ch. 204, § 204-16
Sec. 22	Ch. 120, Art. I, § 120-1
Sec. 23, Camping, Tenting, Sleeping in the Open Bylaw	Ch. 129
Sec. 24, Beach Vehicular Traffic Bylaw	Ch. 116, Art. I
Sec. 24A	Ch. 215, Art. I
Sec. 25, Dog Leash Bylaw	Ch. 111, Art. II
Sec. 26	Ch. 179
Sec. 27	(Number not used)
Sec. 28	Ch. 204, § 204-17
Sec. 29	Ch. 215, Art. II
Sec. 30	Ch. 135
Sec. 31	(Number not used)
Sec. 32, Mechanical Protection Devices Bylaw	Ch. 103, Art. I
Sec. 33	Ch. 221
Sec. 34, Overnight Accommodations	Ch. 120, Art. II
Sec. 35, Parking Areas for the Handicapped	Ch. 215, Art. III, § 215-7
Sec. 36, Parking in Spaces Reserved for Handicapped Persons	Ch. 215, Art. III, § 215-8
Sec. 37, Penalties and Enforcement	Ch. 107, § 107-3; Ch. 120, Art. I, § 120-2; Ch. 129, § 129-2; Ch. 179, § 179-3; Ch. 200, § 200-2; Ch. 204, § 204-18; Ch. 215, Art. I, § 215-3
Sec. 38	(Number not used)
Sec. 39, Climate Policy	Ch. 19
Sec. 40	(Number not used)
Sec. 41	Ch. 215, Art. IV
Sec. 41a	Ch. 228

Article/Section from Former Bylaws	Location in 2022 Code
Sec. 42	Ch. 120, Art. III
Sec. 43, Penalties and Enforcement - Street Number Posting	Ch. 124, Art. I
Sec. 44, Scenic Roads	Ch. 200
Sec. 45, Plastic Bag Shopping Bag Reduction	Ch. 187, Art. I
Sec. 46, Polystyrene Reduction Bylaw	Ch. 187, Art. II
Sec. 47, Limitations on the Number of Marijuana Dispensaries in Town	Ch. 173
Sec. 48, Prohibition on Sale, Distribution, and Disposal of Balloons	Ch. 187, Art. III
Sec. 49, Commercial Single Use Water Bottle Ban	Ch. 187, Art. IV
Sec. 50, Right to Farm	Ch. 145
Article VIII, Bylaw Procedure and Enforcement	Ch. 1, Art. II
Article IX	Ch. 1, Art. I
Article X, Licenses and Permits Issuance, Renewal and Transfer	
Secs. 1-5	Ch. 168, Art. I
Sec. 6, General Business Licenses and Registration	Ch. 168, Art. II
Article XI, Mechanical Electronic Fire and Police Alarms	Ch. 103, Art. II
Article XII, Recycling	Ch. 193
Article XIII, Demolition Delay Bylaw	Ch. 156, Art. I
Article XIV	(Number not used)
Article XV, Animal Control	Ch. 111, Art. I
Article XVI, Stretch Energy Code	Ch. 124, Art. II
Wellfleet Environmental Protection Bylaw	Ch. 141
Special Assessment for Substantial Rehabilitation of Owner-Occupied Residential Property Listed on the State Register of Historic Places	Ch. 156, Art. II
Council on Aging Advisory Board	Ch. 13, Art. II
Tax Title Payment Plans	Ch. 25, Art. II
Affordable Housing Trust Bylaw	Ch. 25, Art. III
Personnel Bylaw	Ch. 48

Article/Section from Former Bylaws	Location in 2022 Code
Zoning Bylaws	Ch. 235

DISPOSITION LIST

Chapter DL
DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of legislation of the Town of Wellfleet adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last legislation reviewed for the preparation of the Final Draft was adopted at the June 26, 2021 Annual Town Meeting.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition	Supp. No.

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