

**Part I: Administrative Legislation**

**Chapter 1**

**GENERAL PROVISIONS**



## ARTICLE I

**Adoption and Interpretation of Bylaws****§ 1-1. Adoption of bylaws; repeal.**

The following provisions shall constitute the General Bylaws of the Town of West Stockbridge, and shall be in lieu of all bylaws heretofore in force; provided, however, that the repeal of any bylaw may not be effected except by an affirmative vote thereon in a separate article in any Town Meeting.

**§ 1-2. Effect on prior actions.**

These bylaws, and the repeal of all other bylaws now in effect, shall not affect any legal act done, any penalty or liability incurred, or any pending suit, prosecution, or proceeding. The repeal of a bylaw shall not thereby have the effect of reviving any bylaw therefore repealed.

**§ 1-3. Scope of authority.**

Words and phrases specifying or naming any officer, board or committee of the Town shall be construed as including the lawful successor, or the person(s) having the powers and performing the duties of such officer, board or committee.

**§ 1-4. Amendment or repeal.**

Any or all of these bylaws may be repealed or amended or other bylaws may be adopted at any Town Meeting.

**§ 1-5. Severability.**

The invalidity of any part, section, provision or chapter hereof shall not affect the validity of any other section.

**§ 1-6. Applicability of state law.**

Any Town departments, commissions, or function not governed by these bylaws is covered by pertinent provisions of the Massachusetts General Laws.



ARTICLE II  
**Penalties and Enforcement**

**§ 1-7. Criminal complaint.**

Whoever violates any provisions of these bylaws may be penalized by indictment or on complaint brought in the District Court. Except as may be otherwise provided by law and as the District Court may see fit to impose, the maximum penalty for each violation or offense brought in such manner shall be \$300.

**§ 1-8. Noncriminal disposition.**

Whoever violates any provision of these bylaws, the violation of which is subject to a specific penalty, may be penalized by a noncriminal disposition as provided in MGL c. 40, § 21D. The noncriminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board, committee, commission or department which is subject to a specific penalty.

**§ 1-9. Enforcement of fish and game laws.**

The constables and police officers of the Town shall enforce the laws relating to game and fish or fisheries and shall prosecute all violations of the same. The Select Board shall be authorized to pay a reward of \$10 for the detection and conviction in each case of any person violating the same in this Town.



ARTICLE III  
**Town Seal**

**[At the May 6, 1974 Town Meeting, by Article 31, the Town adopted a new Town Seal in accordance with Chapter 40 of the General Laws to replace the Town Seal originally adopted at the April 2, 1900 Town Meeting by Article 7.]**

## Chapter 5

### BOARDS, COUNCILS AND COMMISSIONS

#### § 5-1. Finance Committee.

Pursuant to MGL c. 39, § 16, there shall be elected five members of the Finance Committee, who shall serve for a term of three years. Said terms shall be two elected one year, two the next year, and one the third year. The Town Treasurer and Town Accountant are not eligible to serve on said Committee. In case of vacancy, the Select Board and the remaining members of the Finance Committee shall appoint a candidate to serve until the next Annual or Special Election, whichever shall come first.

- A. The Finance Committee shall organize annually and elect a Chairman and Secretary.
- B. All matters in the warrant for the Annual Meeting calling for the appropriation of money shall be referred to the Committee by the Select Board.
- C. The Committee shall fully inform the Select Board as to the financial condition of the Town and prepare a statement of the fixed charges against the Town for which taxes must be levied.
- D. All Town officers are required to furnish said Committee with any facts or figures in their possession that may be required of them.
- E. No article calling for the appropriation of money shall be acted upon unless first submitted to the Finance Committee. The rejection of an article by the Committee calling for the appropriation of money shall not prevent the Town from taking action thereon at an Annual or Special Town Meeting.
- F. At least two public hearings shall be held previous to the Annual Meeting, at which time all interested taxpayers may be heard as to the appropriations to be voted upon at the Town Meeting.
- G. At least three days previous to the Annual Meeting the Report of the Recommendations of the Finance Committee of the ensuing year shall be printed and posted as directed by Town Meeting for the posting of public notices.
- H. A copy shall also be submitted to the Town Meeting when it is organized.
- I. Any article in a warrant for a Special Town Meeting relative to appropriating or borrowing money shall be acted on by said Committee; except that but one public hearing may be held by said Committee.



**§ 5-2. Planning Board.**

The Town hereby establishes a Planning Board of five members under the provisions of MGL c. 41, § 81A, with all the powers and duties therein, and terms in accordance with the provisions of statute.

**§ 5-3. Conservation Commission.**

The Town hereby establishes a Conservation Commission consisting of six members, plus one associate member, who will be appointed by the Select Board and who shall serve in accordance with and with the powers and duties set forth in the Massachusetts General Laws.

**§ 5-4. Parks and Recreation Commission.**

There shall be appointed by the Select Board a Parks and Recreation Commission. The Parks and Recreation Commission shall oversee and maintain all public parks and recreational facilities within the Town and, with the approval of the Select Board, set compensation for any employees needed to maintain said parks. Said Commission shall consist of five or more members, who shall be appointed annually for terms of one year.

**§ 5-5. Capital Planning Committee.**

There shall be appointed by the Select Board a Capital Planning Committee pursuant to MGL c. 41, § 106B, as amended. Said Committee shall be required to develop and annually review a capital improvement program for the Town, to make recommendations to the Select Board and the Finance Committee and to include those recommendations in the Annual Report of Town Officers. Said Committee shall consist of five members with staggered terms of five years.

**§ 5-6. Council on Aging.**

There shall be appointed by the Select Board a Council on Aging in accordance with MGL c. 40, § 8B, as amended, for the purpose of coordinating and carrying out programs designed to meet the problems of the aging. The Council shall consist of seven members with staggered terms of five years.

**§ 5-7. Board of Health.**

Pursuant to the provisions of MGL c. 41 there shall be elected three members of the Board of Health, who shall each be elected for a term of three years. Said terms shall be staggered so that one member is elected every year.

**§ 5-8. Berkshire Hills Regional School District.**

There shall be elected two members of the Berkshire Hills Regional School District, who shall be elected for terms of four years. Said election shall

be according to the provisions of the Berkshire Hills Regional School Agreement, Section 1, Paragraphs A, B, C, and D, as amended. Candidates shall appear on the Biennial State Election Ballot.

**§ 5-9. Cemetery Commissioners.**

There shall be elected three Cemetery Commissioners, who shall serve for terms of three years. Said terms shall be staggered so that one Commissioner is elected every year.

**§ 5-10. Library Trustees.**

There shall be elected three Library Trustees, who shall serve for terms of three years. Said terms shall be staggered so that one Trustee is elected every year.

**§ 5-11. Board of Water and Sewer Commission.**

There shall be appointed by the Select Board a Board of Water and Sewer Commission in accordance with Chapter 125 of the Acts of 1998. The Board shall consist of five members, of which not less than three shall be users of the water or sewer system, with staggered terms of five years. Said Board shall have all the powers and duties as set forth in MGL c. 41, §§ 65 and 69B. Said Board shall, subject to the approval of the Select Board, annually set the charges to be assessed upon the water and sewer users and shall determine the number and compensation of all employees necessary to operate said water and sewer systems.

**§ 5-12. Historical Commission.**

There shall be appointed by the Select Board an Historical Commission in accordance with MGL c. 40, § 8D, as amended. Said Commission shall have not more than seven members with staggered terms of three years.

## **Chapter 10**

### **CONTRACTS**

**§ 10-1. Conflicts of interest prohibited.**

No officer of the Town shall, in his official capacity, except by and with the approval of the Select Board, make or pass upon, or participate in making or passing upon, any sale, contract, agreement or the terms or amount of any payment in which the Town is interested and in which such officer has any personal financial interest, direct or indirect.

**§ 10-2. Competitive bids for purchasing.**

No contract shall be awarded for any work or service to be performed for the Town, and no purchase of materials, supplies or equipment shall be

made, the estimated cost of which is \$50,000 or more, unless competitive bids have been invited by advertising in a newspaper of general circulation in the Town. The Select Board may exempt a purchase or contract from any or all of the provisions of this section when, in its opinion, an emergency exists requiring immediate action to protect the health and safety of persons or property, or when no reasonable substitute can be obtained for the article or service to be purchased or contracted for. Evidence indicating that such emergency exists shall be furnished, in writing, by the Select Board, and a copy shall be filed with the Town Clerk and with the Chief Procurement Officer.

## **Chapter 20**

### **FINANCES**

#### **§ 20-1. Audit.**

An audit of the accounts of the Town shall be made semi-annually beginning with the closure of Fiscal Year 1999 on June 30, 1999, as provided by MGL c. 44, § 35.

#### **§ 20-2. Transfer of outstanding bills.**

Each Town officer, board or committee authorized to spend money shall, on or before July 14 of each year, transmit to the Town Accountant all unpaid bills outstanding as of this date.

#### **§ 20-3. Custody of bonds and other instruments.**

Except as otherwise provided by the Massachusetts General Laws, the Town Clerk shall have custody of investment bonds, blasting bonds, deeds, contracts, bonds of performances, Treasurer's, Tax Collector's and Town Clerk's bonds, insurance policies and similar instruments in possession of the Town.

#### **§ 20-4. Payment of funds to Treasurer.**

Every Town officer shall each month pay into the treasury of the Town all amounts received by him on behalf of the Town, except as otherwise provided by the Massachusetts General Laws. All departments shall make a true return of such funds to the Town Treasurer, stating the accounts upon which said amounts were received.

#### **§ 20-5. Fee for use of off-duty Town employees.**

Pursuant to MGL c. 44, § 53C, there shall be established a 5% fee for accounting services performed by the Town to be charged to companies employing off-duty Town employees. This fee shall be deposited into the Town Treasury to be used as estimated receipts.

**§ 20-6. Inspection processing fee.**

There shall be established a processing fee of \$5, which shall be collected by any Town inspectors who collect inspection fees. Said processing fee shall be used to offset any administrative expenses incurred by the Town.

**§ 20-7. Reimbursement of expenses.**

Any person(s) presenting any matter to any Town board, committee, commission, or officer, which requires the Town to incur expenses for compliance with the zoning bylaws, Town bylaws, state statutes or federal statutes, shall reimburse the Town for such expenses. Any Town board, committee, commission or officer shall file said schedule of fees with the Town Clerk.

**§ 20-8. Occupancy tax.**

Pursuant to MGL c. 64G, § 3A, there shall be established a local excise occupancy tax at the rate of 4%.

**§ 20-9. Quarterly real estate tax bills.**

Pursuant to MGL c. 59, § 57C, there shall be issued quarterly billing for real estate tax payments.

**§ 20-10. Expenditure of fees collected.**

Pursuant to the provisions of MGL c. 44, § 53E, all fees collected by any Town department shall be recorded or deposited in a special account by the Town Treasurer and may be expended for the purpose allocated without further appropriation. Any balances in said accounts at the end of the fiscal year shall be deposited into the general treasury of the Town.

**§ 20-11. Collection of parking citations; hearing clerk.**

Pursuant to the provisions of MGL c. 90, § 20A 1/2, the Town shall collect its own parking citations, including overnight parking violations, as well as overtime parking fines. The Board of Selectmen shall appoint a hearings parking clerk, who shall hear all grievances and collect said fines.

**§ 20-12. Municipal Buildings and Town Property Insurance Trust Account.**

Pursuant to the provisions of MGL c. 40, § 13, there shall be established a Municipal Buildings and Town Property Insurance Trust Account to be used as required to cover costs incurred, but exempt from insurance coverage due to insurance deductibles. This account shall be held by the Treasurer in an interest-bearing account and shall not be closed out annually, but shall be held open on the Town of West Stockbridge books.

**Chapter 30**

**LEGAL AFFAIRS****§ 30-1. Authority of Select Board.**

The Select Board shall be the agents of the Town to institute, prosecute and defend any and all claims, actions and proceeding to which the Town is a party or in which the interests of the Town are or may be involved.

**§ 30-2. Appearance before courts and legislative bodies; settlements and claims.**

- A. The Select Board may appear either personally or by the Town Counsel or by special counsel duly employed, before any court, committee or legislative body, or any state or county board or commission, to protect the interest of the Town, but are not authorized, except as otherwise provided by law, to commit the Town or any of its interests.
- B. No settlement of claim or suit obligating the Town in excess of \$1,000 shall be made, except as authorized by law, without the consent of Town Meeting.

**§ 30-3. Appointment of Town Counsel.**

The Select Board shall annually, after the final adjournment of the Annual Town Meeting, appoint a member of the Bar in good standing to serve as Town Counsel for the term of one year, and at the salary prescribed at Annual Town Meeting.

**Chapter 45****OFFICERS AND EMPLOYEES**



ARTICLE I  
**General Provisions**

**§ 45-1. Town Moderator.**

Pursuant to the provisions of MGL c. 41, there shall be elected one Moderator for a term of one year. In the event of a vacancy, it shall be the first order of business to elect a moderator at the next Special or Annual Town Meeting or at the next Special or Annual Town Election, whichever is first. In the event of a Town Meeting, the Moderator shall be elected for said meeting; if said election is at a Special Town Election, the Moderator shall serve for the remaining term of office.

**§ 45-2. Town Clerk.**

Pursuant to the provisions of MGL c. 41, there shall be elected one Town Clerk for a term of three years. The Town Clerk may appoint an Assistant Town Clerk, who shall be under the direction of the Town Clerk and hold all the powers and duties of said office. In the event of a vacancy, the Select Board may appoint a temporary Town Clerk until the next Special or Annual Town Election, at which time a candidate shall run for the remaining term of said office.

**§ 45-3. Select Board.**

Pursuant to the provisions of MGL c. 41, there shall be elected three members of the Select Board for terms of three years. Said terms shall be staggered so that one member of the Select Board is elected each year. In the event of a vacancy, the two remaining members may call for a special election as prescribed by MGL c. 41, § 10, and so notify the Town Clerk of such.

**§ 45-4. Budget and articles for Annual Town Meeting.**

The Select Board shall notify and present to the Town Clerk a budget, approved by the Finance Committee, along with all articles for the Annual Town Meeting warrant, no later than the first Monday of April. Said warrant for Annual Town Meeting shall be included in the Annual Report of Town Officers.

**§ 45-5. Annual report.**

It shall be the duty of the Town Clerk to make available the Annual Report of Town Officers, Appointees, and Committees no later than seven days before the Annual Town Meeting. This report shall contain a statement of the financial condition of the Town, together with a report of all receipts and expenditures incurred during the preceding year. The Annual Report shall also include warrants for any Special Town Meeting(s) held in the preceding year, along with the votes on each article. If any Town officer, appointee, or committee fails to submit said report for the Annual Report

of Town Officers, they shall be required to distribute, at their own expense, said report at the Annual Town Meeting.

**§ 45-6. Notification of new committee members.**

It shall be the duty of the Town Clerk, as soon as possible after every Town Meeting, to notify, in writing, all members of committees who may be elected or appointed at such meeting, stating the business on which they are to act and the names of the persons composing the committees, and also to notify all officers, boards, and committees of all articles passed at such meeting that in any way affect them.

**§ 45-7. Town Clerk fees.**

Pursuant to MGL c. 262, § 34, Clauses 1 through 79, the Town Clerk shall cause to be printed a schedule of fees for said office and post the same in said office.

**§ 45-8. Assessors.**

Pursuant to the provisions of MGL c. 41, there shall be elected three Assessors for terms of three years. Said terms shall be staggered so that one Assessor is elected each year.

**§ 45-9. Town Treasurer.**

Pursuant to the provisions of MGL c. 41, there shall be appointed one Town Treasurer for a term of three years. The Treasurer may appoint an assistant, who shall work under the direction of the Treasurer and hold all powers and duties of said office.

**§ 45-10. Tax Collector.**

Pursuant to the provisions of MGL c. 41, there shall be elected one Tax Collector for a term of three years. The Tax Collector may appoint an assistant, who shall work under the direction of the Tax Collector and shall hold all the powers and duties of said office.

**§ 45-11. Tree Warden.**

Pursuant to the provisions of MGL c. 41, there shall be elected one Tree Warden, who shall be elected for a term of three years.

**§ 45-12. Constables.**

Pursuant to the provisions of MGL c. 41, there shall be elected five constables, who shall be elected for terms of three years.



**§ 45-13. Appointed officers.**

Pursuant to the provisions of MGL c. 41, the Select Board shall appoint all the necessary appointed Town officers as authorized by the Massachusetts General Laws and as directed by vote of Town Meeting. Said appointments shall begin of July 1 of said year and until the next June 30 of said term of office. There shall be, at least, appointed:

<b>Appointment</b>	<b>Term of Office</b>
Town Counsel	1 year
Select Board's Administrative Assistant	3 years
6 Conservation Commission members	3 years
1 Conservation Commission Associate member	3 years
1 Deputy Tax Collector	1 year
Emergency Planning Committee	1 year
Official Weighers	1 year
Memorial Day Committee	1 year
Veterans' Graves Officer	1 year
Veterans' Agent	1 year
Parking/Hearings Clerk	1 year
Animal Control Officer	1 year
5 Zoning Board of Appeals members	5 years
3 Alternates to Board of Appeals	1 year
Building Inspector	1 year
Zoning Enforcement Officer	1 year
3 members of Board of Registrars	3 years
Emergency Management Director	1 year
Consultant of Veterans' Agent	1 year
Right-to-Know Officer	1 year
Police Chief	3 years
Patrolman	3 years
Special Police Officers	1 year
Traffic Officers	1 year
Fire Chief	3 years
ADA Coordinator	1 year
Field Driver	1 year
Fence Viewer	1 year
Parks and Recreation Committee	1 year

Appointment	Term of Office
Animal Inspector	1 year
TV Cable Committee	1 year
5 members of Arts Lottery Council	3 years
Oil Burner Inspector	1 year
Gas Inspector	1 year
Town Historian	1 year
Historical Committee	1 year
Chief Procurement Officer	1 year
Plumbing Inspector	1 year
Assistant Plumbing Inspector	1 year
Wiring Inspector	1 year
Assistant Wiring Inspector	
Town Accountant	3 years
Safety Committee	1 year
2 Alternate Water and Sewer Commissioners	1 year
Berkshire Regional Planning Commission	1 year

**§ 45-14. Additional authority of Tax Collector.**

- A. Authority of Tax Collector to collect all Town accounts. In accordance with the provisions of MGL c. 41, § 38A, the Tax Collector and Deputy Tax Collector may act as Collector(s) of all accounts due the Town.
- B. Receipts from lien certificates. In accordance with the provisions of MGL c. 60, § 23, the Tax Collector may retain receipts from municipal lien certificates.

## ARTICLE II

**Ethics****§ 45-15. Findings.**

General Laws Chapter 268A, entitled "Conduct of Public Officials and Employees", defines "municipal employee" and places certain restrictions, limitations and prohibitions on a municipal employee's activities concerning the Town of West Stockbridge. The Select Board of the Town of West Stockbridge is authorized to classify certain persons within the statutory definition of municipal employee as "special municipal employees"; and a special municipal employee is not subject to the same stringent restrictions, limitations and prohibitions as in the case of a municipal employee. It would be to the best interest of the municipality to encourage participation in local government by enabling citizens to serve on a municipal board, commission or agency and persons under contract of hire or agency for a special purpose, without causing them to refrain from any and all business activities with the Town or other departments, boards, offices, commissions or agencies thereof with which his or their official duties are not involved.

**§ 45-16. Designation of special municipal employees.**

The members of the below-listed boards, offices, commissions and municipal agencies and additional categories of the Town of West Stockbridge are hereby classified as special municipal employees of the Town of West Stockbridge as per MGL c. 268A, § 1, Clause (n), for the purpose set forth in this article:

- A. Moderator.
- B. Planning Board member.
- C. Board of Health member.
- D. School Committee member.
- E. Library Trustee.
- F. Cemetery Commission members.
- G. Constables.
- H. Card Pond Committee.
- I. Tree Warden.
- J. Town Clerk and Treasurer.
- K. Weighers of all Commodities.
- L. Finance Committee members.
- M. Board of Registrars and Election Officers.

- N. Inspector of Gas Piping and Gas Appliances.
- O. Inspector of Animals.
- P. Persons who by contract are hired or engaged for special purposes.
- Q. Members of committees appointed as the result of Town Meeting action for special studies or purposes.

ARTICLE III  
**Finance Director**

**§ 45-17. Statutory authority; consolidation of functions.**

The Town hereby adopts the provisions of MGL c. 43C, providing for optional plans of municipal administration. MGL c. 43C, § 11 authorizes the legislative body to provide, by ordinance or bylaw, for a consolidated department of municipal finance which may include the offices of accountant, auditor or comptroller, treasurer, collector and assessors.

**§ 45-18. Scope.**

The following bylaw shall determine the powers of the Finance Director and which officers shall be included in the Finance Department.

**§ 45-19. Appointment and term; Finance Department.**

- A. The Director of Municipal Finance shall be appointed by and shall be responsible to the Select Board.
- B. The Director of Municipal Finance shall serve, ex-officio, as the Accountant of the Town.
- C. The Assessors, Collectors, Accountant and Treasurer will be included in the Finance Department (Current elected incumbents shall serve out their current terms of office and be subject to appointment thereafter.)
- D. The term of office of the Director of Municipal Finance shall not be less than three years nor more than five years, subject to removal as may be otherwise provided in the Charter of the Town.

**§ 45-20. Powers and duties.**

The powers of the Director of Municipal Finance shall include:

- A. Coordination of all financial services and activities;
- B. Maintenance of all accounting records and other financial statements;
- C. Payment of all obligations;
- D. Receipt of all funds due;
- E. Assistance to all other Town departments and offices in any matter related to financial affairs;
- F. Monitoring of the expenditure of all funds, including periodic reporting to appropriate agencies on the status of accounts;
- G. Doing capital planning;
- H. Coordinating the budget process;

- I. Supervision of all purchases of goods, materials and supplies and maintenance of inventory controls;
- J. Supervision of all data processing facilities; and
- K. Any other matter relating to municipal finance as may be determined necessary or desirable.

**Chapter 55****RECORDS AND REPORTS****§ 55-1. Minutes and records required; public inspection.**

All officers, boards, committees and commissions of the Town shall cause records of their doings and accounts to be kept in suitable books. Said books shall be kept in their respective places in the Town offices and shall not be moved therefrom without the approval of the Select Board. Said books shall, unless otherwise provided by law, be open to public inspection at any reasonable time, but shall remain during inspection under the supervision of the officer, board, committee or commission having custody thereof.

**§ 55-2. Financial reports.**

All officers, boards, committees, or commissions of the Town having charge of the expenditures of Town money shall annually report thereon in writing in such manner as will give the citizens a fair and full understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Accountant for statements in detail of receipts and payments. Such reports shall be submitted to the Town Clerk for inclusion in the Annual Town Report on or before the first Monday in March of each year.

**Chapter 65****TOWN MEETINGS****§ 65-1. Date and location of Annual Town Meeting.**

The Annual Town Meeting shall be held on the first Monday evening in May of each year at the Village School Auditorium.

**§ 65-2. Annual Town Election.**

The Annual town meeting for the election of Town officers and the determination of such matters as are required by law to be elected or determined by ballot shall be held on the second Monday of May as prescribed by Massachusetts General Laws.

**§ 65-3. Poll hours.**

The polls shall be opened during hours prescribed by the Town Clerk and in compliance with provisions of the Massachusetts General Laws.

**§ 65-4. Notice of Town Meetings.**

At least seven days before the day fixed in the warrant for the Annual Meeting, the Select Board shall cause, by constable affirmation, posting of the warrant at the Post Office in West Stockbridge, and at the public notice

boards in State Line, West Center, Williamsville, and High Street and with the Town Clerk for public review. In the case of a Special Town Meeting, said postings shall be 14 days before the date fixed in said warrant.

**§ 65-5. Eligibility to vote and speak at meetings.**

Only persons registered to vote in the Town shall have a vote at the Town Meeting. Any other person may be allowed to attend and speak at the discretion of the Moderator. If as many as 10 voters so desire, a person who is not a registered voter shall be allowed to speak. An attorney representing a client(s) shall disclose the fact before speaking on any matter.

**§ 65-6. Quorum.**

The number of voters necessary to constitute a quorum at any Annual Town Meeting shall be 25 and Special Town Meeting shall be 20; provided, however, that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted to the election of Town officers.

**§ 65-7. Acting on articles.**

Articles of the warrant shall be acted upon in the order in which they appear unless otherwise determined by a majority of the meeting.

**§ 65-8. Written motions.**

All motions having to do with the expenditure of money shall be presented in writing to the Moderator; other motions shall be in writing if so directed by the Moderator.

**§ 65-9. Method of voting.**

When a question is put, the sense of the meeting shall be determined by a voice vote and the Moderator shall declare the vote as it appears to the Moderator. If the Moderator's decision is doubted, or a division of the house is called for, the Moderator may appoint tellers to make and return the count by a show of hands.

**§ 65-10. Motion to dissolve.**

No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant therefor has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article(s) to an adjournment of the meeting at a stated time and place.

**§ 65-11. Warrant closing date.**

To be included in the warrant for the Annual Town Meeting of any year, articles must be presented to the Select Board not later than the second



Friday of March of that year. Selectmen shall announce a date to close acceptance of any articles to appear on the Warrant for a Special Town Meeting and so notify the Town Clerk.

**§ 65-12. Public participation in committee and board meetings.**

Every Town committee or board, appointed or elected, shall place on its agenda of public meetings public speak time to raise issues under the jurisdiction of that committee or board, at which time the committee or board may elect to add the issue raised to the agenda of the next available meeting.

**Part II: General Legislation**

**Chapter 80**

**ALARM SYSTEMS**

**§ 80-1. Timing device required.**

The user of every automatic emergency system shall install or cause to be installed an automatic timing device which shall regulate such alarm so that it will be activated for no more than 15 minutes. Any system installed on or after the effective date of this bylaw shall comply with this bylaw. Preexisting installations must comply within six months of the effective date of this bylaw.

**§ 80-2. Filing requirements.**

The user of every automatic emergency alarm system maintained in the Town, except those installed in motor vehicles, shall, within 10 days of the installation thereof or within 60 days of the enactment of this bylaw, file the following information with the Fire Department and the Police Department of the Town:

- A. Type, purpose and description of alarm system.
- B. Street address and the nearest cross street, and name of resident, and/or any other clear and accurate description of the location of the building which houses the automatic emergency alarm system.
- C. In addition to the above, in the case of a commercial premises, the name, address, and telephone number of an authorized representative and/or alternative who will be able to respond when called by police or fire personnel to deactivate the alarm system if necessary.
- D. In addition to the above, in the case of a private residence, the name, address and telephone number of a person who is not a resident of the private residence in question and who will be able to deactivate the automatic emergency alarm system; an external shut-off to the alarm

system must be available to the Police and Fire Departments to deactivate the alarm.

**§ 80-3. Permit required; fees; revocation.**

- A. The Select Board is hereby authorized to grant a revocable permit to any owner, lessee, or occupant of property located in the Town to operate, maintain, install or modify an automatic emergency alarm system. Following the effective date of this bylaw, no person shall use, operate or install any automatic emergency alarm system without a permit issued by the Select Board.
- B. The Select Board shall from time to time establish fees for the issuance of such permit.
- C. A permit issued pursuant to this bylaw may be revoked at any time by the Select Board upon 10 days' notice in writing, by certified mail, to the holder of the permit, sent to the address shown on the permit. Any violation of this bylaw shall constitute grounds for the revocation of the permit.

**§ 80-4. False alarms.**

After the issuance of a permit, a fee in an amount set by the Select Board will be charged for response to any emergency alarm in which the Police Department is the responding agency. A fee in an amount set by the Select Board will be charged for any response to a false emergency alarm in which the Fire Department is the responding agency. The Police Chief/Fire Chief or senior officer at an alarm response will determine whether the alarm was a false emergency alarm. After the third response within a twelve-month period, the permit may be revoked by the Select Board until the alarm system has been recertified by reputable installer of alarms.

**§ 80-5. Disconnection.**

In the event that an automatic emergency alarm system shall fail to be deactivated within the time limitation specified in § 80-1 above, the Police Chief/Fire Chief or senior officer shall have the right to take such action as necessary in order to disconnect any such alarm.

**§ 80-6. Violations and penalties.**

Any person operating an alarm system without a permit from the Select Board violates the provisions of this bylaw and shall be subject to the penalties set forth in Chapter 1, Article II, of the Town Code. Each day that such violation continues may be considered a separate offense.

## **Chapter 85**

### **ALCOHOLIC BEVERAGES**

**§ 85-1. Public consumption prohibited.**

No person shall consume any beer, wine, malt or alcoholic beverages or have in his possession any containers thereof upon any public way, street or Town-owned property, except when specifically licensed by the Select Board.

**§ 85-2. Violations and penalties.**

Any person who violates the provisions of this bylaw shall be subject to penalties as set forth in Chapter 1, Article II, of the Town Code. Each violation shall be considered a new violation.

**Chapter 90****ANIMAL CONTROL****§ 90-1. Definitions.**

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

**ANIMAL CONTROL OFFICER** — Any officer appointed by the Select Board to enforce the laws relating to animals.

**ANIMALS** — All animals of any species, both male and female, including but not limited to dogs and cats.

**COMMERCIAL KENNEL** — A kennel maintained as a business for or to include the boarding or grooming of dogs.

**LICENSE PERIOD** — The time between April 1 and March 31, both dates inclusive.

**LIVESTOCK OR FOWL** — Animals or fowls kept or propagated by the owner for food or as a means of livelihood, kept in proper houses or suitable enclosed yards. Such phrase shall not include dogs, cats and other pets.

**MULTIPLE-PET HOUSEHOLD** — More than three dogs over the age of six months of age in a single private residence.

**OWNER/KEEPER** — Any person or persons, firm, association or corporation owning, keeping, or who or which has in its possession for 11 consecutive days in any calendar year a dog or any other animal, licensed or unlicensed; and cannot show to the satisfaction of the Animal Control Officer that such animal was sold, had died, was given away, or otherwise disposed of. Further, if the owner or keeper of a dog or other animal is a minor, the parent or guardian of such minor shall be held liable for any violation of this bylaw.

**RUN AT LARGE** — Free of restraint and permitted to wander on private or public ways at will.

**§ 90-2. Dogs required to be leashed and under control of owner/keeper.**

- A. No owner or keeper of a dog shall permit such a dog, whether licensed or unlicensed, to run at large within the Town of West Stockbridge. No person shall permit a dog owned or kept by him beyond the confines of the property of the owner or keeper unless the dog is physically restrained by a leash that shall not exceed six feet in length or is under the control of its owner/keeper.
- B. No person shall permit a dog owned or kept by him to run freely outside the confines of the property of the owner or keeper unless leashed so as to restrain the dog in such manner that the dog will not go beyond the property of the owner or keeper by fencing or appropriate barriers.
- C. No person shall permit a dog owned or kept by him to be unaccompanied by a person of adequate age and discretion to properly control its actions.
- D. A dog may, for the purpose of sporting events such as hunting, field trials, farm purposes or training purposes, be exempt from the restraining order during such period of time as the dog is actually engaged in the event or sport, provided the dog is under the direct supervision of a person of adequate age and discretion to properly control its actions.

**§ 90-3. License requirements; kennels; fees; exceptions.**

- A. Any owner or keeper of a dog six months of age or older in the Town of West Stockbridge shall cause that dog to be licensed as required by Massachusetts General Laws Chapter 140, commencing on April 1 of each year.
- B. Any owner or keeper of more than three dogs must acquire a multiple-pet permit.
- C. Commercial kennels must be fully licensed pursuant to the provisions of MGL Chapter 140 and are subject to Chapter 275, Zoning, of the Town Code.
- D. Commercial kennels shall be available to inspection by the Animal Control Officer, a Natural Resource Officer, Fish and Game Warden, a police officer or the Board of Health.
- E. All dogs and cats six months of age or older must be currently vaccinated against rabies as per MGL c. 140, § 145B.
- F. The annual fee for every animal license, multiple-pet permit, and commercial kennel license and all fines relevant to animal control shall be established by the Select Board. No fee shall be charged for a license for a service animal as defined by the Americans with Disabilities Act or regulations promulgated thereunder.
- G. The registering, numbering, describing and licensing of animals shall be performed in the office of the Town Clerk on a form prescribed and

supplied by the Town and shall be subject to the condition expressed therein that the dog so licensed shall be controlled and restrained from killing, chasing or harassing livestock or fowl.

- H. No license fee shall be refunded in whole or part for any reason.
- I. Should any owner or keeper of an animal fail to license that animal as required under MGL Chapter 140 before June 1, the owner or keeper shall pay a late fee as established by the Select Board before obtaining said license, except a dog brought into the Town as provided by MGL c. 140, § 138. This late fee shall be applicable from the 61st day after arrival of such dog. Any person maintaining a commercial kennel in the Town of West Stockbridge who fails to license as prescribed by this section and the laws of the commonwealth shall pay a late fee as established by the Select Board commencing June 1.
- J. The owner or keeper of a licensed animal shall cause it to wear around its neck or body a collar or harness to which shall be securely attached a tag issued by the Town Clerk at the time of licensing.
- K. In addition to all other sums due and owing for any license fee hereunder, a person who applies for a license hereunder shall be obligated to pay all prior amounts of license fees determined to be due and owing by the Town Clerk pursuant to this bylaw, for past periods in which said person was obligated to obtain a license. It shall be a violation of this bylaw to fail to pay any said sum due hereunder; this remedy shall be cumulative.

#### **§ 90-4. Restrictions on number of dogs.**

No more than six dogs may be kept at any private residence. Persons owning more than six dogs prior to the passage of this bylaw are permitted to keep such dogs, but may not replace them in excess of the permitted total. This section shall not be applicable to dogs under the age of six months.

#### **§ 90-5. Muzzling dogs.**

- A. Any owner or keeper of a dog may be ordered to muzzle said dog by a duly appointed Animal Control Officer and, in his/her absence, by a police officer for either of the following reasons:
  - (1) For having bitten, injured or physically molested any person; or
  - (2) For having physically injured any dog or any other animal
- B. This order shall remain in effect until removed by the officer after having been satisfied that the dog is unlikely to repeat its offense. Such decision by the officer to remove the order shall not be unreasonably withheld.

#### **§ 90-6. Impounding, release and disposition of animals.**

- A. Animal Control Officers or, in their absence, police officers may cause an animal to be impounded for any of the following causes:
- (1) If found without a license when a license is required; or
  - (2) If found unrestrained as set forth in § 90-2 of this bylaw; or
  - (3) For violation of a muzzling order as provided for in § 90-5 of this bylaw; or as provided under MGL c. 140, § 167, as amended; or
  - (4) For having bitten, injured or physically molested any person; or
  - (5) For having physically injured any dog or other animal; or
  - (6) To restore peace when the owner or keeper of an animal is otherwise unavailable, unwilling, or physically unable to restrain his/her animal from causing a nuisance by continuous barking or howling; or
  - (7) To ensure the safety and well being of the particular animal; or
  - (8) For any violation of this bylaw.
- B. No later than two days after the impounding of any animal, the owner or keeper shall be notified, or if the owner or keeper of the animal is unknown, or, after reasonable efforts, is not contacted, written notice shall then be posted for seven consecutive days in the location for posting notices in the Town Hall, which notice shall describe the animal and its place and time of taking. Animals impounded and unclaimed by the owner or keeper after such seven-day period shall be disposed of in accordance with the provisions of MGL c. 140, § 151A. Prior to the end of said seven-day period, the owner or keeper may obtain the release of such dog or other animal upon payment of all pound fees, fines, and notification costs, if any, and in the case of a violation of Subsection A(1) of this section, upon obtaining a license as required by law.
- C. No animal shall be turned over or sold in any manner inconsistent with MGL c. 140, § 151 or disposed of inconsistent with the provisions of MGL c. 140, § 151A.

#### **§ 90-7. Person convicted of cruelty to animals.**

Any person or persons found guilty of a violation of any provisions of MGL c. 272, § 77, 80A, 94 or 95 will forfeit the right to own or keep any animal within the Town of West Stockbridge and must immediately upon conviction surrender all animals in his/her possession to the Animal Control Officer.

#### **§ 90-8. Complaint of dangerous dogs or excessive barking.**

If written complaint is made to the Select Board or Chief of Police regarding a vicious or dangerous dog or excessive barking or other disturbance, such complaint shall be acted upon in conformance with MGL c. 140, §§ 157 and 158.

**§ 90-9. Warrant to Animal Control Officers.**

The provisions of MGL c. 140, § 153, Form of Warrant to Officers, are incorporated herein.

**§ 90-10. Liability of owner for damages or injuries.**

- A. The owner or keeper of a dog that has done damage to livestock or fowl shall be liable for such damage, and the Select Board may order the owner or keeper to pay such damages after an investigation as set forth in MGL Chapter 140.
- B. In the event that the owner or keeper of such dog known to have done damage to livestock or fowl refuses to pay upon order of the Select Board, the Select Board shall enter or cause to be entered a complaint in the District Court for the enforcement of the order.
- C. In addition, the Select Board or its agents thereto authorized in writing may, after written notice to the owner or keeper of any dog known to them to have killed livestock or fowls, then and there kill such dog, unless such owner or keeper whose premises are thus entered for said purpose shall give a bond in the sum of \$200, with sufficient sureties approved by the Select Board, conditioned that the dog is continually restrained. If the owner or keeper of the dog declares his intention to give such a bond, said Select Board or its agents shall allow him seven days, exclusive of Sundays and holidays, in which to procure and prepare the same and to present it to them, or file it with the Town Clerk.
- D. If a dog which has previously been ordered restrained by the Select Board, or upon review by the District Court, wounds any person or maims or kills any livestock or fowl, the owner or keeper of such dog will be liable to the person injured thereby in treble the amount of damages sustained by him.
- E. The owner or keeper of any animal injured or killed by a motor vehicle shall be responsible for the cost of all rescue response, emergency care, treatment and/or disposal of said animal.

**§ 90-11. Enforcement; violations and penalties.**

- A. The Animal Control Officer duly appointed or, in his/her absence, police officers shall enforce the provisions of this Animal Control Bylaw, and shall attend to all complaints or other matters pertaining to animals in the Town of West Stockbridge.
- B. Notwithstanding any provisions of the General Laws to the contrary, any person(s) who: 1) refuses to answer or answers falsely questions of an Animal Control Officer or a police officer pertaining to his/her ownership of an animal or 2) is found guilty of cruelty to animals or 3) refuses to turn over any animal to the Animal Control Officer upon demand as authorized by §§ 90-6 and 90-7 of this bylaw or 4) violates a

Select Board order shall be punished by a fine of not less than \$100 nor more than \$300.

- C. Any owner or keeper who: 1) violates the provisions of this bylaw or 2) is the owner/keeper of any animal who shall be found by an Animal Control Officer to have defecated on private property other than that of its owner/keeper, or on a public sidewalk, and has not removed the feces from the private property or public sidewalk and properly disposed of the feces; or 3) is the owner/keeper of any animal who intentionally allows any such animal to cause a nuisance by barking, howling or otherwise disturb another person's right to peace or 4) is the owner/keeper of an animal found to have bitten or injured any person, dog or other animal may be penalized by noncriminal disposition as provided in MGL c. 40, § 21D and shall be punished by a fine of \$300.
- D. Where applicable, each day shall constitute a separate offense.

**§ 90-12. Alternate procedure under MGL c. 140, § 173A.**

- A. Notwithstanding any provisions of the General Laws to the contrary, any Animal Control Officer who takes cognizance of a violation of: 1) this bylaw or 2) failure to license animals pursuant to MGL Chapter 140 and this bylaw or 3) failure to obtain a multiple-pet permit or commercial kennel license or 4) failure to vaccinate against rabies pursuant to MGL c. 140, § 145B may issue or mail a notice of complaint of violation of municipal animal control bylaw to the owner or keeper of such animal.
- B. Any owner or keeper found in violation of the above-mentioned procedure shall be subject to a fine of not more than \$50.

**§ 90-13. Disclaimer; severability; effective date.**

- A. Nothing contained within this bylaw shall limit or restrict any enforcement officer's authority to seek criminal prosecution of any violation of state or federal law.
- B. If any part, section or provision of this bylaw is found to be invalid, the remainder of this bylaw shall not be affected thereby.
- C. This bylaw will take effect April 1, 1998, and it shall replace former animal bylaws set by West Stockbridge.

**Chapter 95**

**BUILDING CONSTRUCTION**



ARTICLE I  
**Building Permits**

**§ 95-1. Required.**

Building permits are required for all building construction in the Town of West Stockbridge. Said permits shall be issued by the Select Board in multiple copies so that one may be given to the builder, one to the Assessors and the Finance Director, one to the Board of Health, one to the Planning Board and one to be filed by the Select Board.



ARTICLE II  
**Numbering of Buildings**

**§ 95-2. Buildings to be numbered.**

Numbers shall be provided for each dwelling and each business, industrial, and other building in the Town of West Stockbridge by the owner of such structures.

**§ 95-3. Location of numbers.**

The numbers shall be placed on each structure or on a suitable support near the main entrance to the structure so as to be visible.

**§ 95-4. Assigned numbers.**

The numbers shall be those assigned to each structure.

**§ 95-5. Number required for building permit.**

The owner of any property seeking a building permit for a new building or structure shall apply for and receive a building number designation from the Town Clerk or the designate prior to submitting an application to the Building Inspector for a permit, and no building permit shall be issued without designation of such building number.

**§ 95-6. Enforcement; violations and penalties.**

This bylaw shall be enforced by the Select Board of the Town of West Stockbridge either directly or through an inspector to be appointed by it. Failure to comply with this bylaw shall subject the offending property owner to a fine not exceeding \$10.

## **Chapter 105**

### **CEMETERIES**

#### **§ 105-1. Applicability.**

Every lot shall be held subject to the provisions of these bylaws and rules and regulations presently in force or as amended hereafter. Lot purchasers will acknowledge receipt of a copy of the cemetery bylaws of West Stockbridge.

#### **§ 105-2. Scope of rights.**

When a lot is purchased, only the right of human burial is secured, not the land itself.

#### **§ 105-3. Fees.**

The Cemetery Commission will set fees for burial sites, registration fee and site work.

#### **§ 105-4. Stones and monuments.**

Prior to installation, the Cemetery Commission must approve the size, kind and placement of stones or monuments. A three-foot foundation is required under the headstone and footstone placements.

#### **§ 105-5. Corner markers required.**

Corner markers are required for all burial lots at the owner's expense.

#### **§ 105-6. Plantings.**

No plantings shall be made on any lot without permission of the Cemetery Commission. The Commission reserves the right to remove any previous, present or future plantings which are detrimental, dangerous or inconvenient, in the judgment of the Commission, at the owner's expense.

#### **§ 105-7. Trees.**

Tree plantings within Town cemeteries are strictly prohibited. Existing trees whose roots interfere with cemetery plots and/or disturbing stone placements will be removed, at the owner's expense.

#### **§ 105-8. Flowers, wreaths and decorations.**

- A. The Cemetery Commission will arrange to remove flowers, wreaths or other decoration left on the lot when they become unsightly and bill the owner.

- B. Winter wreath decorations are permitted from November 11 (Veteran's Day) until April 15. After that date, the Town will remove them.

**§ 105-9. Vehicle and animal restrictions; hours of operation.**

Motorcycles, motorbikes, motor scooters, snowmobiles, dogs and horses are prohibited unless on official business; cemetery speed limit is 15 miles per hour. Cemetery hours shall be from 8:00 a.m. to sunset. Anyone convicted of a violation of this restriction shall be subject to the penalties set forth in Chapter 1, Article II, of the Town Code.

**§ 105-10. Sale of lots.**

Lots or parts thereof may not be resold, but may be repurchased by the Town. All sales must have Cemetery Commission approval.

**§ 105-11. Management.**

The Cemetery Commission is in charge of all matters pertaining to the management of the cemetery grounds and the Commission may make additional rulings as deemed expedient in contingencies.

**§ 105-12. Work performed on grounds.**

No work of any kind may be done on the grounds without approval of the Chairman or the Cemetery Commission in the absence of the Chairman.

**§ 105-13. Dumping of refuse prohibited.**

Dumping of refuse or garbage on or adjacent to Town cemeteries is prohibited. Anyone convicted of a violation of this prohibition shall be subject to the penalties set forth in Chapter 1, Article II, of the Town Code.

## **Chapter 125**

### **FARMING**

**§ 125-1. Legislative purpose and intent; applicability.**

- 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; c. 90, § 9; c. 111, § 125A; and c. 128 § 1A. We the citizens of the Town of West Stockbridge 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 West Stockbridge 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 of West Stockbridge.

### **§ 125-2. Definitions.**

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

**FARM** — Includes any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, or accessory thereto.

**FARMING** — Shall encompass activities including, but not limited to, the following:

- A. Operation and transportation of slow-moving farm equipment over roads within the Town;
- B. Control of pests, including, but not limited to, insects, weeds, predators, and disease organisms of plants and animals;
- C. Application of manure, fertilizers, and pesticides;
- D. Conducting agriculture-related educational and farm-based recreational activities, provided that the activities are related to marketing the agricultural output or services of the farm;
- E. Processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand, including signage thereto;
- F. 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;
- G. On-farm relocation of the earth and the clearing of ground for farming operation;
- H. Construction and use of farm structures and facilities for the storage of animal wastes, farm equipment, pesticides, fertilizers, agricultural products and livestock, for the processing of animal wastes and agricultural products, for the sale of agricultural products, and for the use of farm labor, as permitted by local and state building codes and regulations, including construction and maintenance of fences.

**FARMING OR AGRICULTURE** — Shall include, but not be limited to, the following:

- A. Farming in all its branches and the cultivation and tillage of the soil;
- B. Dairying;
- C. Production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;

- D. Growing and harvesting of Christmas trees;
- E. Cultivation of sugar maple trees for the production of maple products;
- F. Growing and harvesting of forest products and any other forestry or lumbering operations; raising of livestock, including horses;
- G. Keeping of horses as a commercial enterprise;
- H. Keeping and raising of poultry, swine, cattle, sheep, goats, rabbits, ratites (such as emus, ostriches and rheas), camelids (such as llamas, alpacas, and camels) and other domesticated animals for food and other agricultural purposes, including fiber and fur-bearing animals (not to include exotic animals);
- I. Keeping of honey bees;
- J. Fish hatcheries.

### **§ 125-3. Right to farm declaration.**

The right to farm is hereby recognized to exist within the Town of West Stockbridge. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the accompanying 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 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 imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning bylaw. This bylaw does not supersede local, state or federal laws or regulations or private covenants.

### **§ 125-4. Disclosure notification.**

- A. The Town will provide a copy of the following notice by posting a copy of the notice at the West Stockbridge Town Hall and at the West Stockbridge Public Library, and will include the notice and copy of the bylaw on the Town's official website: "It is the policy of the Town of West Stockbridge to conserve, protect and encourage the maintenance and improvement of agricultural land 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 noise, dust and odors. Buyers or occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations,

including the ability to access water services for such property under certain circumstances."

- B. A copy of the disclosure notification shall be given on a form prepared by the Town and shall be signed by the landowner prior to the sale, purchase, exchange or occupancy of such real property. A copy of the disclosure notification shall be provided by the Town to landowners each fiscal year by mail.
- C. A violation of § 125-4 shall be subject to a fine of \$300 and shall be enforced by the Select Board or its designee. The Town is authorized to enforce § 125-4 under the noncriminal disposition provisions of MGL c. 40, § 21D.

#### **§ 125-5. 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 Select Board, 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 Select Board may forward a copy of the grievance to the Agricultural Commission or 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 with all involved parties.
- B. The Board of Health, except in cases of imminent danger or public health risk, may forward a copy of the grievance to the Agricultural Commission or its agent, which shall review and facilitate the resolution of the grievance, and report its recommendations to the Board of Health within an agreed-upon time frame with all involved parties.

#### **§ 125-6. Severability.**

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

## **Chapter 130**

### **FEES AND CHARGES**



## ARTICLE I

**Interest Rate on Unpaid Water Charges****§ 130-1. Rate; quarterly invoices.**

The Town hereby establishes the interest rate for unpaid water charges to be 14% and declares that all water invoices are due and payable quarterly each year. The Water Commissioners are authorized to invoice the water user costs on a quarterly basis.

## **Chapter 135**

### **FIRE PROTECTION SYSTEMS**

#### **§ 135-1. Purpose.**

The purpose of this bylaw is to provide minimum safety requirements for the prevention of fire in residential buildings. A sprinkler system designed and installed in residential structures in accordance with the standards contained herein is expected to prevent flashover (total involvement) in the room of fire origin, when sprinklered, and to improve the chance for occupants to escape or be evacuated.

#### **§ 135-2. Scope.**

This bylaw is applicable to any buildings or structure hereafter constructed or hereafter substantially rehabilitated so as to constitute the equivalent of new construction and occupied in whole or in part for residential purposes, including mobile homes to the extent otherwise allowed by the Town bylaws. No certificate of occupancy shall be issued to any building or structure failing to meet the requirements of this bylaw.

#### **§ 135-3. Sprinkler system requirement; standards.**

All structures regulated by this bylaw shall be equipped with an approved system of automatic sprinklers in accordance with the following applicable National Fire Protection Association (NFPA) standards (most current edition):

- A. NFPA 13D: Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.
- B. NFPA 13R: Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies.
- C. NFPA 13: Standard for the Installation of Sprinkler Systems.

#### **§ 135-4. Enforcement.**

The Chief of the West Stockbridge Fire Department shall administer and enforce the provisions of this bylaw.

## **Chapter 160**

### **LICENSES AND PERMITS**

## ARTICLE I

**Denial or Revocation for Failure to Pay Taxes or Fees****§ 160-1. Definitions.**

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

LICENSING AUTHORITY — Any department, board, commission or division that issues local licenses or permits of any kind, including renewals and transfers.

PARTY — Any person, corporation or business enterprise

TAX COLLECTOR — The municipal official responsible for records of municipal taxes, assessments, betterments and other municipal charges.

**§ 160-2. List of delinquent parties.**

The Tax Collector shall annually, and may periodically, furnish to all municipal licensing authorities, and to any such licensing authority upon request, a list of all parties that have neglected or refused to pay any local taxes, fee, assessments, betterment or other municipal charges, provided 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.

**§ 160-3. Authority to deny, revoke or suspend; notice and hearing.**

With the exception of licenses and permits specified in § 160-6 of this bylaw, 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 by the Tax Collector, or with respect to any activity, event or other matter which is the subject of such license or permit and which activity, event or matter is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the Tax Collector, and said list shall be prima facie evidence for denial, revocation or suspension of such license or permit to any party whose name appears on said list. Before any such denial, revocation or suspension, however, written notice shall be given to the party by certified mail, return receipt requested, and to the Tax Collector, both in accordance with applicable provisions of law, and the party shall be given a hearing, to be held not earlier than 14 days after receipt of said notice. For the purpose of this section, said notice shall be deemed received on the date the party or its representative signs the return receipt. In the event the party fails or refuses to accept said written notice and/or the return receipt is unsigned or undated, the notice shall be deemed to have been received on the third business day by the postmark or other evidence. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such a license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reinstated or renewed until the licensing authority receives a certificate issued by the Tax Collector certifying that the party is in good standing with respect to

any and all local taxes, fees, assessments, betterment or municipal charges payable to the Town of West Stockbridge as of the date of issuance of said certificate. 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.

#### **§ 160-4. Payment agreements.**

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit, thereby conditioning the validity of said license or permit 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 of said license or permit is given notice and a hearing as required by applicable provision of law.

#### **§ 160-5. Waiver.**

The Select Board, upon written request, may waive such denial, suspension or revocation if it finds after a public hearing that there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of the property owner's immediate family, as defined in MGL c. 268A, § 1, in the business or activity conducted in or on said property. Notice of said public hearing shall be posted on the principal bulletin board of the Town Hall not less than seven days before the hearing and shall be advertised in a newspaper of general circulation within West Stockbridge once in each of two succeeding weeks, with the date of the first publication not less than 14 days before the date of the hearing.

#### **§ 160-6. Exceptions.**

This bylaw shall not apply to the following licenses and permits:

- A. Open burning permits (MGL c. 48, § 13).
- B. Sales of articles for charitable purposes (MGL c. 101, § 33).
- C. Children's work permits (MGL c. 149, § 69).
- D. Licenses for clubs and associations dispensing food and beverages (MGL c. 140, § 21E).
- E. Dog licenses (MGL c. 140, § 137).
- F. Fishing, hunting and trapping licenses (MGL c. 131, § 12).
- G. Marriage licenses (MGL c. 207, § 28).
- H. Permits for theatrical events and public exhibitions (MGL c. 140, § 181).

**Chapter 170****MOBILE HOME PARKS****§ 170-1. Definitions.**

The following terms, phrases, words and their derivations shall have the meanings given herein, unless the context in which they are used clearly require a different meaning:

ACT — Chapter 53 of the Acts of 2013, An Act Providing for the Establishment and Administration of Rent Regulations and the Control of Evictions in Mobile Home Accommodations in the Town of West Stockbridge.

CAPITAL IMPROVEMENT — Any substantial rehabilitation, addition or improvement which appreciably adds to the value of the property or prolongs its life, or both, but not including ordinary maintenance and repairs.

MOBILE HOME or MOBILE HOME PARK ACCOMMODATION — A dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or a permanent foundation for permanent living quarters, but shall not include modular homes set upon permanent foundations and which are installed on a lot or parcel of land located in a mobile home park.

MOBILE HOME PARK — A park licensed by the Town's Board of Health pursuant to MGL c. 140, § 32B.

RENT BOARD and BOARD — The Mobile Home Park Rent Control Board as established under the Act and herein. The Board shall consist of the members of the Town's Select Board.

RULES AND REGULATIONS — Rules and regulations as promulgated by the Board.

TOWN — The Town of West Stockbridge.

**§ 170-2. Maximum rent and registration.**

- A. In the Town of West Stockbridge, no rent adjustment shall be effective without the prior approval of the Board. The initial base maximum rent of a mobile home park accommodation shall be \$325 a month, which is the amount charged on January 1, 2013. If the mobile home park accommodation was unoccupied at that time, the maximum rent shall be the rent charged for similar accommodations on January 1, 2013. Any maximum rent may be subsequently adjusted by the Board under the provisions of §§ 170-3 and 170-4 of this bylaw and the rules and regulations.
- B. The owner of a mobile home park shall register the park with the Board within 30 days of the effective date of this bylaw. Required registration information shall include:

- (1) Current total number of mobile home units located in the park;
- (2) Current total number of available lots, both occupied and vacant;
- (3) Names and addresses, including contact information of current mobile home park tenants;
- (4) Current owner's name of the mobile home park and contact information for same; and
- (5) Contact information of the current mobile home park manager.

**§ 170-3. Adjustment of maximum rent.**

- A. The Board shall, by order as provided in the Act, make such individual or general adjustments, either upward or downward, of the maximum rent established by § 170-2, as may be necessary to remove hardships or correct inequities for both the owner and tenant, and to yield to owners a fair net operating income for such mobile home park accommodations.
- B. "Fair net operating income" shall be that income which will yield a return, after all reasonable operating expenses, on the fair market value of the property equal to the debt service rate generally available from institutional first mortgage lenders in Berkshire County, Massachusetts or such other rate of return as the Board, on the basis of the evidence presented before it, deems more appropriate to the circumstances of the case.
- C. The fair market value of the mobile home park shall be the assessed valuation of the property or such other valuations as the Board, on the basis of the evidence presented before it, deems more appropriate to the circumstances of the case.
- D. The Board, by regulations, may establish further standards and rules consistent with the foregoing. The Board may promulgate a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.
- E. Refusal to grant adjustments.
  - (1) Notwithstanding any other provision of this section, the Board may refuse to grant an upward adjustment of maximum rent:
    - (a) If it determines that the affected mobile home park accommodation does not comply with state and municipal codes, building codes, other state or local laws or regulations and bylaws regulating the conditions of housing accommodations; and
    - (b) If it determines that such lack of compliance is due to the failure of the owner of the mobile home park accommodation to provide normal and adequate repairs and maintenance.

- (2) The Board may refuse to make a downward adjustment of maximum rent if it determines that the tenant is more than 60 days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of MGL c. 239, § 8A; or if the tenant is in substantial violation of any enforceable rule of the mobile home park; or if the tenant is in violation of any laws, regulations or bylaws which protect the health and safety of other mobile home park residents.

**§ 170-4. Rent adjustment proceedings.**

- A. Adjustment of maximum rent. The Board shall consider an adjustment of rent for an individual or group of mobile home park accommodations for adjustment filed by the owner of the mobile home park or tenant(s) of such mobile home park accommodation(s). Such petition shall be made in a manner approved by the Board on forms provided by the Board. The petitioning party shall notify the owner if the petition was filed by the tenant(s). The tenant(s) shall be notified if the petitioning party is the owner. Notification shall be made 60 days prior to the date of proposed adjustment of rent. The petition must be in writing on the appropriate form. The Board shall schedule a hearing within 21 days of receipt of the petition. If a hearing is requested by either party, or if the action is undertaken on the initiative of the Board, notice of the time and place of the hearing shall be published once in the Berkshire Eagle or such other newspaper which has a general circulation in the Town, not less than five days prior to the hearing. The Board may consolidate petitions and actions relating to mobile home park accommodations in the same mobile home park, and all such petitions and actions may be considered in a single hearing. A hearing under this section shall be an adjudicatory hearing, following the procedures set forth in MGL c. 30A and 801 CMR 1.02, Informal/Fair Hearing Rules, insofar as the procedures are relevant.
- B. General adjustment of maximum rent by regulation.
  - (1) On its own initiative, the Board may make a general adjustment, by percentage or otherwise, of the rental levels for mobile home park accommodations, subject to such conditions, if any, as the Board shall determine. Prior to making such adjustment, a public hearing shall be held before the Board. Notice of the time, place, and purpose of such hearings shall be published one time in the Berkshire Eagle or such other newspaper which has a general circulation in the Town. Notice shall be published not less than five days prior to said hearing. There shall be no filing fee associated with a general adjustment, and the costs of publication and holding the public hearing shall be borne by the Town.
  - (2) Except as the Board for good cause may otherwise determine, annually, in October of each year, the Board shall hold a public hearing on whether to make a general adjustment; if, as a result of the public hearing, the Board determines that a general adjustment

should be made, the amount of the adjustment shall be based upon the increase in the Consumer Price Index (CPI) for the prior year for the Standard Metropolitan Statistical Area (SMSA) where the Town is located.

**§ 170-5. Petition for rent adjustment.**

- A. The Board shall consider a petition for an adjustment of rent filed by an owner or a tenant of a mobile home park situated in the Town. All petitions shall be filed with the Town Clerk, who shall sign and date them. No application may be accepted by the Town Clerk unless accompanied by the filing fee as established by the Board through its rules and regulations. In cases of multiple mobile home park ownership, the landlord shall segregate the financial information for the specific park(s) located within the Town.
- B. Owner's petition. The following information shall be submitted to the Board with the filing of the application for rent adjustment by the owner of a mobile home park. No Board action shall be initiated without the following supporting documentation:
- (1) Financial statements for the three years preceding the filing of the application for rent adjustment; such statements should clearly set forth income, sources of income, and a detailed breakdown of operating expenses;
  - (2) An interim updated financial statement showing income and operating expenses for the current calendar year and last 12 months immediately prior to the current petition;
  - (3) A complete and current balance sheet;
  - (4) A statement of the number of employees, job titles and descriptions, and salaries for any employee whose employment relates to the affected mobile home park;
  - (5) Current capital improvements and dates of completion;
  - (6) Proposed capital improvements and proposed dates of completion;
  - (7) Proposed budget for the year in which the increase is to be effective;
  - (8) A statement of the rate or return sought and the assessed valuation of the property where the mobile home park is located.
- C. The Board shall require payment of a filing fee, in an amount to be established by its rules and regulations, by any and all parties that make application to request a rent adjustment under this bylaw.



**§ 170-6. Limitation on petitions for individual adjustment.**

Notwithstanding any other provision in this bylaw, the Board may, without holding a hearing, refuse to adjust the maximum rent for an individual mobile home park accommodation and may dismiss any petition for adjustment if a decision has been made with regard to the maximum rent for such mobile home park accommodation within 12 months, or if the Board finds that the petition for adjustment is filed for purposes of harassment or for other purposes not intended by the Act or in conflict with MGL c. 140, §§ 32A through 32S.

**§ 170-7. Notice of discontinuance.**

In addition to the requirements of MGL c. 140, § 32L, and in accordance with 940 CMR 10.00, if the owner, in good faith, decides to discontinue use of part or all of the land owned and licensed as a mobile home park, such discontinuance will be subject to any existing contractual rights between the owner and the tenant located in the mobile home park. As a local requirement, the park owner must, in writing, give a minimum of 60 days' notice to each tenant prior to closing, in addition to any other notices required by state law.

**§ 170-8. Evictions.**

- A. Pursuant to the provisions of MGL c. 140, § 32J, an owner shall not bring an action to recover possession of a mobile home park accommodation unless the Board issues a certificate of eviction on one or more of the following grounds:
- (1) The tenant has failed to pay the rent to which the owner is entitled; or
  - (2) The tenant is in substantial violation of an enforceable rule of the mobile home park; or
  - (3) The tenant is in violation of a law, bylaw or regulation which protects the health or safety of other mobile home park residents.
- B. The owner must provide the Board with satisfactory evidence that all notice requirements as to any alleged violation have been provided to the tenant in a timely manner and the tenant has failed to cure the alleged violation in a timely manner, all as set forth in MGL c. 140, § 32J.
- C. Application for certificate of eviction; notice and hearing; issuance of certificate.
- (1) An owner shall file an application for a certificate of eviction and a copy of the application on a form provided by the Board as well as pay a filing fee in the amount established by the Board. The fee shall be paid by check or money order made payable to the Town of West Stockbridge at the time of filing the application for a certificate of eviction.

- (2) An application for a certificate of eviction shall be signed by the owner under the penalties of perjury and shall describe in complete detail the basis for eviction and the facts in support of such basis. A copy of the lease and the rules and regulations of the mobile home park shall be submitted with the application where the tenant is claimed to have violated either the lease or the park regulations.
  - (3) An application for a certificate of eviction which fails to comply with the foregoing provisions of this Subsection C shall not be processed until such defects have been corrected or removed.
  - (4) Within 30 days of receiving an application for a certificate of eviction, the Board shall by certified mail, return receipt requested, forward to the tenant or tenants listed on the application for a certificate of eviction and to the mobile home park owner a copy of the application for a certificate of eviction, as received, together with a notice of the date, time and place of the hearing.
  - (5) An application or an amended application for a certificate of eviction shall be scheduled for a hearing not less than 10 days or more than 21 days from the date on which the notice of hearing is mailed by the Board to the parties. Hearings shall be conducted by the Board and shall be adjudicatory hearings following the procedures set forth in MGL c. 30A, and 801 CMR 1.02, Informal/Fair Hearing Rules, insofar as the procedures are relevant.
  - (6) A request for postponement of the hearing may be granted for good cause shown.
  - (7) At the hearing, the owner shall have the burden of establishing the facts and basis for the eviction. Testimony shall be taken under oath and any party shall have the right to cross examine witnesses of the other party and to introduce evidence in support of its position.
  - (8) A written order granting or denying a certificate of eviction shall be issued by the Board within 30 days of the date of the final session of the hearing, and any order denying a certificate of eviction shall be a defense in any summary process action commenced by the owner against the tenant or tenants named on the application for a certificate of eviction.
- D. An owner who seeks to recover possession of a mobile home park accommodation without a certificate of eviction shall be deemed to have violated the Act and this bylaw.
- E. The provisions of this bylaw shall be construed as additional restrictions on the right to recover possession of a mobile home park accommodation. No provision of this bylaw shall entitle any person to recover possession of such a mobile home park accommodation. Upon a decision of the Board concerning the granting or withholding of a certificate of eviction, either party concerned may appeal to the

Southern Berkshire Division of the District Court or the Berkshire Superior Court, Department of the Trial Court, within 30 calendar days after such decision.

**§ 170-9. Violations.**

If a party appearing before the Board fails to comply with the required procedures or production of information requested, such conduct shall be grounds for dismissal of a petition presented to the Board.

**Chapter 180**

**NEWSPAPER DISPENSING DEVICES**

**§ 180-1. Permit required; application.**

Applications may be made to and on forms approved by the Select Board for rental permits allowing the installation of newspaper dispensing devices on public property along the streets and thoroughfares within the Town respecting newspapers having general circulation throughout the Town.

**§ 180-2. Definitions; approval of design.**

The terms "newspaper dispensing device", as used in this bylaw, shall mean a mechanical, coin-operated container constructed of metal or other material of substantially equivalent strength and durability, not more than 50 inches in height and not more than 25 inches in length and width. The design of such devices shall be subject to approval by the Building Inspector.

**§ 180-3. Location restrictions.**

Newspaper dispensing devices shall not be placed in the residential use districts of the Town and shall otherwise be placed adjacent and parallel to building walls not more than six inches distant therefrom or near and parallel to the curb not less than 18 inches and not more than 24 inches distant from the curb at such locations applied for and determined by the Select Board not to cause an undue health or safety hazard, interfere with the right of the public to the proper use of the streets and thoroughfares. Provided further, however, that no newspaper dispensing device shall be placed, installed, used or maintained:

- A. So as to create a hazard to the public health or safety or to impede or obstruct the normal flow of traffic on any street or sidewalk.
- B. So as to reduce the clear, continuous combined sidewalk and paved tree lawn width to less than five feet.
- C. Within five feet of any fire hydrant or other emergency facility;
- D. Within five feet of any intersecting driveway, alley, or street;

- E. Within three feet of any marked crosswalk;
- F. At any location where the width of paved clear space in any direction for the passageway of pedestrians is reduced to less than five feet;
- G. Within 250 feet of another newspaper dispensing device containing the same newspaper or news periodical, except that the Select Board may permit two such dispensing devices at an intersection where such placement would not impair traffic or otherwise create a hazardous condition; and
- H. At any location where three newspaper dispensing devices are already located.

**§ 180-4. Permit conditions.**

The rental permit shall be granted upon the following conditions:

- A. The permittee shall pay a rental fee, which shall be \$50 per year or part thereof, for each location where a newspaper dispensing device is installed;
- B. The permittee, upon removal of a newspaper dispensing device, shall restore the property of the Town to the same condition as when the device was initially installed, ordinary wear and tear excepted;
- C. The permittee shall maintain the device in good working order and in safe and clean condition and keep the immediate area surrounding such device free from litter and debris;
- D. The permittee shall not use a newspaper dispensing device for advertising signs or publicity purposes other than that dealing with the display, sale, or purchase of the newspaper sold therein;
- E. The permittee shall save and hold the Town of West Stockbridge harmless from any and all liability for any reason whatsoever occasioned upon the installation and use of each newspaper dispensing device and shall furnish, at the permittee's expense, such public liability insurance as will protect permittee and the Town from all claims for damage to property or bodily injury, including death, which may arise from operation under the permit or in connection therewith; and such policy shall name the Town of West Stockbridge as an additional insured, shall be in an amount not less than \$100,000 combined single limit for any injury to persons and/or damaged property, and shall provide that the insurance coverage shall not be cancelled or reduced by the insurance carrier without 30 days' prior notice.
- F. Rental permits shall be for a term of one year and shall not be assignable; and
- G. Such other terms and conditions deemed necessary and reasonable by the Select Board.

**§ 180-5. Revocation of permits.**

- A. Rental permits issued pursuant to this bylaw may be revoked by the Select Board after notice and hearing for any of the following causes:
- (1) Fraud, misrepresentation or any false statement contained in the application for such a permit;
  - (2) Violation of any provision of ordinances regulating such rental permit; or
  - (3) Violation of the terms of the rental permit granted.
- B. Notice of hearing for such a revocation shall be given in writing, stating the grounds of the complaint together with the time and place of hearing, and shall be mailed postage prepaid to the permittee at the address given in the rental permit application at least five days prior to the date set for the hearing.

**Chapter 185****NOISE****§ 185-1. Prohibitions.**

- A. Excessive noise from electronic amplification devices, including, but not limited to, vehicular sound systems, stereo equipment, outdoor speakers, or air horns in excess of 55 decibels, as measured at the source's property line, shall be prohibited in all residential zones. In the absence of decibel measuring devices, electronic amplification devices shall not be permitted, except when such system is inaudible at the property line. No public address system shall be permitted, except when such system is inaudible at the property line in all residential zones.
- B. Noise from motor vehicles.
- (1) It shall be unlawful for any person, while in control of any motor vehicle not traveling on a public way, to cause any unnecessary, loud, excessive, or unusual noise in the use or operation of the motor vehicle. The fact that the noise is plainly audible at a distance of 150 feet from the motor vehicle from which it originates shall constitute prima facie evidence of a violation of this bylaw.
  - (2) It shall be unlawful for any person, while in control of any motor vehicle at a single location for more than two minutes, to cause any unnecessary, loud, excessive, or unusual noise in the use or operation of the motor vehicle. The fact that the noise is plainly audible at a distance of 150 feet from the motor vehicle from which it originates shall constitute prima facie evidence of a violation of this bylaw.

**§ 185-2. Exceptions.**

Excluded from this bylaw are church bells, public school related athletic or entertainment events, emergency warning devices and Town-authorized functions.

**§ 185-3. Permit for one-day events.**

Applications for permits for noise levels to exceed this bylaw shall be made to the Select Board. The Select Board shall limit the issuance of permits under this bylaw to a single-day event; no more than four events per year for each parcel of land; for noise levels at the property line not to exceed 70 decibels; and to a restricted use during the hours of 10:00 a.m. through 10:00 p.m.

**§ 185-4. Enforcement; penalties for offenses.**

The Police Department shall be responsible for the enforcement of this bylaw. Any person or persons who violate this bylaw may be fined \$50 for the first offense, \$100 for the second offense within one year, and further violations within one year of the last violation shall be punishable at a rate of \$300 for each subsequent offense. Each such act which continues or is repeated within 1/2 hour after issuance of a notice of violation of this bylaw shall be a separate offense. (The instrumentation for determining noise sound pressure levels shall be with a sound device meter of standard design. Sound pressure level measurements shall be made with the "A" weighting Network.)

**Chapter 190****PARKS AND RECREATION AREAS**

ARTICLE I  
**Card Pond**

**§ 190-1. Beach restrictions.**

The Card Pond beach shall be restricted to people of the Town and their invited guests and taxpayers in the Town.

**§ 190-2. Dogs.**

Dogs will be barred from the beach, whether loose or on a leash.

**§ 190-3. Vehicles.**

Washing of cars will be prohibited.

**§ 190-4. Bathing restrictions.**

Bathing with soap will not be allowed.

**Chapter 200****RECYCLING****§ 200-1. Program established; recyclable materials; fees.**

- A. The Board of Health shall establish a mandatory program of recycling in conjunction with ordinary waste disposal.
- B. Residents of every household and business shall separate waste material into the following categories before depositing the same for disposal:
  - (1) Glass and cans.
  - (2) Paper and cardboard.
  - (3) Other waste.
- C. The Select Board shall establish a schedule of fees for items accepted for recycling at the transfer station.

**§ 200-2. Scavenging of recyclable materials prohibited.**

It shall be unlawful to remove from the West Stockbridge Transfer Station, without the permission of the Board of Health or its agent, any material(s) which the Board of Health has determined to be recyclable as set forth in this bylaw.

**§ 200-3. Enforcement.**

The Board of Health, its agent, or, in their absence, police officers shall enforce the provisions of this bylaw, and shall attend to all complaints or other matters pertaining to the West Stockbridge Transfer Station.

**§ 200-4. Violations and penalties.**

Notwithstanding any provisions of the Massachusetts General Laws to the contrary, any person(s) who violates any provision of this bylaw may be penalized by noncriminal disposition as provided in MGL c. 40, § 21D and shall be punished by a fine not to exceed \$300.

**§ 200-5. Disclaimer; severability.**

Nothing contained within this bylaw shall limit or restrict any enforcement officer's authority to seek criminal prosecution of any violation of state or federal law. If any part, section or provision of this bylaw is found to be invalid, the remainder of this bylaw shall not be affected thereby.

**Chapter 210****SKATEBOARDS, SCOOTERS AND ROLLER SKATES**



**§ 210-1. Operating restrictions.**

No person shall utilize a scooter, skateboard, roller skates or similar equipment or engage in any other athletic game on the streets, sidewalks or public parking lots as designated below unless a permit or order shall have been given by the Select Board:

Name of Street	Location
Center Street	From Main Street to Moscow Road
Depot Street	From Center Street to Main Street
Harris Street	From Main Street to Center Street
Main Street	From South Street to Depot Street

**§ 210-2. Violations and penalties.**

A first offense may be punishable by a fine of \$10; a second offense during a twelve-month period may be punishable by a fine of \$25; and a third or subsequent offense during a twelve-month period may be punishable by a fine of \$50.

**Chapter 215**

**STREETS AND SIDEWALKS**

**§ 215-1. Planning Board review of proposed actions.**

- A. Street acceptances. Any article in a Town Meeting warrant for the acceptance of a public way shall first be submitted to the Planning Board at least four weeks prior to the Town Meeting. The Planning Board shall make its recommendation on said article, but its failure to do so shall not invalidate the article.
- B. Construction of sidewalks. Any article in a Town Meeting warrant providing for the construction of a sidewalk along or on public property shall first be submitted to the Planning Board at least four weeks prior to the Town Meeting. The Planning Board shall make its recommendation on said article, but its failure to do so shall not invalidate the article.

**§ 215-2. Approval required for street openings.**

No accepted Town way or public sidewalk shall be dug into without prior written approval of the Select Board and Highway Superintendent. Said approval shall be in the form prescribed by the Select Board.

**§ 215-3. Removal of vehicles interfering with snow removal or maintenance.**

The Chief of Police shall have the authority to remove or cause to be removed from public ways any vehicle parked thereon, after reasonable effort to contact the owner thereof, which interferes with the normal functions of removing snow or ice therefrom, or normal cleaning/maintenance of the roadways. Any vehicle so removed shall be taken into a public garage and stored. The owner of such vehicle shall be liable for payment of charges incurred in removing the vehicle and storing the same in accordance with the provisions of MGL c. 40, § 22D, as amended.

**§ 215-4. Duty to remove snow and ice from sidewalks.**

The owner of premises, and his tenant or licensee, shall, as soon as practical after any snowfall or ice storm, cause all public sidewalks abutting said premises to be cleared reasonably of such snow and/or ice, and said sidewalk to be made usable by the public with as much safety as is possible under the circumstances.

**§ 215-5. Placing snow or ice into public ways prohibited.**

No person other than an employee in the service of the Town or an employee in the service of an independent contractor acting for the Town shall pile, push or plow snow or ice onto a Town way so as to impede the flow of traffic on such way. Whoever violates this section shall be punished by a fine of not more than \$100.

**§ 215-6. Driveways.**

No person shall construct or cause to be constructed a driveway to any public way until such time as the following conditions have been met and approved by the Highway Superintendent or Massachusetts Department of Transportation:

- A. Driveways with a maximum grade of 10% or less.
  - (1) A driveway permit shall be issued by the Road Superintendent before access to a property can begin.
  - (2) Entrances onto state highways shall conform to Massachusetts Department of Transportation standards and regulations.
  - (3) No driveway shall be approved at an intersection.
- B. Driveways with a maximum grade of more than 10% and any common driveways servicing up to a maximum of two lots.
  - (1) All requirements of Subsection A, if applicable, shall be satisfied.
  - (2) Common driveways may not be used to satisfy zoning frontage requirements. Each lot shall have frontage on ways which serve to satisfy frontage requirements.

- (3) Common driveways shall provide access to the lots from the way on which the lots served have their frontage and must observe a twenty-five-foot setback from the sideline which the lot of origin shares with a lot not served by the common driveway.
- (4) No common driveway shall be located within 100 feet of an intersection of public ways.
- (5) The design of any driveway shall, in the opinion of the Planning Board, assure adequate safety for emergency vehicles, including fire and police vehicles.
- (6) Driveways shall be located to the best advantage with regard to alignments with the public way, profile sight distance conditions and the like. In no instance shall the driveway intersect the public way at less than a 60° angle.
- (7) Culverts taking the place of roadside ditches shall have a diameter of not less than 15 inches. A larger diameter may be required. All culverts under any driveway shall become the property owner's responsibility for cleaning, maintenance, and replacement as determined by the Highway Superintendent.
- (8) The elevation of driveways at the point of entry into the public right-of-way shall not be more than the elevation of the shoulder of the roadway.
- (9) Driveways shall be so constructed that the water runoff from the driveway shall not drain onto the crown of the road.
- (10) In no instance shall the edge of the driveway entering onto the public way conflict with the flow of surface water runoff.
- (11) Individual driveways shall not be less than 12 feet nor more than 20 feet in width within the Town right-of-way. Any curb at the entrance shall be rounded off with a radius of three feet.
- (12) Wherever possible, as determined by the Highway Superintendent, driveways shall be pitched downward from the public way. However, where the topography prevents the driveway from being pitched in its entirety, the driveway shall be constructed on a downgrade from the road surface to the sideline of the Town right-of-way with a pitch of at least 1/4 inch per foot. From the sideline, the driveway may pitched toward the roadway; however, in no instance shall a driveway have a pitch toward the roadway of greater than one inch per foot, unless adequate provisions have been made and approved by the Highway Superintendent for the diversion of driveway surface runoff away from the roadway. The Highway Superintendent may require methods of diversion for driveways having a pitch of less than one inch per foot if the proposed driveway construction will result in excess accumulation of surface water in the right-of-way.

- (13) Driveways entering a paved way shall have a paved apron installed extending the width of the right-of-way or 15 feet, whichever is greater. Maintenance of said apron shall become the property owner's responsibility.

**§ 215-7. Police details to protect traffic.**

Where any contractor or other person(s) is performing construction work or any other activity on or near a public way in the Town of West Stockbridge, and where the passage or flow of pedestrians or vehicular traffic will be impeded or rerouted, and where, in the opinion of the Chief of Police, the safety, health and welfare of the general public is jeopardized., said contractor or other person(s) shall procure, at his own expense, sufficient police detail furnished and approved by the Chief of Police.

**§ 215-8. Enforcement of sidewalk restrictions.**

The Select Board and constables shall enforce the law against running or using bicycles and wagons upon the sidewalks in the Town. The Select Board may offer a small reward for the detection of any person placing tacks, glass or other substances on the sidewalks and highways which may puncture rubber tires.

**Chapter 240**

**VEHICLES AND TRAFFIC**

## ARTICLE I

**Storage of Unregistered Vehicles****§ 240-1. Outdoor storage prohibited.**

No unregistered and dilapidated motor vehicle and/or parts thereof may be allowed to stand on any premises unlicensed under MGL c. 140, § 57.

**§ 240-2. Notice of violation; penalties.**

If the owner or occupier of said premises receives notification, either written or oral, from the Select Board or Chief of Police that there exist on the premises unregistered and dilapidated motor vehicles and/or parts thereof on such premises, the owner or occupier shall be in violation of this bylaw after 14 days from the date of the aforementioned notification. Such violation may be punishable by a fine of \$10. Each motor vehicle and each part thereof and each day that any motor vehicle or part thereof exists on such premises shall constitute a separate offense.



ARTICLE II  
**Heavy Commercial Vehicles**

**§ 240-3. Weight restrictions.**

The use and operation of heavy commercial vehicles having a total GVW (gross vehicle weight) of more than five tons are hereby restricted on the following named streets or parts thereof:

Name of Street	Location
Lenox Road	From Lenox Branch/Richmond Road to Swamp Road

**§ 240-4. Exemptions.**

Section 240-3 of this bylaw shall not apply to heavy commercial vehicles going to or coming from places upon said streets for the purpose of making deliveries of goods, materials or merchandise to, or similar collections from, abutting land or buildings or adjoining streets or ways to which access cannot otherwise be gained; or to vehicles used in connection with construction, maintenance and repair of said streets or public utilities therein; to federal, state, municipal or public service corporation owned vehicles.

**§ 240-5. Alternate route.**

The alternate route shall be Routes 7 and 102.

**§ 240-6. Violations and penalties.**

Any person convicted of a violation of this bylaw shall be punished by a fine of \$100 for the first offense, \$200 for the second offense and \$300 for the third and subsequent offenses.

**Chapter 250****WATER USE RESTRICTIONS****§ 250-1. Authority.**

This bylaw is adopted by the Town under its police powers to protect public health and welfare and its power under MGL c. 40, § 21 et seq.; and implements the Town's authority to regulate municipal water use pursuant to MGL c. 41, § 69B.

**§ 250-2. Purpose.**

The purpose of this bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation.

**§ 250-3. Definitions.**

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

PERSON — Any individual, corporation, trust, partnership, association, or other entity.

STATE OF WATER SUPPLY CONSERVATION — A State of Water Supply Conservation declared by the Town pursuant to § 250-4 of this bylaw.

WATER USERS or WATER CONSUMERS — All public and private users of the Town's public water system, irrespective of any person's responsibility of billing purposes for water used at any particular facility.

**§ 250-4. Declaration of State of Water Supply Conservation.**

The Town, through its Board of Sewer and Water Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Supply Conservation shall be given under § 250-6 of this bylaw before it may be enforced.

**§ 250-5. Restricted water uses.**

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions, or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions, or requirements shall be included in the public notice required under § 250-6.

- A. Odd/Even day outdoor watering. Outdoor watering by water users with odd-numbered addresses is restricted to odd-numbered days. Outdoor watering by water users with even-numbered addresses is restricted to even-numbered days.



- B. Outdoor watering ban. Outdoor watering is prohibited.
- C. Outdoor watering hours. Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- D. Filling swimming pools. Filling of swimming pools is prohibited.
- E. Automatic lawn sprinkler use. The use of automatic lawn sprinkler systems is prohibited.

**§ 250-6. Public notification of State of Water Supply Conservation; notification of DEP.**

Notification of any provision, restriction, requirement or condition imposed by the Town as part of a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town or by such means reasonably calculated to reach and inform all users of the water of the State of Water Supply Conservation. Any restriction imposed under § 250-5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation shall be simultaneously provided to the Massachusetts Department of Environmental Protection.

**§ 250-7. Termination of State of Water Supply Conservation.**

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water and Sewer Commissioners, upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by § 250-6.

**§ 250-8. Violations and penalties.**

Any person violating this bylaw shall be liable to the Town in the amount of \$50 for the first violation and \$100 for each subsequent violation, which shall inure the Town. Fines shall be recovered by indictment or on complaint before the District Court or by noncriminal disposition in accordance with MGL c. 40, § 21D. Each day of violation shall constitute a separate offense.

**§ 250-9. Severability.**

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

## **Chapter 255**

### **WETLANDS PROTECTION**

**§ 255-1. Purpose.**

- A. The purpose of this bylaw is to protect the wetlands, water resources, flood-prone areas, and adjoining upland areas in the Town of West Stockbridge by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, including coastal storm flowage, water quality, prevention and control of pollution, fisheries, shellfisheries, wildlife habitat, rare species habitat, including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the "resource area values protected by this bylaw").
- B. This bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (MGL c. 131, § 40; the "Act") to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and regulations thereunder (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the commonwealth and other relevant bylaws of the Town of West Stockbridge.

### **§ 255-2. Jurisdiction.**

- A. Except as permitted by the Conservation Commission, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the "buffer zone"; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the "riverfront area"; and lands subject to flooding or inundation by groundwater or surface water (collectively, the "resource areas protected by this bylaw"). Said resource areas shall be protected, whether or not they border surface waters.
- B. The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

### **§ 255-3. Exemptions and exceptions.**

- A. The applications and permits required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
- B. The applications and permits required by this bylaw shall not be required for 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 to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- C. The applications and permits required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.
- D. Other than stated in this bylaw, the exceptions provided in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

#### **§ 255-4. Applications and fees.**

- A. Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.
- B. The Commission in an appropriate case may accept as the application and plans under this bylaw any application and plans filed under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

- C. Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a request for determination of applicability (RDA) or abbreviated notice of resource area delineation (ANRAD) filed under the Act shall include information and plans as are deemed necessary by the Commission.
- D. At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.
- E. Consultants. Pursuant to MGL c. 44, § 53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants, including engineers, wetlands scientists, wildlife biologists or other experts, in order to aid in the review of proposed projects. Such funds shall be deposited with the Town Treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.
- (1) Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five business days of the date notice is given without incurring any costs or expenses.
  - (2) The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the requested consultant fee within 10 business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.
  - (3) The applicant may appeal the selection of an outside consultant to the Select Board, which may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. The applicant shall make such an appeal in writing, which must be received within 10 business days

of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

**§ 255-5. Notice and hearings.**

- A. Any person filing a permit or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the Assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.
- B. The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD, with written notice given at the expense of the applicant at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in § 255-6.
- C. The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).

**§ 255-6. Coordination with other boards.**

Any person filing a permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the Select

Board, Planning Board, Board of Appeals, Board of Health, Agricultural Commission and Building Inspector. A copy shall be provided in the same manner to the commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

**§ 255-7. Permits and conditions.**

- A. If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.
- B. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is

necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

- C. In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.
- D. In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that 1) there is no practicable alternative to the proposed project with less adverse effects, and 2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- E. To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication. The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species

in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

- F. The Commission shall presume that all areas meeting the definition of "vernal pools" under § 255-9 of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.
- G. A permit, determination of applicability (DOA), or order of resource area delineation (ORAD) shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.
- H. For good cause the Commission may revoke any permit, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and Town boards, pursuant to § 255-5 and § 255-6, and after a public hearing.
- I. Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.
- J. The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or certificate of compliance (COC) issued under the Wetlands Protection Act and regulations.
- K. No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected is registered land, in the Registry Section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the applicant to furnish the recording fee therefor, either at the time of recording or as a condition precedent to the issuance of a COC.



**§ 255-8. Regulations.**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. At a minimum, these regulations shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

**§ 255-9. Definitions.**

A. The following definitions shall apply in the interpretation and implementation of this bylaw:

AGRICULTURE — Shall refer to the definition as provided by MGL c. 128, § 1A.

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- (1) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging, or filling with any material which may degrade water quality.
- (5) Placing of fill, or removal of material, which would alter elevation.
- (6) Driving of piles, erection, expansion or repair of buildings, or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting or trimming of trees and shrubs.
- (9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
- (10) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.
- (11) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

**BANK** — Includes the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

**PERSON** — Includes any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

**POND** — Shall follow the definition of 310 CMR 10.04, except that the size threshold of 10,000 square feet shall not apply.

**RARE SPECIES** — Includes, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless of whether the site in which they occur has been previously identified by the Division.

**VERNAL POOL** — Includes, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression.

- B. Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00).

### **§ 255-10. Security.**

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to

be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.

- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

**§ 255-11. Enforcement; violations and penalties.**

- A. No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.
- B. The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the commonwealth.
- C. The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, noncriminal citations under MGL c. 40, § 21D, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- D. Upon request of the Commission, the Select Board and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- E. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- F. Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

- G. As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the noncriminal disposition procedure set forth in MGL c. 40, § 21D.

**§ 255-12. Burden of proof.**

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

**§ 255-13. Appeals.**

A decision of the Conservation Commission shall be reviewable in the Superior Court in accordance with MGL c. 249, § 4.

**§ 255-14. Relation to Wetlands Protection Act.**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (MGL c. 131, § 40) and regulations (310 CMR 10.00) thereunder. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

**§ 255-15. 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 permit, approval or determination which previously has been issued.

**Chapter 275**

**ZONING**

## SECTION 1

**Title, Authority and Purpose****1.1. Title.**

This bylaw shall be known as the "Zoning Bylaw of the Town of West Stockbridge, Massachusetts", hereinafter referred to as "this bylaw".

**1.2. Authority.**

This bylaw is adopted in accordance with the provisions of Chapter 40A of the General laws as amended to regulate the use of land, buildings, and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety, and general welfare of the present and future inhabitants of the Town.

**1.3. Purpose.**

The purpose of this bylaw is to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety, and welfare, including, but not limited to, the following objectives:

- a.) To prevent overcrowding of land, to secure safety from fire, flood, panic, and other dangers, to conserve health, and to lessen congestion in the streets;
- b.) To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space, and other public requirements;
- c.) To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
- d.) To preserve and increase amenities by the promulgation of regulations designed to:
  - Protect the Town's significant environmental features such as: floodplains and flood-prone areas, wetlands, rivers, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.
  - Preserve the natural, scenic, and aesthetic qualities of the community.
  - Minimize the adverse effects of developments on the Town's unique environmental and historic features.
  - Further the objectives of the Town's Comprehensive Plan.

- Employ cooperatively the various measures taken by the Town's agencies, under diverse legislative authority, including the State Sanitary Code, Wetlands Protection Act, Subdivision Control Legislation, and the State Building Code, for the protection and enhancement of the Town's existing small-town character, open spaces, low density of population, and in the interests of the Town's orderly growth at a deliberate pace.

## SECTION 2 Definitions

### **2.1. Word usage and interpretation.**

For the purpose of this bylaw and unless the context of usage clearly indicates another meaning, the following rules of construction apply to the text of this bylaw:

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular.

The words "used" or "occupied" include the words "designated," "intended," or "arranged to be used or occupied."

The words "building," "structure," "lot," "land," or "premises" shall be construed as though followed by the words "or any portion thereof."

The word "shall" is mandatory; the word "may" is permissive.

The words "including" or "such as" shall not limit a term to specified examples, but are intended to extend its meaning to all other instances or circumstances of like kind or character.

Terms and words not defined herein but defined in the Building Code shall have meanings given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster's Unabridged Dictionary.

### **2.2. Terms defined.**

For the purpose of this bylaw, the following words and terms as used herein shall have the meanings or limitations of meaning hereinafter defined, explained or assigned:

**ACCESSORY APARTMENT** — A second dwelling unit located within a structure constructed as a single-family dwelling, subordinate in size to the principal dwelling unit and constructed so as to maintain the appearance of the structure as a single-family dwelling.

**ACCESSORY BUILDING** — A subordinate building, the use of which is customarily incidental to that of a principal building, and located on the same lot therewith.

**ACCESSORY USE** — A use subordinate and customarily incidental to the principal use of a building, structure, or land, and located on the same lot therewith.

**AGRICULTURAL USE** — Any parcel of land which is used in the raising of agricultural products, livestock, poultry, or dairy products, including necessary farm structures, vehicles, and equipment. This term does not include riding stables, kennels, or facilities for the commercial raising of swine or fur-bearing animals.

**AUTOMOBILE SERVICE STATION** — Any area of land, including structures thereon, which is used or designed to be used to supply motor vehicles with fuel, lubrication, and customary accessories; and may include facilities for lubrication, washing, polishing and minor repairs.

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

All dwellings to include farm animal restrictions.

**DWELLING UNIT** — One or more rooms constituting a separate independent housekeeping establishment with cooking, living, sanitary, and sleeping facilities for the use of one family.

**DWELLING, MULTIFAMILY** — A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**DWELLING, SINGLE-FAMILY** — A detached residential building containing one dwelling unit and occupied by one family only; but not including mobile homes, whether placed on a foundation or not.

**DWELLING, TWO-FAMILY** — A detached residential building containing two dwelling units, designed for occupancy by not more than two families living independently of each other.

**FAMILY** — One or more individuals related by blood, marriage, or adoption, or not more than five individuals who are not so related, living in a single dwelling unit.

**FAST-FOOD EATING ESTABLISHMENT** — A place that has as its principal business the sale of prepared or quickly prepared foods or drinks in disposable containers or wrappers for consumption either on or off the premises, and has a drive-through or drive-up facility.

**GARAGE, COMMERCIAL** — Any garage available to the public, operated for gain, and which is used for storage or repair of automobiles or other motor vehicles.

**GROSS AREA** — The overall area of all habitable or occupied space of a building on all floors, measured to the outside face of exterior walls, excluding decks and porches, and excluding uninhabitable basements, attics, and mechanical spaces. **[Added 2-27-2017 STM by Art. 2]**

**GUESTHOUSE** — A dwelling in which more than four rooms are rented by a resident family for transient guests, with or without meals as an accessory use.

**HOME OCCUPATION** — A business engaged in within a dwelling by a resident thereof as a use accessory thereto, involving no undue traffic or noise. For the purpose of this bylaw, "home occupation" does not include a gift shop or similar common retail or wholesale establishment.



**HOTEL** — A building with six or more rooms in which lodging is offered to paying guests with customary hotel services, including feeding in a central dining room on a transient or permanent basis.

**KENNEL** — A structure and other facilities for the keeping of more than three dogs, more than six months old, or three or more other household mammal pets, for sale or boarding purposes.

**LOT** — A single tract of land, or several contiguous tracts, whether acquired at one time or at more than one time, held in identical ownership throughout, defined by metes and bounds or lot lines in one or more deeds or conveyances, or shown on a duly recorded plan, with at least sufficient size to meet minimum zoning requirements for area, frontage, and yards under this bylaw.

**LOT FRONTAGE** — The distance along the street line (for corner lots to be measured along one street only), which provides direct access to the lot; provided, however, that the depth of any lot created after the effective date of this bylaw shall not be less than 40 feet at any point along its frontage in order to qualify for frontage under this bylaw. A private street approved by the Planning Board under the Subdivision Control Law may provide frontage only for the lots which are contained within the approved subdivision.

**MANUFACTURING** — Shall be light and clean in nature and be developed in a nonoffensive manner. Also, the manufacturing plant and its related activities shall be nonpolluting of our air, water and land.

**MIXED USE** — A combination of residential and nonresidential uses on a single lot or a combination of one or more nonresidential uses on a single lot. **[Added 2-27-2017 STM by Art. 2]**

**MOBILE HOME** — A vehicular, portable, completely enclosed structure built on a permanent chassis, designed as a dwelling unit to be transported after fabrication on its own wheels or on a flatbed or detachable wheels. For the purpose of this bylaw, the term "mobile home" includes trailers incorporating the characteristics of mobile homes as herein defined.

**MOTEL** — A building or group of buildings, whether detached or connected units, designed as individual sleeping units primarily for transients traveling by automobile, with off-street parking facilities on the same lot.

**MUNICIPAL USE** — Any use of land in accordance with the general laws governing municipal powers and functions, including participation in regional uses.

**PIGGERY AND FUR FARM** — The keeping of two or more pigs or fur-bearing animals exceeding 10 weeks in age shall constitute a piggery or fur farm.

**PRIVATE CLUB** — Land and/or buildings used exclusively by members of an organized group, who are elected by a committee or by membership, and not open to public use.

**SIGN, ACCESSORY** — Any sign that advertises or indicates the person occupying the premises on which the sign is erected or maintained, or the

business transacted thereon, or advertises the property itself or any part thereof as for sale or rent, and which contains no other matter.

**SITE PLAN** — A plan indicating, but not limited to, the following: the location of all existing and proposed buildings, structures, access roads, driveways, parking areas, all proposed site improvements, and including the names of all current abutters.

**STORY** — That portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than 1/2 of such portion vertically is below the average finished grade of the ground adjoining such building.

**STREET** — A public way or a private way either shown on a plan approved in accordance with the Subdivision Control Law or otherwise qualifying lots along it for frontage under the Subdivision Control Law.

**STREET LINE** — The right-of-way line of a street as established under public authority, or as shown on a plan approved by the Planning Board; or if neither of the above apply, a line parallel to the center line of the street measured back a distance equal to 1/2 of the normally required right-of-way.

**TAG SALE** — The occasional (infrequent) sale of common household items, for a period not exceeding three consecutive days.

**YARD, FRONT** — A required yard extending along the full length of the front lot line between the side lot lines.

**YARD, REAR** — A required yard extending the full length of the rear lot line between the side lot lines.

**YARD, REQUIRED** — The open areas of the lot extending inward from a lot line for the distance specified in the zoning regulations, within which no structure may be located except as otherwise provided in this bylaw.

**YARD, SIDE** — A required yard extending along a side lot line from the required front yard to the required rear yard.

SECTION 3  
**Zoning Districts**

**3.1. Establishment of districts. [Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 9-18-2019 STM by Art. 1]**

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

R-1	One-Acre Residence
R-3	Three-Acre Residence
R-D	Residence
C	Commercial
M	Manufacturing
F-P	Floodplain Districts
W-A	Wetland Area
VCOD	Village Core Overlay District
MROD	Marijuana Retail Overlay District
PVOD	Photovoltaic Overlay District

**3.2. Location of districts; Zoning Map.**

The location and boundaries of these districts shall be as shown on the Zoning Map of West Stockbridge, Massachusetts, dated March 1998, bearing the signatures of the members of the Planning Board, and on file in the office of the Town Clerk, which map, with all explanatory matter thereon, is hereby made a part of this bylaw.

3.2.1 Floodplain Districts (F-P) and Wetland Area (W-A) shall be considered as overlying other districts as generally shown on the Zoning Map of West Stockbridge as a recognition of the special hazards which exist in such areas and shall include the following:

1. The Floodplain District includes all special flood hazard areas designated as Zones A, A1-30 on the Town of West Stockbridge Flood Insurance Rate Maps, dated June 1, 1982, on file with the Town Clerk, Planning Board and Building Inspector.
2. Wetlands are shown on the map prepared by Robert G. Brown & Associates, Inc. entitled "Zoning Map - West Stockbridge, Massachusetts," dated June 7, 1978.

3.2.2 The Village Core Overlay District (VCOD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 2-27-2017 STM by Art. 2]**

3.2.3 The Marijuana Retail Overlay District (MROD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 1-14-2019 STM by Art. 1]**

3.2.4 The Photovoltaic Overlay District (PVOD) is an overlay district mapped over other districts. It modifies and, where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying district remain in effect. **[Added 9-18-2019 STM by Art. 1]**

### **3.3. District boundary lines.**

3.3.1 The district boundary lines shall be as shown on the Zoning Map and indicated by the dimensions entered thereon.

3.3.2 For the purpose of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:

3.3.3 Boundaries which appear to follow the center lines of streets, railroads, or streams shall be construed to follow such lines.

3.3.4 Boundaries indicated as following shorelines of lakes or ponds shall be construed to follow such shorelines.

3.3.5 Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.

3.3.6 Boundaries which appear to run parallel to the features indicated above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

3.3.7 Where a district boundary appears to parallel a street line and no dimension is given, the boundary shall be interpreted as being 200 feet from said street line.

3.3.8 Where a district boundary line divides a lot in single ownership at the time such district is established, the Board of Appeals may permit by special permit the extension of the regulations for either portion of the lot not to exceed 20 feet beyond the district line into the remaining portion of the lot.

3.3.9 In cases of uncertainty or disagreement concerning the exact locations of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Board of Appeals.

SECTION 4  
**Use Regulations**

**4.1. General provisions.**

Except as provided by law or in this bylaw, no building or structure shall be erected and no building, structure, land, or part thereof shall be used for any purpose or in any manner other than for one or more of the uses set forth in the accompanying Table of Use Regulations, Section 4.11, as permitted by right in the district in which such building, structure, or land is located, or which may be permitted in said district and so authorized by special permit granting authority as designated in Section 4.11 herein.

**4.2. (Reserved)**

**4.3. Multiple buildings on single lot.**

More than one building or structure housing a principal permitted use or any portion thereof may be erected or placed on a single lot, provided that:

- a. Area, width, frontage, yard, and other requirements of this bylaw shall be met for each building or structure as though it were on an individual lot, unless any such requirement is reduced by special permit of the Planning Board; and
- b. This Section 4.3 shall have no application if more than one use on a lot is specifically prohibited by any other provision of this bylaw.

**4.4. Applicability of other laws and regulations.**

Every use permitted by right or authorized by special permit under the provisions of this bylaw shall be subject to the State Building Code, State Sanitary Code, and the Town's Board of Health regulations and all other applicable statutes, bylaws, and regulations.

**4.5. Floodplains and wetlands.**

Any use otherwise permitted in the portion of any zoning district overlaid by a Floodplain District or Wetland Area shall be subject to the restrictions set forth in Sections 6.4 and 6.5, respectively.

**4.6. Interpretation of uses.**

Where a structure or use might be classified under more than one of the listed uses, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.

**4.7. Accessory uses.**

Subject to the limitations contained in this bylaw, an accessory use shall be permitted:

- a. On the same lot with the building to which it is accessory; or
- b. On a lot any portion of the frontage of which is directly across the road from the frontage of the lot containing the principal use, provided that it does not alter the character of the premises and is not detrimental to the neighborhood.

#### **4.8. Farm buildings and agricultural structures.**

Farm buildings and structures used exclusively for agricultural purposes shall be deemed to be accessory buildings and structures for the purpose of this bylaw. Such buildings and structures may be located on the same lot with the principal permitted use or on separate lots.

#### **4.9. Nuisances prohibited.**

Any use of land, buildings, or structures which creates excessive and objectionable noise, fumes, odor, dust, electrical interference or undue traffic shall be prohibited in all districts.

#### **4.10. Large-scale development. [Amended 2-27-2017 STM by Art. 2]**

This section is intended to regulate larger-scale development in the Town of West Stockbridge.

4.10.1 Any nonresidential building or use or combination of uses, including mixed uses which include residential components of use, which occupies a gross floor area of 4,500 square feet or more shall, in addition to satisfying any otherwise applicable requirement of this bylaw, be permitted only with a special permit from the Planning Board.

4.10.2 If a special permit is required by this section because the building or use, or combination of uses, is 4,500 square feet or more of gross area and a special permit is also required for one or more of the uses by Subsection 4.11.1, Table of Uses, then only one special permit will be required under Section 4.10, and the applicant must meet all of the standards and requirements of Section 4.10 and all of the applicable standards and requirements for the use or uses as required by Subsection 4.11.1, Table of Uses.

4.10.3 For a building or use or a combination of uses in the VCOD that is 4,500 square feet or more, the Planning Board may reduce the underlying commercial district setback regulations that would be otherwise applicable so as to be no less than the setback requirements of the VCOD overlay district, provided that the following conditions are met:

- a. The proposed structure is in harmony with adjoining structures in terms of mass, proportions of building elements, and general character of building elements.
- b. Main entrances are on the front.

- c. If the proposal includes mixed use, the proposal conforms to all the requirements of Subsection 4.11.3.6.C.
- d. All other applicable regulations are met to the satisfaction of the Planning Board.

4.10.4 Conditions on mixed-use special permits. The special permit granting authority may impose other conditions as it sees necessary on a special permit granted under Section 4.10, as permitted by Subsection 6.3.5.

4.10.5 In addition to the site plan required under Subsection 6.3.6, all special permit applications made under Section 4.10 shall include building floor plans and elevations, drawn to scale, showing all floor areas and the general character of the proposed structure, prepared in a manner that is adequate for the Planning Board to assess conformance of the proposal to the requirements for the special permit.

4.10.6 Uses in the VCOD that are less than 4,500 square feet of gross floor area, in addition to uses in the VCOD greater than 4,500 square feet of gross floor area, which seek to reduce setbacks to less than five feet in the VCOD when frontage of the lot is located on a sidewalk may, by special permit, reduce frontage to up zero feet, provided that:

- a. If existing, the sidewalk has been in existence for at least five years prior to the construction of the new building or buildings being proposed.
- b. If new, the proposed sidewalk extends and connects continuously to at least six other lots and connects to an existing sidewalk that has been in existence for at least five years prior to the construction of the new building or buildings being proposed.
- c. The main entrance to the proposed building is on the front of the building and is connected to the sidewalk.

#### **4.11. Tables of Principal and Accessory Uses.**

4.11.1 Table of Principal Uses. **[Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]**

Symbols used in the Table of Use Regulations shall mean the following:

- Yes Use permitted by right.
- SPA Use which may be authorized by special permit from the Board of Appeals in accordance with the provisions of Section 6.3 herein.
- SPP Use which may be authorized by special permit from the Planning Board in accordance with the provisions of Section 6.3 herein.
- SPS Use which may be authorized by special permit from the Select Board in accordance with the provisions of Section 6.3 herein.
- NO Specifically excluded or prohibited use.

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
Residential Uses								
1.	One single-family dwelling; more than one single-family dwelling per lot is not permitted, and no other principal use is permitted on a lot which contains a single-family dwelling	YES	YES	YES	YES		YES	
2.	Two-family dwelling, provided the lot area is at least twice the minimum lot area in the district	SPP	SPP	SPP	SPP		SPP	
3.	Multifamily dwelling, subject to the special requirements set out in Subsection 4.11.3.4	NO	NO	SPP	SPP		NO	
4.	Conversion of a single-family dwelling which existed on January 1, 1992, into either a two-family dwelling or a building having a use or combination of uses, each of which is permitted at the location either as of right or by special permit in the district; subject to the requirements of Subsection 4.11.3.2 hereof	SPP	SPP	SPP	SPP		SPP	



Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
Institutional, Municipal, and Community Uses								
5.	Religious or education use on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation, with at least 200 feet of setback	YES	YES	YES	YES		YES	
6.	Use by a municipal or governmental body (including, but not limited to, a duly constituted special sewer or other district) with at least 200 feet of setback; provided, however, that the special permit granting authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	SPP	SPP	SPP	SPP		SPP	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
7.	Public utilities such as a telephone exchange, natural gas or electric power facility, railroad or bus station, with at least 200 feet of setback; however, the special permit granting authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	NO	SPS	SPS	SPS		NO	
8.	Nonprofit library or museum	SPS	SPS	SPS	SPS		SPS	
9.	Hospital, sanitarium, nursing home, children's day-care center or other similar use subject to regulations of the commonwealth, with at least 200 feet of setback; however, the special permit granting authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	NO	SPP	SPP	SPP		NO	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
10.	Private school, college, nursery school, trade or professional school, except as regulated under Subsection 4.11.1(5) herein, with at least 200 feet of setback; however, the special permit granting authority may reduce the setback requirement in its discretion to a figure not less than 50 feet	NO	SPP	SPP	SPP		NO	
Recreational Uses								
11.	Golf, tennis, swimming, or sportsmen's club, ski tow, livery or riding stable or other recreational use of similar character	SPP	SPP	SPP	SPP		SPP	
12.	Summer camp for children or family-type campground	SPP	SPP	SPP	SPP		SPP	
13.	Private club, as defined in this bylaw	SPP	SPP	SPP	SPP		SPP	
14.	Boat house for rental of boats and canoes	SPP	SPP	SPP	SPP		SPP	
Businesses, Industrial and Other Uses								
15.	Hotel or motel as defined in this bylaw	NO	NO	SPP	SPP		NO	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
16.	Restaurant (except for fast-food eating establishments) where food is served primarily for consumption within the building	NO	NO	SPS	SPS		NO	
17.	Fast-food eating establishment	NO	NO	NO	NO		NO	
18.	Antique or gift shop or art gallery	NO	NO	YES	YES		NO	
19.	Automobile service station or commercial garage	NO	NO	SPS	SPS		NO	
20.	Commercial amusement	NO	NO	SPS	SPS		NO	
21.	Sale or storage of feed, lumber, or building supplies	NO	NO	SPS	SPS		NO	
22.	Research laboratory or light and clean manufacturing activity where the majority of the services or products is retailed on the premises or by mail	NO	NO	SPS	SPS		NO	
23.	The removal of sand, gravel, rock, loam, topsoil, or other earth material, as a commercial business	NO	NO	NO	NO		NO	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
24.	Office, bank, retail business or consumer service establishment, unless otherwise specifically regulated in this bylaw	NO	NO	YES	SPP		NO	
25.	Any lawful industrial, light and clean manufacturing, warehousing, service including processing, fabrication, assembly or storage, unless specifically otherwise regulated in this bylaw; all such uses must meet the requirements of Subsection 4.11.3.1, and the applicant is required to submit an impact statement addressing said requirements	NO	NO	NO	SPP		NO	
26.	Commercial greenhouse, nursery, or landscape gardening	NO	NO	YES	YES		NO	
27.	The use of land or structure for the primary purpose of agriculture, horticulture, or floriculture with at least 5 acres of land	YES	YES	YES	YES		YES	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
28.	Piggery or fur farm not qualifying under the preceding section	NO	NO	NO	NO		NO	
29.	Kennel or veterinary hospital	NO	NO	NO	SPS		NO	
30.	Cemetery	SPS	SPS	SPS	SPS		SPS	
31.	Junkyards, commercial racetracks, drive-in theaters, trailer parks, billboards, or off-premises signs	NO	NO	NO	NO		NO	
32.	Automobile sales establishments	NO	NO	SPS	SPS		NO	
33.	Dump or other area for the disposal of rubbish, except officially designated areas for such purposes by the Town of West Stockbridge	NO	NO	NO	NO		NO	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
34.	Commercial communication activities, including radio television transmission or receiving facilities, directional beacons and antennas, and cable television reception facilities; provided, however, that any such facilities shall be visually screened from adjoining public ways and other land to the maximum extent feasible, in accordance with specific conditions to be established by the special permit granting authority; this section does not include Personal wireless service facilities and repeaters, which are covered by Subsection 4.11.1(35)	SPP	SPP	SPP	SPP		SPP	
35.	Personal wireless service facilities and repeaters, as defined in Section 8 of these bylaws, and in accordance with the terms and conditions thereof	SPP	SPP	SPP	SPP		SPP	

Principal Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
36.	Mixed use, subject to the specific requirements set forth in Subsection 4.11.3.6	NO	NO	SPP (1)	NO		NO	
37.	Retail sales of medical and adult use (i.e., recreational) marijuana	NO	NO	NO	NO	SPS	NO	
38.	Cultivation of marijuana for commercial purposes	SPP See Sub-section 4.11.3.7.	NO	NO	SPP	NO	SPP See Sub-section 4.11.3.7.	
39.	Marijuana manufacturing and production of marijuana-based products	NO	NO	NO	SPP	NO	NO	
40.	Marijuana testing facility	NO	NO	NO	SPP	NO	NO	
41.	Marijuana transportation business	NO	NO	NO	SPP	NO	NO	
42.	(Reserved)							
43.	Large-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	NO
44.	Medium-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	YES

4.11.2 Table of Accessory Uses. **[Amended 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]**



Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
1.	Home occupation, no on-premises sale: Occupation, business, profession, craft, or art engaged in within a dwelling or in an accessory building by a resident of premises, as a use accessory thereto, whether or not in connection with an off-premises occupation, and involving no on-premises sale (for either immediate or later delivery) of goods or services, or public exhibits or displays, and utilizing the services (whether as employee or on commission or as independent contractor) of no persons outside the household, and with no external evidence of the conduct of such accessory use	YES	YES	YES	YES		YES	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
2.	Home occupation in connection with off-premises occupation: Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, as a use accessory thereto, in connection with an off-premises occupation, and conforming to the requirements of Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	
3.	Home occupation involving sale or delivery of services: Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the sale or delivery of services, and conforming to the requirements of Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
4.	Home occupation involving sale of products made on premises: Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the sale of products, articles or goods made on the premises, and conforming to the requirements of Subsection 4.11.3.3 hereof	SPP	SPP	YES	YES		SPP	
5.	Home occupation involving sale of products not made on premises: Occupation, business, profession, craft or art engaged in within a dwelling or in an accessory building by a resident of premises, and involving the on-premises sale (for either immediate or later delivery) of products, articles, or goods not made on the premises, or public exhibitions or displays, as a use accessory thereto, and conforming to the requirements of Subsection 4.11.3.3 hereof	NO	NO	SPP	SPP		NO	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
6.	Rental of not more than 4 rooms, with or without meals, in a dwelling by a resident family, provided no separate kitchen facilities are maintained; and provided further that the parking requirements of Subsection 6.2.1 have been satisfied	YES	YES	YES	YES		YES	
6a.	Accessory apartment, subject to the requirements of Subsection 4.11.3.5	SPP	SPP	SPP	SPP		SPP	
7.	Guesthouse as defined by this bylaw	SPP	SPP	SPP	SPP		SPP	
8.	Roadside farm stand selling primarily agricultural, horticultural, or floricultural products raised on the premises, provided that no products are displayed for sale within 20 feet of the street	YES	YES	YES	YES		YES	
9.	Greenhouse, tennis court, swimming pool, or any other recreational facility not for commercial purposes	YES	YES	YES	YES		YES	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
10.	The removal of any earth materials, including stripping of topsoil, only when incidental to or required in connection with any of the following operations:	YES	YES	YES	YES		YES	
a.	The erection of a building or structure on the lot for which a building permit has been properly issued, and the construction of a private driveway							
b.	Any otherwise lawful accessory use incidental to a permitted use, including cultivation, planting, or drainage of land or landscaping							
c.	The construction of a private street in a subdivision approved by the Planning Board under the Subdivision Control Law							
d.	Municipal or government construction or operation							

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
11.	The display of a sign or signs pertaining to a permitted use as regulated in Section 6.7 in this bylaw, unless specifically prohibited or regulated by other provisions of this bylaw	YES	YES	YES	YES		YES	
12.	The raising or keeping of poultry, livestock, or domestic animals, for use by the residents of the premises, not as a commercial venture, subject to the regulations of the Board of Health, provided all grounds used for pasturing or other purposes involving unrestrained animals shall be properly fenced	SPP	SPP	SPP	SPP		SPP	
13.	The raising or keeping of household pets by the residents of the premises not as a commercial venture	YES	YES	YES	YES		YES	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
14.	Temporary use of a trailer for living purposes while a permanent dwelling is actively under construction on the same lot, for a period not exceeding 6 months, subject to the approval of the Board of Health, provided off-street parking requirements and yard requirements are met	SPS	SPS	SPS	SPS		SPS	
15.	Trailer of a type intended only for camping purposes, stored within sight of a public way in excess of 30 days in any calendar year, provided it is not used for living purposes	SPS	SPS	SPS	SPS		SPS	
16.	Radio-television transmission and receiving towers as well as fire, police, and CB antennas not to exceed 40 feet in height from the ground, or 25 feet over the height of the roof, whichever is greater; said tower shall be constructed so that if said tower were to collapse or fall, the entire system would fall within the boundaries of said owner	YES	YES	YES	YES		YES	

Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
17.	Antennas for the purpose of noncommercial reception of television and/or radio signals from orbiting satellites, subject to the following provisions:	YES	YES	YES	YES		YES	
a.	Ground-mounted satellite television antennas shall not exceed a height of 15 feet and shall not be located in the front yard area							
b.	All satellite television antennas, when located between the minimum setback distance (front yard) and the dwelling, shall be adequately screened from view from the street by plantings.							
18.	Tag sales (home) or garage sales, as defined in Section 2 of these bylaws, in excess of 2 per year	SPS	SPS	SPS	SPS		SPS	



Accessory Use		District						
		R-3	R-D	C	M	MROD	R-1	PVOD
19.	Marijuana microbusiness, engaged within a dwelling or in an accessory building by a resident of the premises involving no on-premises sales of products, articles, or goods made on or off the premises to consumers and conforming to Subsection 4.11.3.3 hereof	SPP	NO	NO	SPP	SPP	SPP	
20.	Marijuana craft cooperative, engaged within a dwelling or in an accessory building by a resident of the premises involving no on-premises sales of products, articles, or goods made on or off the premises to consumers and conforming to Subsection 4.11.3.3 hereof	SPP	NO	NO	SPP	SPP		
21.	Large-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	NO
22.	Medium-scale ground-mounted solar energy system	NO	NO	SPP	SPP		NO	YES
23.	Small-scale ground-mounted solar energy system	SPP	SPP	SPP	SPP		SPP	YES
24.	Roof-mounted solar energy system	YES	YES	YES	YES		YES	YES

## 4.11.3 Special requirements.

4.11.3.1 Light and clean manufacturing. All uses under Subsection 4.11.1(25) shall meet the following performance standards:

- A. The use shall not be likely to create any dangerous, injurious, noxious, or otherwise objectionable fire, explosion, or other hazard, noise or vibration, smoke, dust, dirt, or other form of air pollution, electrical or other disturbance, glare, or any other dangerous or objectionable substance, condition, or element in such amount as to adversely affect the surrounding area or premises. The determination of the existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Any use already established on the effective date of this provision shall not be so altered or modified as to conflict with, or further conflict with, these performance standards.
- B. No materials or waste shall be deposited upon a lot in such form or manner that it may be transferred off the lot by natural causes or forces.
- C. All materials or waste which constitutes a fire hazard or which may be edible by or attractive to rodents or insects shall be stored outdoors only in closed containers.
- D. No discharge at any point into any public sewer, private sewage disposal system, or stream, lake, or pond, or into the ground of any material of such nature or temperature as can contaminate any water supply or cause the emission of dangerous or offensive elements shall be permitted, except in accordance with all relevant laws, rules, and regulations.

4.11.3.2 Conversion of single-family into two-family dwelling. All uses under Subsection 4.11.1(4) shall meet the following requirements:

- A. The lot size shall be equal to or greater than the minimum lot size in the district, even if the use prior to the conversion was protected as preexisting.
- B. The livable floor area of such dwelling shall not be increased, and no exterior changes shall be made which would alter the residential character of the building.
- C. The required yards shall be in compliance with the provisions of this bylaw.
- D. The Planning Board may impose such additional conditions as it finds reasonably necessary for the protection of neighboring uses, including fencing, screening, and the maintenance of existing ground improvements and landscaping.

4.11.3.3 Certain home occupations. All uses under Subsections 4.11.2(2) through (5) shall meet the following performance standards:

- A. They shall utilize the services (whether as employee or on commission or independent contractor, or otherwise) of not more than two persons outside the household.
- B. There shall be no external evidence of the conduct of such accessory use, except that there may be a sign if:
  - 1. Such sign, if in Zone R-1, R-3, or R-D, shall not exceed two square feet in area; and
  - 2. Such sign is otherwise permitted under Section 6.7 of this bylaw.
- C. The parking requirements of Subsection 6.2.1 of this bylaw shall be met.

4.11.3.4 Multifamily uses. Any multifamily development shall conform to the following special requirements:

4.11.3.4.1 Development standards.

- A. The minimum lot area requirements per dwelling unit shall be a minimum of two acres plus an additional 1/2 acre per living unit over three units per structure.
- B. The required front, side, and rear yard dimensions shall be twice the minimum requirements for the district.
- C. No more than six dwelling units shall be provided for any such development.
- D. The minimum area of developed playgrounds, recreational areas, or other usable, suitably landscaped open space shall be at the rate of 1,000 square feet per bedroom.
- E. Front yard and all open areas shall be suitably screened from the road, suitably landscaped and maintained with grass, trees, shrubs and walks.
- F. Any driveway within the development shall be set back from any side or rear property line not less than 50 feet.
- G. Off-street parking space shall be located to the rear of the building setback line and at least 50 feet from any side or rear property line, and shall conform to the standards set forth in Section 6.2 of this bylaw.

4.11.3.4.2 Bonding. Unless the installation of all required improvements has been completed, no certificate of occupancy shall be issued by the Building Inspector until the applicant

shall have filed in the office of the Town Clerk a bond with surety satisfactory to the Town Counsel and Planning Board. Such bond shall be in the amount sufficient in the judgment of the Planning Board to secure the completion of such work in compliance with all applicable statutes, ordinances, and regulations, and in accordance with the approved site plan.

#### 4.11.3.5 Accessory apartments.

- A. The size and scale of the structure shall be appropriate to the neighborhood of predominately single-family dwellings; the appearance of a single-family house shall be maintained and its second entrance shall be to the side or rear of the building to avoid the appearance of a multifamily dwelling.
- B. Adequate parking for at least four vehicles shall be provided.
- C. Adequate visual screening and protection for neighboring properties from noise, traffic and light shall be provided.
- D. The overall building, landscaping, lighting and paving will not be substantially more detrimental to the neighborhood than would be a single-family dwelling.
- E. The owner of at least 50% of the real estate in whole must occupy one of the dwelling units.
- F. Certification shall be obtained from the Board of Health that the water and sanitary systems are adequate to support both dwelling units.

#### 4.11.3.6 Mixed use. **[Added 2-27-2017 STM by Art. 2]**

- A. Mixed use in the VCOD.
  - 1. Mixed use shall be allowed by right in the VCOD if the proposed uses to be mixed are all allowed by right in the Table of Principal Uses (Subsection 4.11.1).
  - 2. Any underlying use which requires a special permit according to the Table of Principal Uses shall continue to require such underlying special permit, notwithstanding that it is one of a combination of mixed uses.
- B. Mixed use in the Commercial District outside of the VCOD.
  - 1. Mixed use shall require a special permit in the Commercial District outside of the VCOD whether the underlying uses are authorized by right or by special permit.
- C. Requirements applicable to all mixed uses. All mixed use, whether or not located in the VCOD, and whether allowed in the district by right or by special permit, must meet the following requirements:

1. Any allowable use may be combined with one or more other allowable uses.
  2. Six dwelling units or fewer are allowed on a mixed-use lot.
  3. Fifty percent of the ground floor adjacent to the street on which the lot has frontage must be used as a nonresidential use.
  4. At least one entrance to a mixed-use building must be located on the street on which the lot has frontage.
  5. The allowable uses may be co-located in the same building or in separate buildings on the same lot.
  6. Off-street parking shall be as required by Section 6.2.
- D. Conditions on mixed-use special permits. The special permit granting authority may impose conditions on its approval of a mixed-use special permit as permitted by Subsection 6.3.5.
- 4.11.3.7 A special permit for cultivation of marijuana for commercial purposes may only be granted in a residential district when the proposed use is part of the activity of a farm. For the purposes of this subsection, a farm must meet the criteria given in Subsection 4.11.3.7.a or 4.11.3.7.b. **[Added 1-14-2019 STM by Art. 1]**
- a. A farm is defined as having more than five acres dedicated to agricultural production and the farm must meet the federal definition of a farm where the entity has an EIN number and shows a minimum of \$2,500 in gross sales of any agricultural commodity.
  - b. For farms that meet the federal criteria listed in Subsection 4.11.3.7.a but which are on lands less than five acres in size but more than two acres in size, a special permit may also be granted for the commercial cultivation of marijuana.

Where an applicant may propose to combine multiple marijuana-related uses on one site, each of which may require a separate license from the Cannabis Control Commission, the SPGA may elect to issue a single special permit for a facility that proposes to combine multiple licensed uses at one site.

Marijuana-related uses may be of a business type or format as allowed by and as licensed by the Cannabis Control Law, 935 CMR 500, including marijuana microbusinesses and craft cooperatives.

Other regulations relating to the cultivation of marijuana are given in Section 9.1.



SECTION 5  
**Intensity Regulations**

**5.1. Compliance with intensity regulations required.**

Any building used for dwelling purposes, and any building or structure housing a principal permitted use, including any use authorized by a special permit, shall be so constructed and located on a lot as to meet the minimum requirements for lot area, frontage, the required front, side, and rear yards, and the maximum height, and maximum lot coverage by buildings as set forth in the Table of Dimensional Requirements and exceptions (Section 5.6 herein), except as otherwise specifically provided in the bylaw.

**5.2. Required land and yard spaces.**

The land and yard spaces required for any building or structure or use shall not include any land or yard area required by any other building, structure or use to meet the minimum requirements of this bylaw.

**5.3. Change in lot size or use prohibited.**

No lot nor any building or structure thereon shall be changed in size, nor shall any use be changed, so as to violate lot area, frontage, or yard requirements of this bylaw.

**5.4. Height regulations.**

The height regulations of buildings and structures shall not apply to agricultural buildings and structures, churches, spires, chimneys, or other appurtenances usually required to be placed above roof level and not intended for human occupancy. This does not include towers.

**5.5. Detached accessory buildings.**

Detached accessory buildings and garages, except docks and boat houses, shall conform to the minimum yard requirements as set forth herein unless otherwise authorized by special permit from the Zoning Board of Appeals if compliance with these requirements due to the size or shape of the lot would create unnecessary hardship.

**5.6. Table of Dimensional Requirements. [Amended 2-27-2017 STM by Art. 2; 1-14-2019 STM by Art. 1; 1-14-2019 STM by Art. 4; 9-18-2019 STM by Art. 1]**

District	Minimum Area (acres)	Lot Frontage (feet)	Yard Minimum			Maximum Building Height		Maximum Coverage by Building
			Front	Side	Rear	Stories	Feet	
Residence R-1	1	150	40	25	40	2.5	35	10%
Residence R-3	3	225	40	25	40	2.5	35	10%
Residence R-D	1/2	100	30	15	20	2.5	35	25%
Commercial C	1/2	100	30	15	40	2.5	35	30%
Manufacturing M	3	225	100	15	50	2.5	35	20%
VCOD	0.10	50	5 (1,2,3)	3 (3,4)	15 (3)	2.5	35	75%
MROD	1/2	100	30	15	40	2.5	35	30%

**FOOTNOTES**

1. The five-foot setback is only applicable "as of right" to buildings or uses with less than 4,500 square feet gross floor area.
2. The front setback may be reduced by special permit, as provided for by Section 4.10, to less than five feet where a sidewalk exists along the street and at least one entrance to the building is located along the sidewalk.
3. For buildings or uses greater than 4,500 square feet in gross floor area, the setback requirements of the underlying Commercial District shall apply, except that the underlying Commercial District setback requirements may be reduced by special permit as provided for by Section 4.10.
4. Total setback of both sides shall be equal to six feet. The total may be all on one side, all on the other side, or divided in any proportion.
5. Ground-mounted solar photovoltaic installations shall meet yard setback requirements, except that setback requirements may be reduced by special permit as a part of the special permit granted for the underlying use.
6. Solar energy systems shall not be included in calculations for lot coverage or impervious surface.



7. Ground-mounted solar energy generation systems at any scale shall not exceed 15 feet above the ground as measured under each panel module, except the overall height of tracking-type systems may exceed 20 feet for transient conditions when dumping snow.
8. The size of a small-scale solar photovoltaic system, defined as having a total collector area of 750 square feet or less, may be increased by the SPGA per Subsection 9.2.6.

Exceptions to Rules in Table of Dimensional Requirements:

1. Side yards and/or rear yards of commercial or manufacturing uses shall be at least 50 feet when adjacent to a Residence District.
2. When a side or rear yard borders on a street, the minimum distance between the street and any type of building shall be as follows: R-3, 40 feet; R-D, 30 feet; C, 10 feet; M, 100 feet; and R-1, 35 feet.



SECTION 6  
**Special Provisions**

**6.1. Nonconforming structures, uses and lots.**

6.1.1 Exemptions. Except as herein provided this bylaw shall not apply to:

- a. Structures and uses lawfully in existence prior to the effective date of this bylaw.
- b. A structure lawfully begun under a building permit or special permit issued before the first publication of notice of the required public hearing by any special permit grant authorization on the applicable zoning bylaw or amendment.
- c. The alteration, reconstruction, extension or structural change to a single-family or two-family dwelling, provided this does not increase the nonconforming nature of such structure.
- d. The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.
- e. Nonconforming lots by separate deeds or records and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this bylaw to the extent and as provided in MGL c. 40A, § 6.

6.1.2 Requirements for extension, reconstruction or change in use. The Board of Appeals may authorize by special permit any extension, alteration or reconstruction of a nonconforming structure 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, provided that no such extension, alteration, reconstruction, or change in use shall be permitted unless the Board of Appeals finds:

- a. That such change, extension, or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood; and
- b. That such extended, altered, reconstructed structure or changed use shall not be in greater nonconformity with open space, yard, and off-street parking requirements of this bylaw.

6.1.3 Reconstruction of structure damaged by fire, explosion, or other catastrophe. A nonconforming structure damaged by fire, explosion, or any other catastrophe may be rebuilt, provided such rebuilding, reconstruction, or restoration shall be undertaken within two years of such catastrophe and the structure as rebuilt or restored shall not be in greater nonconformity with the provisions of this bylaw. Such rebuilt, reconstructed, or restored structure may be enlarged or changed in use in accordance with the provisions of Subsection 6.1.2 herein.

- 6.1.4 Maintenance, repair, and reconstruction of unsafe structure. Nothing in this bylaw shall be deemed to restrict the normal maintenance and repair of nonconforming structures or prevent reconstruction to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.
- 6.1.5 Abandonment. Any nonconforming use which has been abandoned or not used for two years or more shall not be reestablished, except by special permit from the Board of Appeals, and any future use of such premises shall conform to the provisions of this bylaw.
- 6.1.6 Conditions, safeguards, and limitations. The Board of Appeals may impose reasonable conditions, safeguards or limitations on applications for special permits under this section, designed to lessen any possible adverse impact on adjacent uses or neighborhood, whenever a nonconforming use is authorized to enlarge, expand, extend, or convert to another nonconforming use under the provisions of this section.
- 6.1.7 Nonconforming lots; effect of taking. Any lot that is protected as a nonconforming lot shall not lose its protection and rights as a nonconforming lot solely because of a reduction in area as a result of any land being taken by eminent domain, or conveyed for a public purpose for which land could have been taken by eminent domain, unless the total area of said lot is reduced because of said taking by a percentage of more than 15%.

**6.2. Off-street parking requirements. [Amended 2-27-2017 STM by Art. 2]**

6.2.1 Required parking minimums. After the effective date of this bylaw, off-street parking spaces shall be provided and maintained for every new structure, enlargement of an existing structure, the development of a new use or any change in an existing use, in accordance with the Table of Parking Minimums below.

<b>Table of Parking Minimums</b>	
	<b>Required Parking Spaces</b>
<b>Residential Uses</b>	
Single-family and two-family dwellings	1 space for each dwelling unit
Multifamily dwelling	1 space for each dwelling unit, plus adequate space for service and supply vehicles
<b>Nonresidential Uses</b>	
Accessory home occupation, office or roadside stand	1 space in addition to the spaces required for the principal use

<b>Table of Parking Minimums</b>	
	<b>Required Parking Spaces</b>
Antique or gift shop or art gallery	1 space per 400 square feet of gross floor area, plus 1 space per employee on an average-sized shift
Automobile service station or commercial garage	To be determined by the special permit granting authority (see Subsection 6.2.7) based upon the anticipated number of patrons and employees
Bank, retail business or consumer service establishment, unless specifically regulated	1 space per 250 square feet of gross floor area, plus 1 space per employee on an average-sized shift.
Commercial greenhouse, nursery, landscape gardening	1 space per 250 square feet of gross floor area of indoor sales space, plus 1 space per employee on an average-sized shift
Other nonresidential uses, unless specifically regulated in this table	To be determined by the special permit granting authority (see Subsection 6.2.7) based upon the anticipated number of patrons and employees
General office	1 space per 400 square feet of gross floor area
Hotel, motel or guesthouse	1 space for each sleeping room, plus 1 space per employee on an average-sized shift
Manufacturing, industrial, wholesale	1 parking space for each 2 employees, plus adequate space for customers, service and supply vehicles
Medical office	2 spaces per medical professional employed on-site, plus 1 space per employee (including medical professionals) on an average-sized shift
Mixed use	Sum of the parking spaces required for each use
Restaurant, theater, other places of assembly or amusement	1 space for each 3 seats, plus 1 space per employee on an average-sized shift

### 6.2.2 Reduction in minimum parking requirements.

- a. If the required minimum number of off-street parking spaces for lots located in the VCOD, computed in accordance with Subsection 6.2.1 or other provisions in this bylaw, is seven or fewer, then the minimum number shall be reduced to zero.
- b. The required minimum number of off-street parking spaces for lots may be reduced up to 50% by special permit where the SPGA (as determined by Subsection 6.2.7) finds that municipal parking spaces equal to the percent reduction requested are available within 300 feet of the lot.
- c. The required minimum number of off-street parking spaces for lots may be reduced up to 50% by special permit where the SPGA (as determined by Subsection 6.2.7) finds that shared parking spaces equal to the percent reduction requested are available within 300 feet of the lot and the following criteria have been met:
  1. The applicant must demonstrate that the uses served by the shared parking facility are not normally open, used or operated during similar hours and that sufficient parking is available to justify its requested percent reduction.
  2. A written agreement establishing the shared use of a parking facility shall be submitted to and approved by the SPGA (as determined by Subsection 6.2.7) as part of the special permit application. The written agreement must state specifically the use or uses for which the off-street parking requirement exists. The approved agreement shall be recorded in the title of both properties in the Southern Berkshire District Registry of Deeds prior to the issuance of an occupancy permit for the project.
  3. A party to the written shared parking agreement may only terminate the agreement after providing 90 days' written notice to the other party, the Building Inspector and the board that issued the original shared parking special permit.
  4. The shared parking special permit shall automatically expire after 90 days from the date the notice of intent to terminate the shared parking agreement is received by the other party.
  5. During this ninety-day period, the holder of the shared parking special permit shall make alternative arrangements to meet the applicable off-street parking requirements and submit an application to amend the special permit or for a new special permit.
  6. A safe and convenient pedestrian connection exists between the site and the shared parking facility.
  7. The availability of parking at the shared parking facility is indicated by directional signs as permitted by Section 6.7, Sign regulations.

- d. A written shared parking agreement shall terminate automatically if there is a change in the use of the property requiring a greater number of parking spaces; notwithstanding the foregoing, it shall not terminate solely because of a change of use if the new use requires the same or a lesser number of parking spaces than the use to which the agreement applies.
- e. The SPGA may require the applicant to provide a parking study or parking survey with all information deemed necessary to render a decision in Subsection 6.2.2.b.
- f. The minimum number of required off-street parking spaces as set forth in Subsection 6.2.1 may be reduced by special permit from the Board of Appeals upon determination that special circumstances render a lesser provision adequate for the parking needs in any particular case. If a reduction in parking is made under this section based on the use of shared parking, the requirements for shared parking under Subsection 6.2.2.c above shall apply.

6.2.3 Off-street parking space dimensions. An area of 175 square feet of appropriate dimensions for the parking of an automobile, exclusive of drives or aisles, shall be considered as one off-street parking space.

6.2.4 Street access and maintenance. All required parking spaces shall be provided with unobstructed access to and from a street and shall be properly maintained in such a manner as to permit them to be used at all times.

6.2.5 Location and screening. Any parking area of more than five parking spaces shall not be located within the front, side or rear setbacks. Such parking area shall be suitably screened on any property line which abuts upon a residential district.

6.2.6 Drainage and surface material. All parking spaces shall be properly graded for drainage and topped with stone or oil and stone or an appropriate substitute approved by the SPGA (as determined by Subsection 6.2.7).

6.2.7 Designation of SPGA. If a special permit for the use of the property is requested, then the board designated as the SPGA for the use special permit shall be the SPGA for this section. If a special permit for the use of the property is not requested, then the Zoning Board of Appeals shall be the SPGA for this section.

### **6.3. Special permits.**

6.3.1 Special permit granting authority. Any board designated as special permit granting authority in this bylaw may hear and decide applications for special permits upon which such board is specifically authorized to act under this bylaw in accordance with the provisions of MGL c. 40A, § 9.

- 6.3.2 Special permits may only be issued following public hearings held within 65 days after filing of an application with the special permit granting authority. Notice of public hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing, and by mailing it to "parties in interest" as provided in MGL c. 40A, § 11, which include the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within 300 feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board, and the planning board of every abutting municipality.
- 6.3.3 Review by other boards and agencies. The special permit granting authority shall, within 10 days after receipt of an application for special permit, transmit a copy thereof for review to the Board of Health, the Planning Board, the Select Board, the Conservation Commission and any other municipal board or agency at the discretion of the special permit granting authority. Any board or agency to which such applications are referred for review shall make such recommendations as it deems appropriate in writing; provided, however, the failure to make recommendations within 35 days of receipt by such board or agency of the application for review shall be deemed lack of opposition thereto.
- 6.3.4 Findings required. Before granting a special permit for any use requiring such permit under the provisions of this bylaw, the special permit granting authority shall find that the proposed use:
- a. Is in compliance with all provisions and requirements of this bylaw, and in harmony with its general intent and purpose;
  - b. Is essential or desirable to the public convenience or welfare at the proposed location;
  - c. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
  - d. Will not create undue traffic congestion, or unduly impair pedestrian safety;
  - e. Will not overload any public water, drainage, or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety, or general welfare.
- 6.3.5 Conditions, safeguards, and limitations. Special permits may be issued subject to such conditions, safeguards, or limitations as the special permit granting authority may impose for the protection of neighboring uses or otherwise serving the purposes of this bylaw. Such conditions,



safeguards, or limitations may include, but are not limited to, the following:

- a. Front, side, and rear yards greater than the minimum required by this bylaw; screening buffers or planting strips, fences or walls as specified by the authority;
- b. Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
- c. Regulations of number and location of driveways, or other traffic features, and off-street parking or loading, or other special features beyond the minimum required by this bylaw.

Any conditions, safeguards, or limitations shall be imposed in writing and shall be made a part of the building permit.

6.3.6 Site plan required. Any application for a special permit shall be accompanied by a site plan drawn to scale indicating the location, size, and height of proposed buildings, site improvements, and containing such other information as may be required by the special permit granting authority. This shall include the actual layout with reference to all abutting property, including all necessary dimensions.

6.3.7 Decisions and vote requirements.

The special permit granting authority shall act within 90 days following the date of the public hearing. Failure to take final action upon application for a special permit within said 90 days shall be deemed to be a grant of the permit applied for.

A special permit issued by a special permit granting authority shall require a 2/3 vote of boards with more than five members, a vote of at least four members of a five-member board and a unanimous vote of a three-member board.

6.3.8 Expiration of special permit. A special permit shall lapse in three years if a substantial use or construction has not begun under the permit by such date.

6.3.9 Associate member. The Planning Board shall have one associate member, pursuant to MGL c. 40A, § 9, who shall sit on the Board only for the purpose of acting on a special permit application in the event of either:

- A. An absence, or inability to act, or conflict of interest on the part of any member of the Planning Board; or
- B. A vacancy on the Board.

Such position shall be filled by a majority of the members of the Planning Board and the individual selected shall serve for a term of one year from date of appointment. Once the position has been filled, the Chairman or acting Chairman of the Planning Board may designate the associate member to sit for the purpose of the special permit application when one of the above events occurs.

#### **6.4. Floodplain regulations.**

##### 6.4.1 Purpose of Floodplain Districts:

- a. To provide that lands in the Town subject to seasonal or periodic flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof.
- b. To protect, preserve, and maintain the water table and water recharge areas within the Town so as to preserve present and potential water supplies for the public health and safety of the residents of the Town.
- c. To assure the continuation of the natural flow pattern of the watercourse(s) within the Town in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.

##### 6.4.2 Regulations and restrictions.

- a. Any person desiring to establish any permitted use in Floodplain District involving or requiring the erection of new or alteration or moving of existing structures, or dumping, filling, transfer, relocation, or excavation of earth materials, or storage of materials or equipment shall submit an application to the Select Board for a special permit, describing in detail the proposed use of the property and the work to be performed, accompanied by plans showing:
  1. The location, boundaries, and dimensions of the lot, and existing and proposed structures, watercourses, and drainage easements, fill, means of access, and sewage disposal facilities;
  2. Mean sea level elevation, with two-foot or less contour separation, of the existing and proposed land surface of cellar and first floors and sewage disposal facilities.
- b. Copies of the application and plans shall be delivered by the applicant to the Building Inspector, Planning Board, Board of Health, and the Conservation Commission.
- c. The Select Board may issue, in accordance with the regulations appearing in Section 6.3 of this bylaw, and in compliance with all applicable provisions of this bylaw, a special permit under this

section, if the Board determines, as provided in Subsection 3.2.1 of this bylaw, that the land in question is being in fact not subject to floodplain restrictions for any use which would otherwise be permitted if such land were not, by operation of this section, in the Floodplain Districts have been established. The Board may issue a special permit with such conditions as it deems necessary in the interests of public health or safety, and welfare. The burden of proving that the proposed use will not endanger the health or safety of occupants or the public will rest upon the applicant, who will submit such engineering and hydrological data as may be required. Without limiting the generality of the foregoing, the Board shall insure:

1. That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation; that furnaces and utilities are protected from the effects of flooding; and that the structure will withstand the effects of flooding in accordance with the Building Code;
2. That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural storage, or increase stormwater runoff so that water levels on other land are substantially raised, or danger from flooding increased;
3. That safe vehicular and pedestrian movement to, over, and from the premises is provided in the event of flooding;
4. That the proposed methods of drainage and sewage disposal are approved by the Board of Health, and will not cause pollution or otherwise endanger health in the event of flooding;
5. That within Zone A of the Flood Insurance Rate Maps and the Flood Boundary and Floodway Maps that are then in effect and on file with the Town Clerk, Planning Board and Building Inspector, where the base flood elevation is not provided, the applicant shall obtain any existing base flood elevation data, which shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or floodproofing requirements, as appropriate, of the State Building Code.
6. That in the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:
  - (a) All encroachments, including fill, new construction, substantial improvements to existing structures, and other development are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 1,200-year flood.

- (b) Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.
- d. Granting of a special permit by the Select Board does not indicate in any way compliance with the provisions of the Wetland Protection Act, MGL c. 131, § 40.

### **6.5. Wetlands regulations.**

6.5.1 Any person desiring to construct a dwelling or building housing a principal permitted use in any Wetlands Area shall submit an application to the Select Board for a special permit describing the proposed use of the property and the work to be performed. The Select Board may issue, in compliance with all applicable provisions of this bylaw, a special permit under this section if the Board determines that:

- a. The proposed construction, use, or change of grade will not reduce natural water storage so that water levels on other land are substantially raised, or danger from flooding increased;
- b. Safe vehicular and pedestrian movement to, over, and from the premises is provided;
- c. The proposed method of drainage and sewage disposal is approved by the Board of Health, and will not cause pollution or otherwise endanger public health.

6.5.2 Granting of a special permit by the Select Board under this section does not indicate in any way compliance with the provisions of the Wetlands Protection Act, MGL c. 131, § 40.

### **6.6. Stream, pond and lake protection.**

Hereafter, no on-lot sewage disposal system such as a septic tank or cesspool or leaching field, or the drainage system for wastewater from showers, sinks, etc. shall be installed or constructed within 100 feet of the high water shoreline of a man-made pond or lake exceeding two acres in area, or of any natural waterways, including brooks, streams, the Williams River, or ponds of any nature in the Town of West Stockbridge.

### **6.7. Sign regulations.**

6.7.1 The following signs may be displayed in any district, subject to regulations contained in the Town's Sign Bylaw:

- a. At a single, detached, single-family house, one sign not over two square feet in area, showing the name of the occupants.
- b. At religious, educational or philanthropic institutions, a library, museum, art gallery, or building or area for municipal or

government use or service, one sign not over four square feet in area at each entrance.

- c. A temporary, unlighted sign not over six square feet in area pertaining to construction, repair, lease, or sale of the property on which it is displayed.
- d. One temporary sign, to be displayed on the premises for not more than one week, not exceeding 10 square feet in area, advertising or announcing a sale, entertainment, or other activity open to the public, being conducted by a religious, philanthropic, social, or other nonprofit organization.

6.7.2 The following signs may be displayed with a permit from the Select Board issued in accordance with the provisions of the Town's Sign Bylaw:

- a. At each entrance to a farm, orchard, commercial greenhouse, nursery, truck garden, woodlot, or roadside farm stand permitted or authorized under this bylaw, one sign not over four square feet in area.
- b. For permitted use of residential property, one sign not over two square feet in area.
- c. On property in a Residence District devoted to a use authorized by special permit, one sign not over four square feet in area.
- d. In a Business District, no more than two signs, not to exceed 25 square feet in total combined area, attached flat against the wall of the building, advertising the name of the firm or goods or services available or produced on the premises. No sign shall project over a parapet wall or over a public way owned or maintained by the Town. In the case of privately owned alleys and lanes, where a sign flat against the building would not be readily visible from a public way, one sign for each establishment, not exceeding four square feet in area, is permitted to project over the private way, provided that its lowest point is at least seven feet above the surface of the way and provided that the Town Building Inspector determines that it would not be dangerous to the public using the way.
- e. In a Commercial District, any multiple uses on a lot may display only one sign not exceeding 16 square feet in area for each separate business establishment in addition to a directory sign for multiple listing of uses on the premises. Such directory sign shall not exceed 16 square feet in area and may provide up to four square feet of space for each separate use on the premises. Such directory sign may be a freestanding sign not over 10 feet in height.
- f. In a Manufacturing District, no more than two signs, not to exceed 50 square feet in total combined area, attached flat against the wall are permitted. Said signs may advertise only the name of the firm

and/or goods or services available or produced on the premises. No sign shall project more than six feet above a parapet wall, or

- g. In Manufacturing Districts, one sign, not attached flat against the building, advertising the name of the firm and/or goods or services available or produced on the premises, permitted not to exceed 12 square feet in total combined area.

#### 6.7.3 Sign restrictions.

- a. No sign shall use moving parts, noise-making devices, or blinking, rotation, or flashing or red lights, or changes in light intensity; and except as otherwise provided herein, no sign shall be placed on the roof of any building or structure, or extend above the parapet or eave line.
- b. No illuminated sign or lighting device shall be so placed or directed upon a public way or adjacent premises as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- c. No sign shall be located off the premises to which it applies, except that directional, informational or identification signs may be allowed by the Select Board where such signs will serve the public convenience and not be detrimental to the neighborhood with respect to size, location, or design.
- d. A freestanding sign may not be closer to the front property line than 1/2 the depth of the required front yard, and in Residence Districts may not exceed four feet in height above grade, and in Commercial Districts 10 feet.
- e. No portable sign of any type will be allowed except for a period of not more than three days with a special permit from the Select Board.

### **6.8. Driveways.**

#### 6.8.1 Driveways for not more than two principal uses:

6.8.1.1 No driveway or other access to a way shall serve more than two dwellings or other principal or permitted structures, except as provided by special permit pursuant to the provisions of this bylaw.

6.8.1.2 The Building Inspector shall request a review of the driveway by the Highway Superintendent prior to the issuance of a building permit, to ensure that the driveway will provide safe access to the property for all vehicles, including emergency vehicles and vehicles carrying hazardous materials, such as home heating oil. The Highway Superintendent may, if he/she so chooses, consult Town emergency personnel or other such professionals to determine emergency vehicle access adequacy. Following a site visit, the Highway Superintendent shall, if he/she deems such driveway

layout proper, issue a driveway cut permit. All driveways shall be sufficiently constructed for permanent access and travel before issuance of any certificate of occupancy. Said certificate of occupancy must be signed by the Highway Superintendent upon driveway acceptance (under this section).

6.8.1.3 No driveway shall be approved which does not conform to the following standards:

- a. Entrances onto state highways must conform to Massachusetts Department of Transportation standards and regulations.
- b. No driveway shall be approved at intersections.
- c. No driveway shall be located within 100 feet of an intersection of public ways.
- d. Driveways shall be located to the best advantage with regard to alignments with the public way, profile, sight conditions and the like. In no instance shall the driveway intersect the public way at less than a 60° angle.
- e. Culverts taking the place of roadside ditches shall have a diameter of not less than 15 inches. A larger diameter may be required at the discretion of the Highway Superintendent. All culverts under the driveway shall become the property owner's responsibility for cleaning, maintenance and replacement as determined by the Highway Superintendent.
- f. The elevation of driveways at the point of entry into the public right-of-way shall not be more than the elevation of the shoulder of the roadway.
- g. Driveways shall be constructed so that the water runoff from the driveway shall not drain onto the crown of the road or open waterways or ponds.
- h. In no instance shall the section of driveway entering the public way conflict with the flow of surface water runoff.
- i. Individual driveways shall not be less than 12 feet nor more than 20 feet in width within the Town right-of-way.
- j. Driveways entering a paved way shall have a paved apron installed extending to the width of the Town right-of-way or 20 feet in from the edge of the paved way, whichever is greater. Maintenance of said paved apron shall become the property owner's responsibility.
- k. The slope of the driveway, at any point, shall not be greater than 10%.

6.8.2 Common driveways servings three or four lots.

6.8.2.1 In all districts, common driveways to serve a maximum of four lots may be created only by special permit by the Planning Board. A lot served is any lot crossed by the common driveway, whether or not any building or any dwelling on the lot is actually accessed and/or served by this common driveway, or on any lot on which any building or any dwelling is accessed and/or served by this common driveway. All such lots must be included in the list and number of lots served.

6.8.2.2 Each such common driveway must meet the following criteria:

- a. Common driveways may not be used to satisfy or take the place of other Town Zoning Bylaw requirements. Each lot shall have frontage on ways that serve to satisfy frontage requirements.
- b. Each lot served by the common driveway must have permanent access to the common driveway pursuant to an easement agreement acceptable to the Planning Board, and the deed to each lot served on a common driveway must reference this easement agreement. The easement agreement is to be recorded, along with the special permit, with the Southern Berkshire Registry of Deeds or with the Land Court where appropriate.
- c. Any deeds or ownership of lots served by a common driveway shall require that the owners of said lots must be members of a maintenance association whose purpose is to provide for maintenance of the common driveway, which shall include, but not limited to, snow plowing, road maintenance, maintaining drainage structures and maintaining design specifications. This maintenance association must be created by a maintenance association agreement acceptable to the Planning Board, and the deed to each lot served on a common driveway must reference this maintenance association agreement. This maintenance association agreement is to be recorded along with the special permit with the Southern Berkshire Registry of Deeds or Land Court where appropriate.
- d. The common driveway is defined as extending from the approved or acceptable right-of-way to which it is attached, to the point it serves only one lot, the so called terminus. A common driveway may have more than one terminus. A common driveway shall be connected to an approved or accepted right-of-way at one and only one point. The entire common driveway must lie within the lots served and in the Town of West Stockbridge.
- e. The common driveway must meet the design criteria of this bylaw and any additional design criteria established by the Planning Board in regulations duly voted by said Board according to law. The design criteria of this bylaw are:



1. Twelve feet minimum width of wear surface.
2. A minimum of eight inches of gravel.
3. Passing turnouts must be constructed which provide a total width of at least 18 feet along a distance of at least 25 feet spaced no more than 300 feet between turnouts or a lesser interval where, in the Planning Board's opinion, a lesser distance is warranted for safety considerations.
4. The length must be such that the distance along the common driveway center line to each building or dwelling served by the common driveway will not exceed 1,800 feet from the street sideline.
5. Signs to direct emergency access and signs with lot number designation must be installed both at the street line and at each driveway intersection with the common driveway.
6. Street addresses for all lots served by a common driveway shall be the address of the lot as designated from the accepted Town way from which the common driveway intersects.
7. The center line of the common driveway cannot be located closer than 35 feet to the center line of any approved or constructed single dwelling driveway or shared driveway.
8. A staging area of at least 40 feet in length and a minimum of 20 feet in width at the street line, tapering to a minimum of 12 feet in width at 40 feet from the street line.
9. The requirements of Subsection 6.8.1.3 shall also be met.

6.8.2.3 When deciding whether or not to grant special permit to create a common driveway, the Planning Board should consider:

- a. The safety of the common driveway as designated for normal use.
- b. The safety of the intersection with the Town way.
- c. The adequacy of the legal requirements for maintenance and access.
- d. The adequacy of the common driveway to provide access to vehicles to carry materials that are potentially hazardous if spilled, such as home heating oil.
- e. The environmental impact on wetlands and water resource areas.

- f. The adequacy of the common driveway to provide access to emergency vehicles, fire trucks, ambulances and police vehicles. The Planning Board may, if it so chooses, consult Town emergency personnel or such professionals to determine emergency vehicle access adequacy.
- g. The adequacy of the common driveway to provide for needs of prospective occupants of the lots.

6.8.2.4 Strict compliance with the requirements of these rules, and of any regulations which may be issued, may be waived in any specific respect if the Board finds that:

- a. Such waiver is consistent with the public interest; and
- b. Such waiver is consistent with the safety needs of the immediate and likely future users of the property; including the need for speedy and practical access for fire and police. In making this finding, the Board shall consider the views of the Town of West Stockbridge Highway Superintendent, Chief of Police and Chief of the Fire Department, and may consider the particular resources which are legally committed to be available at the proposed site, such as a local cistern or other water supply or sprinkler systems.

No requirements shall be considered to have been waived unless an express written request for waiver shall have been filed with the Board at the time of the application for the special permit and said request for waiver shall have been expressly approved by the Board. The Board shall make express and specific written findings relative to its action on any waiver request.

### 6.8.3 Miscellaneous.

- 6.8.3.1 Granting of a special permit under this bylaw does not constitute a waiver of any other applicable bylaw or statute.
- 6.8.3.2 The Planning Board may issue regulations to go with this bylaw, including charging a filing fee adequate to cover both legal review and construction inspection.
- 6.8.3.3 The driveway shall be sufficiently constructed for access before the issuance of any building permit. The Building Inspector shall request a review of the driveway by the Highway Superintendent prior to the issuance of the permit to ensure that the driveway will provide safe access to the property for all emergency vehicles.
- 6.8.3.4 No certificate of occupancy shall be issued for a residence served by a common driveway until the Planning Board certifies in writing that the common driveway has been completed in accordance with the standards of this section.

**6.9. (Reserved)<sup>1</sup>**

**6.10. (Reserved)<sup>2</sup>**

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- 1. Editor's Note: Former Sec. 6.9, Temporary moratorium on recreational marijuana establishments, added 11-13-2017 STM by Art. 1, was repealed 1-14-2019 STM by Art. 1. See now Sec. 9.1 of this chapter.**
  - 2. Editor's Note: Former Sec. 6.10, Temporary moratorium on medical marijuana treatment centers, added 11-13-2017 STM by Art. 2, was repealed 1-14-2019 STM by Art. 1. See now Sec. 9.1 of this chapter.**



SECTION 7  
**Zoning Board of Appeals**

**7.1. Membership and authority.**

There shall be a Zoning Board of Appeals consisting of five members and two associate members to be appointed by the Select Board as provided in MGL c. 40A, § 12. The Board shall act within its statutory powers as provided in MGL c. 40A, § 14, and on matters within its jurisdiction under this bylaw in a manner prescribed in MGL c. 40A, § 15. This Board of Appeals shall also serve as Board of Appeals under the Subdivision Control Law as provided in MGL c. 41, § 81-Z.

**7.2. Statutory powers of Board.**

7.2.1 Appeals. The Board is authorized to hear and decide an appeal, as provided in MGL c. 40A, § 8, taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from any administrative officer under the provision of MGL c. 40A, by the Berkshire County Regional Planning Commission, or by any person, including an officer or board of the Town of West Stockbridge, or of an abutting town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of MGL c. 40A or of this bylaw. Any such appeal must be taken within 30 days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in MGL c. 40A, § 15.

7.2.2 Variances. The Board may authorize, upon appeal or upon petition with respect to a particular land or structure, a variance from the terms of this bylaw where the Board specifically finds that, owing to circumstances related to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure but not affecting generally the zoning district in which it is located, 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 this bylaw.

7.2.2.1 No use variance. The Board shall not authorize a use or activity not otherwise permitted in the district in which the land or structure is located.

7.2.2.3 Expiration of variance. If the rights authorized by a variance are not exercised within one year of the date of grant of such variance, they shall lapse and may be reestablished only after notice and a new hearing as provided in Subsection 7.5.1 herein.

**7.3. Special permits.**

The Board of Appeals may hear and decide applications for special permits upon which the Board of Appeals is specifically authorized to act under this bylaw in accordance with all the applicable provisions of Section 6.3 herein.

**7.4. Conditions, safeguards and limitations.**

The Board of Appeals may impose conditions, safeguards, or limitations, both of time and use, including the continued existence of any particular structure, but excluding any condition, safeguards, or limitations based upon the continued ownership of the land or structures in question by the same person.

**7.5. Appeals, applications and petitions to Board.**

Any appeal, application, or petition to the Board of Appeals must be filed with the Town Clerk, who shall forthwith transmit a copy thereof to the Board of Appeals.

7.5.1 Required public hearing. The Board of Appeals shall hold a hearing on any appeal, application or petition transmitted to it by the Town Clerk within 65 days from the date of transmittal after having published, posted and sent a notice of such hearing to parties in interest as provided in MGL c. 40A, § 11, and after having notified the Town's Planning Board and the planning boards of adjacent cities and towns, which may forward recommendations with respect to said matter for consideration of the Board of Appeals as provided in MGL c. 40A, § 15.

7.5.2 Review by other boards and agencies. The Board of Appeals shall, within 10 days after receipt of an appeal, application or permit, transmit a copy thereof for review to the Board of Health, the Planning Board, the Select Board, and the Conservation Commission and any other Town agency at the discretion of the Board of Appeals. Any board or agency to which such matters are referred for review shall make such recommendations as it deems appropriate in writing to the Board of Appeals; provided, however, that failure to make recommendations within 35 days of receipt by such board or agency of the matter for review shall be deemed lack of opposition thereto.

**7.6. Decisions by Board.**

The decision of the Board of Appeals shall be made within 120 days after the date of the filing of an appeal, applications or petition with the Town Clerk, except in regard to special permits as provided in Section 6.3 of this bylaw. Failure by the Board to act within said 120 days shall be deemed to be the grant of relief, application or petition sought, except in regard to special permits.

## SECTION 8

**Personal Wireless Service Facilities and Repeaters****8.1. Purposes.**

The purposes of the Town of West Stockbridge Personal Wireless Service Facilities, Towers and Repeaters Bylaw are to:

- 8.1.1 Preserve the character and appearance of the Town while simultaneously allowing adequate personal wireless services to be developed.
- 8.1.2 Protect the scenic, historic, environmental, and natural or man-made resources of the community.
- 8.1.3 Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of personal wireless service facilities and repeaters.
- 8.1.4 Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify personal wireless service facilities and repeaters.
- 8.1.5 Preserve property values, locate towers so as to minimize negative impacts on the general safety, welfare and quality of life in the community, such as, but not limited to, visual blight, attractive nuisance, noise and falling objects.
- 8.1.6 Require owners of personal wireless service facilities, towers and repeaters to configure them so as to minimize and mitigate the adverse visual impact of the facilities, towers and repeaters, including clustering, co-locating, and camouflaging where appropriate.

**8.2. Consistency with federal law.**

These regulations are intended to be consistent with the Telecommunications Act of 1996 in that: a) they do not prohibit or have the effect of prohibiting the provision of personal wireless services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and c) they do not regulate personal wireless services on the basis of the environmental effects of radiofrequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

**8.3. Definitions.**

As used in this Section 8, the following terms shall have the meanings indicated:

ACT — The Telecommunications Act of 1996.

ADEQUATE CAPACITY — Capacity is considered to be "adequate" if the grade of service is p. 05 or better for a worst-case day in a preceding

month, based on the Erlang B Tables, prior to the date of application; or as measured using direct traffic measurement of the personal wireless service facility in question for existing facilities requesting major modification, and where the call blocking is due to frequency contention at the antenna(s).

**ADEQUATE COVERAGE** — Coverage is considered to be "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal for at least 75% of the covered area is greater than -95 dbm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

**ANTENNA** — A device which is attached to a tower or other structure for transmitting and receiving electromagnetic waves.

**BASE STATION** — The primary sending and receiving site in a wireless telecommunications network.

**CHANNEL** — The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

**COMMUNICATION EQUIPMENT SHELTER** — A structure located at a base station designed principally to enclose equipment used in connection with personal wireless service transmissions.

**dbm** — Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced by one milliwatt.

**EMF** — Electromagnetic frequency radiation.

**FACILITY SITE** — A property, or any part thereof, which is owned or leased by one or more personal wireless service providers and upon which one or more personal wireless service facilities and required landscaping are located.

**FACILITY/TOWER SPECIAL PERMIT (F/TSP)** — The special permit required to be obtained in order to install any tower or personal wireless service facility or for any major modification of an existing facility.

**FCC** — Federal Communications Commission. The Federal agency responsible for regulating telecommunications in the United States.

**FCC 96-326** — A report and order which sets new national standards for emissions of radiofrequency emissions from FCC-regulated transmitters. This report and order is now contained with 47 CFR Chapter I, § 1.1307.

**GRADE OF SERVICE** — A measure of the percentage of calls which are able to connect to the base station during the busiest hour of the day. Grade of service is expressed as a number, such as p.05, which means that 95%



of callers will connect on their first try. A lower number (p.04) indicates a better grade of service.

**MAJOR MODIFICATION OF AN EXISTING REPEATER** — Any removal or change in location of any repeater(s) from the site(s) for which a repeater special permit has been received.

**MAJOR MODIFICATION OF AN EXISTING FACILITY** — Any change, or proposed change in power input or output, number of antennas, change in antenna type or model, repositioning of antenna(s), change in number of channels per antenna above the maximum number approved under an existing special permit. Also any increase, or proposed increase, in dimensions of an existing and permitted tower or other structure designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

**MONITORING** — The measurement, by the use of instruments in the field, of the radiation from a site as a whole, or from individual personal wireless service facilities, towers, antennas or repeaters.

**MONITORING PROTOCOL** — The testing protocol, initially the Cobbs Protocol, which is to be used to monitor the emissions from existing and new personal wireless service facilities and repeaters upon adoption of this Section 8. The SPGA may, as the technology changes, require, by written regulation, the use of other testing protocols. A copy of the monitoring protocol shall be on file with the Town Clerk.

**MONOPOLE** — A single self-supporting vertical pole with below-grade foundations.

**PERSONAL WIRELESS SERVICE FACILITY** — All equipment (excluding any repeaters) with which a personal wireless service provider broadcasts and receives the radiofrequency waves which carry their services and all locations of said equipment or any part thereof. This facility may be sited on one or more towers or structure(s) owned and permitted by another owner or entity.

**PERSONAL WIRELESS SERVICE PROVIDER** — An entity licensed by the FCC to provide personal wireless services to individuals or institutions.

**PERSONAL WIRELESS SERVICES** — Commercial mobile services, unlicensed wireless services, and common-carrier wireless exchange access services. These services include: cellular services, personal communications services (PCS), specialized mobile radio services, and paging services.

**RADIATION PROPAGATION STUDIES or RADIAL PLOTS** — Computer-generated estimates of the radiation emanating from antennas or repeaters sited on a specific tower or structure. The height above mean sea level, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations.

REPEATER — A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

REPEATER SITE — The location within the Town of West Stockbridge leased by one or more personal wireless service providers and upon which one or more repeater(s) and required camouflage or screening are located.

REPEATER SPECIAL PERMIT (RSP) — The special permit required to be obtained in order to install any repeater, or for major modification of an existing repeater within the Town of West Stockbridge.

SPECIAL PERMIT GRANTING AUTHORITY (SPGA) — The Planning Board shall be the SPGA for this use.

TELEPORT — A multi-user commercial facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmission of data.

TOWER — A monopole, lattice, or other structure that is designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

#### **8.4. Scope.**

8.4.1 This Section 8 specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch, citizen band radio, and amateur radio towers used exclusively by a federally licensed amateur radio operator. No personal wireless service facility or repeater shall be considered exempt from this Section 8 for any reason whether or not said facility or repeater is proposed to share a tower or other structure with such exempt uses.

8.4.2 There shall be no teleport(s) within the Town of West Stockbridge.

#### **8.5. Special permit required.**

No personal wireless service facility, tower, or repeater shall be erected, constructed, or installed or undergo major modification without first obtaining a special permit from the SPGA in accordance with the requirements set forth herein. One or both of two kinds of special permits are required: a) a facility/tower special permit (henceforth F/TSP) for new facility/tower construction (or major modification of an existing facility); b) a repeater special permit (henceforth RSP) for repeater(s) to be mounted on an existing or newly permitted tower or structure (or major modification of an existing repeater).

#### **8.6. Application requirements.**

8.6.1 For personal wireless service facilities or towers a F/TSP is required. The applicant must submit all information required in Subsection 8.6.2. For all repeaters proposed for installation, an RSP is required. An RSP may be applied for by an applicant who is currently applying for a F/TSP

under this Section 8, or by an applicant who has previously received a F/TSP under this Section 8 or by an entity which is providing personal wireless services to the Town of West Stockbridge from a base station outside the Town. The applicant must submit all information required in Subsection 8.6.3. If the applicant is applying for both permits, the applications shall be submitted and examined concurrently.

#### 8.6.2 Application requirements for facilities or towers.

##### 8.6.2.1 General. The application shall include the following information:

8.6.2.1.1 The exact legal name, address or principal place of business and phone number of the applicant. If any applicant is not a natural person, it shall also give the state under which it was created or organized.

8.6.2.1.2 The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.

8.6.2.1.3 Name, address, phone number and written consent to apply for this permit, of the owner of the property on which the proposed personal wireless service facility and/or tower shall be located, or the owner(s) of the tower or structure on which the proposed personal wireless service facility shall be located.

##### 8.6.2.2 Engineering requirements. Reports prepared by one or more professional engineers, which shall include the following:

8.6.2.2.1 Copies of all submittals and showings pertaining to: FCC licensing; environmental impact statements; Federal Aviation Administration notice of construction or alteration; aeronautical studies; and all data, assumptions and calculations relating to service coverage and power levels, regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.

8.6.2.2.2 Copies of all information submitted in compliance with the requirements of Massachusetts Department of Public Health, 105 CMR 122, Nonionizing Radiation Limits for: the General Public from Non-Occupational Exposure to Electromagnetic Fields, Employees from Occupational Exposure to Electromagnetic Fields, and Exposure from Microwave Ovens, or any revisions thereof as the Department of Public Health may, by written notice, create.

##### 8.6.2.3 Adequate coverage, adequate capacity and justification of need for F/TSP:

8.6.2.3.1 The applicant shall provide written documentation of any facility site(s) in West Stockbridge, and any sites in abutting towns located within five miles of any boundary of the Town of West Stockbridge, in which it has a legal or equitable interest, whether by ownership, leasehold, or otherwise. For each such facility site, it shall demonstrate with written documentation that this facility site is not already providing, or does not have the potential by adjusting the site, to provide adequate coverage and/or adequate capacity to the Town of West Stockbridge. The documentation shall include, for each facility site listed:

8.6.2.3.1.1 The exact tower location (in longitude and latitude, to degrees, minutes, seconds), ground elevation above mean sea level at the tower location, height of tower or structure, and height of proposed antennas on tower or structure.

8.6.2.3.1.2 Type, manufacturer and model number of antennas, and antenna gain.

8.6.2.3.1.3 Output frequency, number of channels, power input, and maximum power output per channel.

8.6.2.3.1.4 Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, height or power output shall be specified.

8.6.2.3.1.5 Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.

8.6.2.3.2 The applicant shall demonstrate with written documentation that they have examined all existing facility sites located in West Stockbridge and in the sites in abutting towns located within five miles of any boundary of the Town of West Stockbridge, in which applicant has no legal or equitable interest, whether by ownership, leasehold, or otherwise, to determine whether those existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of West Stockbridge. The documentation shall include, for each existing facility site examined:

8.6.2.3.2.1 The exact tower location (in longitude and latitude, to degrees, minutes, seconds), ground elevation above mean sea level at the tower location, height of tower or structure, and height of proposed antennas on tower or structure.

8.6.2.3.2.2 Type, manufacturer and model number of antennas, and antenna gain.

8.6.2.3.2.3 Output frequency, number of channels, power input, and maximum power output per channel.

Radial plots from each of these existing facility sites, configured as documented above, shall be provided as part of the application.

Notwithstanding anything else in this Subsection 8.6.2.3.2, the applicant may request that the requirement to provide documentation be waived or modified as to any or all existing facility sites outside the Town of West Stockbridge and not less than three miles from any boundary of the Town of West Stockbridge. Such a request shall be submitted in writing and shall be supported by a statement of reasons and supporting material. The Planning Board may waive or modify said requirement if it finds that consideration of the documentation as to which waiver is sought is not necessary because the intended technology is clearly not feasible for use at said site. The Planning Board's finding as to the waiver request shall be based on all the evidence, which may include but is not limited to then-current industry standards, government regulatory standards or materials, and input from the Planning Board's independent consultant.

8.6.2.3.3 The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters in conjunction with all existing facility sites listed in compliance with Subsections 8.6.2.3.1 and 8.6.2.3.2 (above) to provide adequate coverage and/or adequate capacity to the Town of West Stockbridge. Radial plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.

8.6.2.4 The following engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. (Note: Survey plans shall also be stamped and signed by a professional land surveyor registered in Massachusetts.) Plans shall be on 24-inch by 36-inch sheets, on as many sheets as necessary, and at scales which are no smaller (i.e., no less precise) than listed below in Subsection 8.6.2.4.1. Each plan sheet shall have a title block indicating a project title, sheet title, sheet numbers, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan.

8.6.2.4.1 Proposed site plans. Proposed facility site layout, grading and utilities at a scale no smaller than one inch equals 40 feet (1:480) or metric equivalent (1:500) showing the entire vicinity within a 400-foot radius of the tower site, with topography drawn with a maximum two-foot (0.6-meter) contour interval, and including:

- 8.6.2.4.1.1 Proposed tower location and appurtenances, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. The site plan shall include the location of all abutting properties within 300 feet of the tower property and names of current owners of each.
- 8.6.2.4.1.2 Limits of areas where vegetation is to be cleared or altered and justification for any such clearing or alteration.
- 8.6.2.4.1.3 Plans for proposed access driveway or roadway and parking area at the facility site. Include grading, drainage and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.
- 8.6.2.4.2 Proposed tower and appurtenances:
  - 8.6.2.4.2.1 Plans, elevations, sections and details at appropriate scales, but no smaller than one inch equals 10 feet.
  - 8.6.2.4.2.2 Two cross sections through proposed tower drawn at right angles to each other, and showing the ground profile to at least 100 feet beyond the limit of clearing. Indicate proposed spot elevations at the base of the proposed tower. Indicate the proposed height of tower above average grade at tower base. Indicate the maximum allowable structural height of the tower after addition of any modular sections. Show all proposed antennas, including their location on the tower.
  - 8.6.2.4.2.3 Details of typical tower foundation, including cross sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
  - 8.6.2.4.2.4 Detail proposed exterior finish and camouflage of the tower.
  - 8.6.2.4.2.5 Indicate relative height of the tower to the tops of surrounding trees as they presently exist.
- 8.6.2.4.3 Proposed communications equipment shelter:
  - 8.6.2.4.3.1 Floor plans, elevations and cross sections of any proposed appurtenant structure at a scale of no smaller than 1/4 inch equals one foot (1:48).

8.6.2.4.3.2 Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

8.6.2.4.4 Proposed equipment plan:

8.6.2.4.4.1 Plans, elevations, sections and details at appropriate scales, but no smaller than one inch equals 10 feet.

8.6.2.4.4.2 Number of antennas and repeaters (if any), as well as the exact location of all repeaters (if any) located on a map as well as by degrees, minutes and seconds of latitude and longitude.

8.6.2.4.4.3 Mounting locations on tower or structure, including height above ground.

8.6.2.4.4.4 Antenna type(s), manufacturer(s) model number(s).

8.6.2.4.4.5 For each antenna, the antenna gain and antenna radiation pattern.

8.6.2.4.4.6 Number of channels per antenna, projected and maximum.

8.6.2.4.4.7 Power input to the antenna(s).

8.6.2.4.4.8 Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.

8.6.2.4.4.9 Output frequency of the transmitter(s).

8.6.2.5 Details of proposed method of financial surety as required in Section 8.13.

8.6.2.6 A written, irrevocable commitment, valid for the duration of the existence of the tower, to rent or lease available space for co-location on the tower at fair market prices and terms, without discrimination to other personal wireless service providers.

8.6.3 Application requirements for RSP. The use of repeaters to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers is permitted and encouraged. An applicant who has received, and is in compliance with a current F/TSP under this Section 8, or an entity which is providing personal wireless services to the Town of West Stockbridge from a base station outside the Town, may apply for a RSP. Applicants for RSP shall provide the following information:

8.6.3.1 Exact location (in longitude and latitude, to degrees, minutes, seconds) as well as by street address or pole number (if applicable);

8.6.3.2 Ground elevation;

- 8.6.3.3 Type, manufacturer and model number of proposed repeater;
- 8.6.3.4 Height of proposed repeater above ground;
- 8.6.3.5 Proposed output frequency;
- 8.6.3.6 Proposed number of channels;
- 8.6.3.7 Proposed power input;
- 8.6.3.8 Proposed maximum power output per channel;
- 8.6.3.9 Radial plots from any proposed repeater(s), configured as documented above, shall be provided as part of the application;
- 8.6.3.10 Name, address, phone number, and written consent to apply for this permit, of the owner of the property on which the proposed repeater shall be located, and of the owner(s) of the tower or structure on which the proposed repeater shall be located;
- 8.6.3.11 Proposed repeater site layout, grading and utilities, at a scale no smaller than one inch equals 40 feet (1:480 or metric equivalent 1:500), showing the entire vicinity within a 300-foot radius of the repeater site, with topography drawn with a minimum two-foot (0.6-meter) contour interval;
- 8.6.3.12 Proposed repeater location and appurtenances, if any, and any accessory building (Communication equipment shelter or other). The site plan shall include the location of all abutting properties within 300 feet of the tower property and names of current owners of each;
- 8.6.3.13 Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration;
- 8.6.3.14 Plans of any proposed access driveway or roadway and parking area at the repeater site. Include grading, drainage, and traveled width. Include a cross section of the access drive, indicating the width, depth of gravel, paving or surface materials.

### **8.7. General requirements for issuance of F/TSP(s).**

- 8.7.1 Provision of service. No new facility or tower shall be permitted unless the Board finds that the applicant cannot provide adequate coverage and adequate capacity from existing facility sites, either controlled by the applicant or on which the applicant could reasonably co-locate.

A special permit shall not be granted for a tower to be built on speculation. If the applicant is not itself simultaneously installing a personal wireless service facility on the tower, it shall provide a copy of its existing lease/contract with a personal wireless service provider. Said provider shall provide all necessary data to comply with the terms



of this Section 8 as part of applicant's application for a F/TSP or the special permit shall not be granted.

If primary coverage (greater than 50%) from a proposed personal wireless service facility is outside West Stockbridge, then the permit may be denied unless the applicant demonstrates to the satisfaction of the SPGA that the applicant is unable to locate within the Town which is primarily receiving service from the proposed facility.

#### 8.7.2 Environmental conditions.

8.7.2.1 In general, towers and personal wireless services facilities shall be located so as to provide adequate coverage and adequate capacity with the least number of towers and antennas which are technically and economically feasible.

8.7.2.2 In furtherance of the above, the following locations are ranked in order of preference:

- a. Shared use of existing personal wireless service facilities.
- b. Clustering of towers: applications for towers adjacent to existing towers.
- c. The use of municipal lands which comply with other requirements of this Section 8, and where visual impact can be minimized and mitigated.
- d. The use of repeaters to provide adequate coverage without requiring new tower(s).
- e. The use of land, distant from higher-density residential properties, and where visual impact can be minimized.

8.7.2.3 Those towers which are necessary shall minimize, to the extent feasible, adverse visual impacts on the environment. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to, requiring the use of camouflage, painting, lighting standards and screening, or the mimicking of a tree or other appropriate object. Towers shall, when possible, be sited off ridgelines and where their visual impact is least detrimental to highly rated scenic areas. (See, for example, Massachusetts Landscape Inventory, MGL c. 131, § 39A: Conducted by Massachusetts Department of Environmental Management, 1982.)

8.7.2.4 A vegetated buffer strip of undisturbed trees of at least 100 feet in depth (or less if determined by the SPGA to be sufficient) shall be retained as close to the tower as possible, but in all cases there shall be no clearing at a distance in excess of 25 feet in radius from the base of the tower except where the access drive is located.

8.7.2.5 No tower or personal wireless service facility, with the exception of repeaters, shall be located within any of the following prohibited areas:

8.7.2.5.1 Massachusetts or federally regulated wetland.

8.7.2.5.2 A Massachusetts certified vernal pool.

8.7.2.5.3 The habitat of any state-listed rare or endangered wildlife or rare plant species.

8.7.2.5.4 Within 100 feet horizontally from any Massachusetts regulated wetland.

8.7.2.5.5 Within 200 feet horizontally of the outer riparian zone of any river or perennial stream, as defined in the Wetland's Protection Act and regulations thereunder.

8.7.2.5.6 Within 500 feet horizontally from any historic district or property listed on the state or federal Register of Historic Places or determined by the Massachusetts Historic Commission to be eligible for such listing.

8.7.2.5.7 Within 500 feet horizontally from any known archaeological site, pursuant to MGL c. 9, § 26.

8.7.2.6 In addition to the above, towers and personal wireless service facilities shall be located so as to minimize the following potential impacts:

8.7.2.6.1 Diminution of residential property values. Siting shall be in as low population density areas as possible.

8.7.2.6.2 Unsafe structural conditions and attractive nuisance.

8.7.2.6.3 Excessive electromagnetic radiation. In case the tower or personal wireless service facility is found in excess of the FCC guidelines.

8.7.3 Physical plant.

8.7.3.1 Fencing. The area around the tower and communication equipment shelter(s) shall be completely fenced for security within an area no greater than 25 feet in radius from the base of the tower, and to a height of six feet, and gated. Use of razor wire is not permitted.

8.7.3.2 Signs. There shall be no signs except the following. A sign no greater than two square feet indicating the name of the personal wireless service facility's owner(s) and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of this bylaw.

- 8.7.3.3 Communication equipment shelters and accessory buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
- 8.7.3.4 New towers shall not exceed the minimum height necessary as determined by the SPGA to provide adequate coverage from the personal wireless service facility(ies) proposed for use on the tower, and shall in no event exceed 190 feet.
- 8.7.3.5 Towers shall be located at least 1 1/2 times their maximum structural height from the outer boundaries of the site on which the tower is located.
- 8.7.3.6 To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of personal wireless service providers which are reasonably likely to utilize the site to provide services to the Town of West Stockbridge and surrounding areas.
- 8.7.3.7 Unless required by the Federal Aviation Administration, no night lighting of towers or the personal wireless facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- 8.7.3.8 No tower or personal wireless service facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR), is permitted.
- 8.7.3.9 Tower(s) must be of a type which will maximize potential sharing. Lattice-type structures are preferred, but where a monopole is requested, the applicant must demonstrate the future utility of such structure for expansion of service for the applicant and other future applicants.
- 8.7.3.10 Commercial advertising shall not be allowed on any antenna, tower, or accessory building or communication equipment shelter.

### **8.8. General requirements for RSP(s).**

- 8.8.1 No repeater shall be located closer than 50 feet to an existing dwelling unit, nor less than 25 feet above ground.
- 8.8.2 The SPGA may require the use of screening, painting, or camouflage to reduce the visual impact of repeaters.
- 8.8.3 Repeaters shall be located so as to have the least impact on the views of residents of the Town of West Stockbridge.

**8.9. Consultant review.**

8.9.1 Upon submission of an application for any special permit under this Section 8, the applicant shall pay a review fee determined by the SPGA, consisting of reasonable costs to be incurred by the SPGA for the employment of independent consultants. The SPGA shall select the independent consultant(s). These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields, as appropriate: 1) telecommunications engineering, 2) structural engineering, 3) monitoring of electromagnetic fields, and, if determined necessary by the SPGA 4) other relevant fields of experience as determined by the SPGA.

8.9.2 Upon submission of a complete application for any special permit(s) under this Section 8, the SPGA shall provide its independent consultant(s) with the full application(s) for their analysis and review.

8.9.3 Applicants for any special permit(s) under this Section 8 shall grant permission for the Town's independent consultant(s) to conduct any necessary site visit(s), or obtain permission from the owner(s) of the proposed site(s) for any site visit(s).

**8.10. Approval criteria.**

8.10.1 In acting on any special permit application, the SPGA shall proceed in accordance with the procedures and time lines established for the special permits in state law, this bylaw, and other applicable law.

8.10.2 In addition to the findings required by the Zoning Bylaw by special permits generally, the SPGA shall make the following findings before granting the special permit:

8.10.2.1 Applicant is not already providing adequate coverage and/or adequate capacity to the Town of West Stockbridge.

8.10.2.2 Applicant has agreed to rent or lease available space on the tower, under the terms of a fair-market lease, without discrimination to other personal wireless service providers.

8.10.2.3 Applicant is not able to use existing tower/facility sites in or around the Town of West Stockbridge, either with or without the use of repeaters, to provide adequate coverage and/or adequate capacity to the Town of West Stockbridge.

8.10.2.4 The proposed personal wireless service facility/tower or repeater will not be likely to have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources.

8.10.2.5 Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the towers or facilities.

8.10.2.6 Emergency access to the site via the planned drive or roadway is adequate. The SPGA shall request and consider input from the Chiefs (or the designees) of fire, police and other emergency services regarding this issue.

8.10.2.7 The proposal shall comply with FCC 96-326 and any and all other applicable FCC regulations, regarding emissions of electromagnetic radiation, and the required monitoring program is in place and shall be paid for by the applicant.

8.10.2.8 The general requirements (Sections 8.7 and/or 8.8) have been met.

8.10.3 Any decision by the SPGA to deny an application for a special permit under this Section 8 shall be in conformance with Section 332 (47 U.S.C. § 332), Subsection (7)(B)(ii)(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

### **8.11. Monitoring and evaluation of compliance.**

8.11.1 Initial monitoring. It shall be a condition of any special permit granted under this bylaw that, in order to determine the tower and facility's or repeater's radiofrequency emissions and their compliance with FCC regulations, the applicant shall, after the granting of a special permit and within 30 days of the date that applicant's personal wireless facility(ies) or repeater(s) begin(s) transmission, pay for an independent consultant, hired by the Town, to monitor the levels of EMF radiation, around the proposed facility and/or repeater site(s). The independent consultant shall use the Monitoring Protocol. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Planning Board, Select Board, the Board of Health, the Zoning Board of Appeals, the Building Inspector, the Conservation Commission, and the Town Clerk.

8.11.2 Ongoing monitoring. It shall be a condition of any special permit granted under this bylaw that, in order to determine ongoing compliance with FCC regulation, after transmission begins, the owner(s) of any personal wireless service facility(ies) or repeater(s) located on any facility or repeater site shall pay for an independent consultant, hired by the Town, to conduct annual testing and monitoring of EMF radiation emitted from said site, and to report results of said monitoring, as follows:

8.11.2.1 There shall be annual monitoring of emissions by the independent consultant using actual field measurement of radiation, utilizing the Monitoring Protocol. This monitoring shall measure levels of EMF radiation from the facility site's primary antennas as well as from repeater site(s) (if any). A report of the monitoring results shall be prepared by the independent consultant and submitted to the Planning Board, the Select Board, the Board

of Health, the Zoning Board of Appeals, the Building Inspector, the Conservation Commission, and the Town Clerk.

- 8.11.2.2 Any major modification of existing facility, or the activation of any additional permitted channels, or the reactivation of any facility which has been idle for six months shall be cause for new initial monitoring in accordance with Subsection 8.11.1.
- 8.11.2.3 Excessive emissions. Should the monitoring of a facility or repeater site reveal that the site exceeds the FCC 96-326 standard, or any other applicable FCC standard, then the owner(s) of all facilities utilizing that site shall be so notified. The owner(s) shall submit to the SPGA, the Select Board and the Building Inspector a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard and any and all other applicable FCC regulations within 10 business days of notification of noncompliance. That plan shall reduce emissions to the applicable FCC standard within 15 days of initial notification of noncompliance. Failure to accomplish this reduction of emissions within 15 business days of initial notification of noncompliance shall be a violation of the special permit and subject to penalties and fines as specified in this Zoning Bylaw. Such fines shall be payable by the owner(s) of the personal wireless service facilities with antennas on the facility site, until compliance is achieved.
- 8.11.2.4 Structural inspection. It shall be a condition of the special permit that tower owner(s) shall pay for any independent consultant (a licensed professional structural engineer), hired by the Town, to conduct inspections of the tower's structural integrity and safety. Towers shall be inspected every five years. A report of the inspection results shall be prepared by the independent consultant and submitted to the Select Board, the Planning Board, the Board of Health, the Building Inspector, and the Town Clerk. Any major modifications or existing facility which includes changes to tower dimensions or antenna numbers or type shall require new structural inspection.
- 8.11.2.5 Unsafe structure. Should the inspection of any tower reveal any structural defect(s) which, in the opinion of the independent consultant, render(s) that tower unsafe, the following actions must be taken: Within 10 business days of notification of unsafe structure, the owner(s) of the tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the special permit and subject to penalties and fines as a zoning violation. Such fines shall be payable by the owner(s) of the tower, until compliance is achieved.

**8.12. Removal requirements.**

Any personal wireless service facility or repeater which ceases to operate for a period of one year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless facility or repeater and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility or repeater site shall be remediated such that all Personal wireless service facility or repeater improvements which have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the facility or repeater site, including any access road(s) which lead to that facility or repeater site from the main access road, shall be revegetated. If all facility or repeater sites have ceased to operate, the owner of the last personal wireless service facility or repeater to leave the site shall revegetate the access road in its entirety. Existing trees shall only be removed with the written permission of the SPGA, and only if the SPGA determines such removal of trees to be necessary to complete the required removal of personal wireless service facility(s) or repeater(s).

**8.13. Performance guarantees.**

8.13.1 The applicant shall, as a condition of the special permit:

8.13.1.1 Post an initial cash bond in a reasonable amount determined and approved by the SPGA. This bond shall be in force to cover the costs of the remediation of any damage to the landscape which occurs during the clearing of the site; and to cover the cost of the removal of the tower or facility or repeater from the site, and remediation of the landscape, should the facility or repeater cease to operate.

8.13.1.2 Post a maintenance bond for the access road(s), site(s), and tower(s) in amounts approved by the SPGA.

**8.14. Fees and insurance.**

8.14.1 Towers, personal wireless service facilities and repeaters shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a certificate of insurance to the SPGA and the Select Board's office on an annual basis. For towers, facilities and repeaters located on property owned by the Town of West Stockbridge, the Town of West Stockbridge shall be an additional named insured.

8.14.2 A schedule of fees for personal wireless service facility, tower or repeater permitting and renewal, any monitoring of emissions and inspection of structures, and any other fees shall be established by the SPGA pursuant to MGL c. 40A, § 9. This schedule may be amended from time to time.

**8.15. Permit expiration and renewal.**

- 8.15.1 Any special permit granted under this Section 8 shall lapse if the applicant fails to begin construction on the facility or tower or repeater within a two-year period of said grant.
- 8.15.2 All special permits granted under this Section 8 shall be granted for five years. The SPGA shall renew said special permit for additional five-year period(s) if the SPGA, upon application filed prior to the expiration of any five-year period, determines that the tower and/or facility and/or repeater so permitted shall have been and shall remain in compliance with all terms and conditions of this bylaw and of any conditions placed upon the original special permit at the time of granting.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.



SECTION 9  
**Other Special Uses**  
**[Added 1-14-2019 STM by Art. 1<sup>3</sup>]**

**9.1. Marijuana-related uses.**

9.1.1 Statement of purpose.

- a. The purpose of this bylaw is to allow for the siting of state-licensed marijuana establishments and medical marijuana treatment centers in appropriate locations in accordance with An Act to Ensure Safe Access to Marijuana, Chapter 55 of the Acts of 2017, and all regulations which have or may be issued by the Cannabis Control Commission, including, but not limited to, 935 CMR 500.000 and 935 CMR 501.000, and to impose reasonable safeguards to govern the time, place and manner of marijuana establishments and medical marijuana treatment centers to ensure public health, safety, well-being and mitigate against undue impacts on the natural and build environment of the Town and its residents.
- b. It is the intent of these bylaws to enable small-scale and local marijuana-related business activity. For all districts, special permits for cultivation of marijuana may only be granted when the size and amount of cultivation for an individual or corporate entity does not exceed a "Tier One" scale of cultivation activity, as defined by 935 CMR 500.000, except that a craft cooperative shall be limited to three noncontiguous cultivation sites in the Town of West Stockbridge, each of which is limited to a Tier 1 canopy (5,000 square feet).

9.1.2 Definitions. Where not expressly defined herein, the meaning of terms used in this bylaw shall be interpreted as defined by the Cannabis Control Commission's regulations governing adult use of marijuana (935 CMR 500.000) in effect on the effective date of this zoning bylaw and otherwise by their plain language.

9.1.3 Special permit application requirements for marijuana-related activities.

9.1.3.1 A marijuana establishment and medical marijuana treatment center may be allowed only in locations set forth in the Table of Uses, Subsection 4.11.1, by special permit from the Planning Board (the "SPGA") in accordance with MGL c. 40A, § 9.

9.1.3.2 Only an applicant holding a valid license or certificate, whether provisional or final, from the Cannabis Control Commission, Department of Public Health, or other appropriate state agency, as

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**3. Editor's Note: This bylaw also redesignated former Secs. 9 and 10 as Secs. 10 and 11, respectively.**

the case may be, is eligible to apply for a special permit pursuant to this bylaw.

9.1.3.3 In addition to the special permit requirements of Section 6.3, special permit applications for any marijuana-related use or activity shall also include the following:

- a. Names and addresses of each owner of the marijuana establishment or medical marijuana treatment center, and where the owner is a business entity, the names and addresses of each owner of that establishment.
- b. Copies of all licenses and permits issued to the applicant by the Commonwealth of Massachusetts and any of its agencies or, if the applicant's license is provisional, a written description of the status of its application to the Cannabis Control Commission relative to the establishment at issue.
- c. A copy of the final, executed host community agreement ("HCA") between the applicant and the Town of West Stockbridge.
- d. A list of any waivers of regulations that the applicant seeks to obtain from the Cannabis Control Commission or a copy of any such waivers that the Commission has issued to the applicant, as applicable.
- e. Copies of all policies and procedures approved by the Cannabis Control Commission, including without limitation the marijuana establishment's and medical marijuana treatment center's operating and safety procedures, or copies of such policies and procedures that the applicant intends to submit to the Commission, as applicable.
- f. A plan that identifies potential energy use reduction and that demonstrates best practices for energy conservation and a plan that identifies opportunities for renewable energy generation. The plan may include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand.
- g. Site plans and/or application narratives that contain sufficient information so that the SPGA can evaluate conformance of the proposal with applicable state law and this zoning bylaw.
- h. The SPGA may require the applicant to provide additional information as it deems necessary, including a traffic study.

9.1.3.4 Upon the filing of the special permit application with the SPGA, the applicant shall simultaneously deliver copies of the full application to the Select Board (if the Planning Board is the SPGA), the Planning Board (if the Select Board is the SPGA), the Building

Commissioner, the Board of Health, the Police Department and the Fire Department.

#### 9.1.4 Outdoor cultivation of marijuana.

9.1.4.1 Cultivation of marijuana outside and not in a building shall conform to the following:

- a. No marijuana cultivation shall be less than 10 feet from a property line.
- b. No marijuana cultivation or related activity shall be allowed in a front yard setback.
- c. Fencing of cultivation areas shall be provided in conformance with 935 CMR 500.000 and with other applicable provisions of this bylaw.
- d. No cultivation may be visible from a public way. Fencing or landscape screen planting may be used to shield cultivation activities.
- e. Where state law requires monitoring by video camera 24 hours per day, only infrared-type technology may be used. The applicant shall provide information relating to the type of video monitoring equipment proposed to be used.
- f. No equipment shall be used that creates continuous noise that is measurable at a property line.
- g. Fencing or landscape planting for screening shall be shown on the site plan submitted with the application.

#### 9.1.5 Indoor cultivation of marijuana.

9.1.5.1 All cultivation of marijuana inside buildings shall comply with the following:

- a. No artificial lighting used for growing inside the building shall be visible on the exterior of the building. Greenhouses that transmit light from inside to outside may not be used for cultivation of marijuana.
- b. Where state law requires monitoring by video camera 24 hours per day on any part of the exterior of a building used for cultivation, only infrared-type technology may be used. The applicant shall provide information relating to the type of video monitoring equipment proposed to be used.
- c. Fencing shall be provided in conformance with 935 CMR 500.000 and shall be shown on the site plan submitted with the application.

- d. No equipment shall be used that creates continuous noise from the regular operation of the facility that is measurable at a property line.

#### 9.1.6 Retail sales of marijuana.

9.1.6.1 No more than one special permit for the retail sale of medical marijuana shall be granted in the Town of West Stockbridge.

9.1.6.2 No more than one special permit for the retail sale of adult use (i.e., recreational) marijuana shall be granted in the Town of West Stockbridge.

9.1.6.3 Upon receipt of a special permit application for a marijuana retail use, the Select Board, as the SPGA for such retail use, shall forward a copy of the full special permit application to the Planning Board and shall request the Planning Board to review the application and make recommendations back to the Select Board as to the completeness of the application and its conformance to these bylaws.

9.1.6.4 In addition to other information required for a special permit application, the following additional information shall be submitted with the special permit application:

- a. Lighting. A site plan with all parking lot lighting and showing all lighting mounted on buildings. Include photometric studies for exterior light levels around the building and specifications for exterior light fixtures showing that all fixtures proposed to be used are "cut-off" type fixtures and that no light pollution shall occur.
- b. Elevation drawings of any new building or renovated building proposed for retail marijuana sales shall be submitted with the special permit application. These drawings shall show how the proposed building will mitigate the effect of the state law and how the proposed building will be compatible with the scale and character of West Stockbridge.
- c. The SPGA may require that a traffic study be submitted.

9.1.6.5 Parking for retail sales of marijuana-related products shall be provided in accordance with the requirements of Subsection 6.2.1 and the particular requirements for "retail businesses".

9.1.6.6 In addition to the findings required pursuant to Subsection 6.3.4, the SPGA shall make the following findings with respect to retail marijuana uses:

- a. The scale and character of the proposed retail facility shall be compatible with the general scale and character of West Stockbridge.

- b. There will be no negative impact on traffic or parking.

9.1.7 Other requirements for marijuana-related uses.

9.1.7.1 The marijuana establishment and medical marijuana treatment centers shall provide the Chief of Police and Building Commissioner up-to-date contact information, as required by the Chief of Police and Building Commissioner, including the name, telephone number and electronic mail address of a contact person, who must be available 24 hours a day, seven days a week.

9.1.7.2 In addition to compliance with applicable state laws and regulations and other requirements of this bylaw, the SPGA may impose reasonable conditions to improve site design, traffic flow, public safety, water quality, air quality, protection of significant environmental resources and the preservation of community character of the surrounding area, including, without limitation, including, but not limited to the following:

- a. The SPGA shall consider the following and may include conditions concerning the following in any special permit granted pursuant to this Section 9.1:
  - 1. Hours of operation, including dispatch for any home delivery of medical marijuana.
  - 2. Compliance with the host community agreement.
- b. The submission of a copy of the final license or final certificate of registration from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, with the Building Commissioner prior to the issuance of a building permit, certificate of occupancy, or commencement of use, whichever occurs first.
- c. The reporting of any cease-and-desist order, quarantine order, suspension order, limiting sales order, notice of hearing or final action by the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, regarding the marijuana establishment and medical marijuana treatment center to the Building Commissioner within 48 hours of the applicant's receipt.

9.1.7.3 A special permit issued pursuant to this bylaw shall be subject to the following:

- a. The special permit shall expire within three years of the date of issue. If the applicant wishes to renew the special permit, an application to renew must be submitted at least 120 days prior to the expiration of the special permit. The SPGA may, at the time of a renewal, renew a special permit for a marijuana-

related use for a period of time not less than three years and not greater than 10 years.

- b. Special permits shall be limited to the original applicant(s) and shall expire on the date the special permit holder ceases operation of the Marijuana Establishment and medical marijuana treatment center.
- c. The holder of a special permit shall annually file an affidavit with the Building Commissioner demonstrating that it is in good standing with respect to its license or certificate from the Cannabis Control Commission, Department of Public Health, and any other applicable state licenses.
- d. The holder of a special permit shall notify the Building Commissioner and the SPGA in writing within 48 hours of the cessation of operation of the marijuana establishment or the expiration or termination of the permit holder's state license.
- e. Special permits shall lapse upon the expiration or termination of an applicant's license from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be.

#### 9.1.8 Discontinuance of use.

9.1.8.1 Any marijuana establishment or medical marijuana treatment center permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia prior to expiration of its operating license or certificate issued by the Commonwealth of Massachusetts or no more than seven days following revocation or voiding of such license or certificate.

9.1.8.2 The licensee shall notify the Select Board, Planning Board, Building Inspector by certified mail of the expiration or revocation of a license or certificate from the Cannabis Control Commission, Department of Public Health or such other applicable state entity, as the case may be, the proposed date of discontinued operations, and the date by which all removals will be completed.

9.1.8.3 All cessation of business and removals of materials shall be in compliance with applicable state regulations, including, but not limited to:

- a. Physical removal of all exterior security-related items (fences, cameras, lights, etc.).
- b. Disposal of all marijuana or marijuana products.
- c. Stabilization or revegetation of the site as necessary. 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.

9.1.8.4 If the licensee of the marijuana-related use fails to carry out removals in accordance with the requirements of this section within 120 days of expiration or revocation of license, the Town may enter the property and remove items/materials after obtaining an appropriate court order.

9.1.8.5 Absent notice as required by Subsection 9.1.8.2 above or written notice of extenuating circumstances, the marijuana-related use shall be considered discontinued when it fails to operate for more than one year without the written consent of the special permit granting authority or when its license to operate has expired or has been revoked.

9.1.8.6 Financial assurance. The SPGA may require the licensee of a marijuana-related use to provide a surety to ensure adequate funds are available to provide for decommissioning and removal of the installation.

**9.2. Photovoltaic solar energy systems. [Added 9-18-2019 STM by Art. 1]**

9.2.1 Statement of purpose. The purpose of this bylaw is to provide a permitting process for solar photovoltaic installations for cost-effective, efficient, and timely implementation to increase the use of distributed generation; to integrate these installations into the Town in a manner that minimizes their impacts on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town, and to protect health and safety.

9.2.2 Definitions. As used in this bylaw, the following terms shall have the meanings indicated:

GRID-INTERTIE — A photovoltaic system that is connected to an electric circuit served by an electric utility.

GROUND-MOUNTED — An active photovoltaic solar energy system that is structurally mounted to the ground and is not roof-mounted; may be of any size (small-, medium- or large-scale).

LARGE-SCALE — An active photovoltaic solar energy system that has a rated nameplate capacity greater than 250 kW DC.

MEDIUM-SCALE — An active photovoltaic solar energy system that has a rated nameplate capacity up to 250 kW DC, and a total collector area greater than 750 square feet.

OFF-GRID — A photovoltaic solar energy system in which the circuits energized by the solar energy system are not electrically connected in any way to electric circuits that are served by an electric utility.

PHOTOVOLTAIC SYSTEM — (Also referred to as "photovoltaic installation") An active solar energy system that converts solar energy directly into electricity.

RATED NAMEPLATE CAPACITY — The maximum rated output of electric power production of the photovoltaic system in watts of direct current (DC).

ROOF-MOUNTED — An active photovoltaic solar energy system that is structurally mounted to the roof of a building or structure; may be of any size (small-, medium-, or large-scale).

SMALL-SCALE — An active photovoltaic solar energy system that has a total collector area of 750 square feet or less, unless a greater area has been allowed by special permit.

SOLAR ACCESS — The access of a solar energy system to direct sunlight.

### 9.2.3 Medium- or large-scale photovoltaic solar developments.

9.2.3.1 Special permit required. Medium- or large-scale photovoltaic solar developments require a special permit per the Table of Uses, Subsections 4.11.1 and 4.11.2. Medium-scale systems do not require a special permit on the PVOD.

9.2.3.2 In addition to the standard special permit application requirements of Subsection 6.3.6, a special permit application for large- and medium-scale photovoltaic solar energy systems the site plan submitted shall include the following additional information:

- a. Property lines and physical features, including roads, for the project site;
- b. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- c. Blueprints or drawings of the solar energy system showing the proposed layout of the system, any potential shading from or to nearby structures, the distance between the proposed solar collector and all property lines and existing on-site buildings and structures, and the tallest finished height of the solar collector;
- d. One- or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all Massachusetts Electric Code (527 CMR 12.00) compliant disconnects and overcurrent devices;
- e. Documentation of the major system components to be used, including the panels, mounting system, and inverter;
- f. Name, address, and contact information for proposed system installer;



- g. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- h. The name, contact information and signature of any agents representing the project proponent;
- i. Zoning district designation for the parcel(s) of land comprising the project site;
- j. Locations of active farmland and prime farmland soils, wetlands, permanently protected open space;
- k. Priority Habitat Areas and BioMap 2 Critical Natural Landscape Core Habitat mapped by the Natural Heritage & Endangered Species Program (NHESP) and "Important Wildlife Habitat" mapped by the DEP;
- l. Locations of floodplains or inundation areas for moderate- or high-hazard dams;
- m. Locations of local or national historic districts;
- n. Documentation of actual or prospective access and control of the project site;
- o. An operation and maintenance plan;
- p. Proof of liability insurance;
- q. A public outreach plan, including a project development time line, which indicates how the project proponent will meet the required special permit review notification procedures and otherwise inform abutters and the community.
- r. Site plans submitted for the above shall be prepared by a MA licensed professional engineer.

9.2.4 Design standards for large- and medium-scale photovoltaic solar developments where a special permit is required.

9.2.4.1 Standards for large- or medium-scale ground-mounted solar energy systems proposed within all zoning districts where a special permit is required.

- a. Utility notification. No grid-intertie photovoltaic system shall be installed until evidence has been given to the special permit granting authority that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator. Off-grid systems are exempt from this requirement.
- b. Utility connections. Reasonable efforts, as determined by the special permit granting authority, shall be made to place all

utility connections from the solar photovoltaic installation to the point of interface with the grid tie-in 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.

- c. Safety. The large- or medium-scale ground-mounted solar energy system owner or operator shall provide a copy of the special permit application to the Fire Chief for review. All means of shutting down the solar installation shall be shown on the application and plans filed, and shall be clearly marked on-site.
- d. Safety. Fencing that is required for safety and prevention of access to photovoltaic equipment shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.
- e. Visual screening, by opaque fence and/or landscape planting, shall be provided, as per conditions set by the SPGA, to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 250 feet or less from an adjoining residential property. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary. If the natural circumstances of existing landscape and vegetation provide screening that is satisfactory to the SPGA, additional visual screening may not be required.
- f. Land clearing, soil erosion and habitat impacts. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.
- g. Stormwater management. Best management practices shall be used for controlling and managing stormwater run-off and drainage for the medium-scale ground-mounted solar photovoltaic installation in compliance with all applicable federal, state and local regulations.
- h. The SPGA may require a glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties.

- i. The SPGA may review the proposed installation with the Conservation Commission.
- j. The SPGA may require an environmental impact report or statement.

9.2.4.2 Design standards for a medium-scale photovoltaic system where a special permit is not required.

- a. Site plans and construction drawings submitted shall be prepared by a MA licensed professional engineer.
- b. Provide evidence that the owner has submitted notification to the utility company of the customer's intent to install an interconnected customer-owned generator and that the utility company has approved the connection.
- c. Utility connections shall be underground to the connection point of the grid tie-in or to the property line of the site. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- d. All means of shutting down the solar installation shall be shown on the plans filed, and shall be clearly marked on site.
- e. Safety fencing shall be provided to prevent access to photovoltaic equipment. Safety fencing shall be set back from roads and property lines to the greatest extent possible and shall be separate from other visual screening that is required.
- f. Visual screening, by evergreen landscape planting or existing evergreens, shall be provided to prevent the solar energy system from being visible from the street or streets which the system has frontage on, from adjoining streets which abut the lot, or from a distance of 200 feet or less from buildings on an adjoining property or across the street. This regulation is not intended to require screening of solar energy systems where the topography within the site of the solar installation and adjoining the solar energy system site rises or falls to an extent that fencing or landscape screening is impractical or unnecessary.
- g. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of ground-mounted solar energy systems or as otherwise prescribed by applicable laws, regulations, and bylaws/ordinances. Plans shall show habitat impacts are mitigated during construction and over the life of the facility. Maintenance of vegetation shall be by mowing. No chemicals, weed killers or herbicides shall be used at any time.

- h. Best management practices shall be used for controlling and managing stormwater run-off and drainage in compliance with all applicable federal, state and local regulations.
- i. Plans submitted shall show a glare analysis and proposed mitigation, if any, to minimize the impact of glare on neighboring properties.
- j. All regular building permit sign-offs shall be approved by local boards or authorities, including the Conservation Commission and Fire Chief.

9.2.5 Special permit requirements for small-scale ground-mounted photovoltaic solar energy systems.

9.2.5.1 A special permit application for small-scale ground-mounted photovoltaic solar energy systems shall include the following additional information on the site plan that is required by Subsection 6.3.6.

- a. North arrow and direction of solar south.
- b. Locations of buildings on neighboring lots within 300 feet.
- c. Topography based on USGS, or a survey by a licensed surveyor.
- d. Satellite imagery of the site and neighboring lots showing tree coverage.

9.2.5.2 The SPGA may impose reasonable conditions for landscape screening or fencing.

9.2.5.3 Findings required for small-scale ground-mounted photovoltaic solar energy systems:

- a. The general findings required for all special permits under Subsection 6.3.4 are required to be made.
- b. The proposed ground-mounted residential photovoltaic solar energy system will not have any negative impact on neighbors or abutters within 300 feet.
- c. The proposed small-scale ground-mounted residential photovoltaic solar energy system will not have any negative impact on views from a public way.
- d. If an increase in size above 750 square feet of collector area is requested as a part of the special permit application per Subsection 9.2.6, the increase in size will not have any negative impact on neighbors or abutters within 300 feet or on views from a public way.

- e. The SPGA may require a glare analysis and proposed mitigation, if any, to minimize the impact of glare on affected properties.

9.2.6 Increase in size of small-scale ground-mounted photovoltaic solar energy systems.

9.2.6.1 The Planning Board, acting as the special permit granting authority (SPGA), may, as a part of the issuance of a special permit for a small-scale ground-mounted photovoltaic solar energy system, allow a small-scale ground-mounted photovoltaic system that is larger than 750 square feet of collector area, provided that findings as required under Subsection 6.3.4 and Subsection 9.2.5.3 are made.

9.2.7 Abandonment or decommissioning.

9.2.7.1 Removal requirements. Any commercial large- or medium-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life, is no longer operational or has been abandoned 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 Select Board, Planning Board, and Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- b. Disposal of all solid and hazardous waste brought to the site or generated by the owner or operator or otherwise related to the large-scale ground-mounted solar photovoltaic installation in accordance with local, state, and federal waste disposal law and regulations.
- c. Stabilization or revegetation 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.

9.2.7.2 Abandonment. The large- or medium-scale ground-mounted solar photovoltaic installation shall be considered abandoned when it does not operate for more than one year without the written consent of the special permit granting authority. If the owner or operator of the large- or medium-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town retains the right, after the receipt of an appropriate court order, to

enter and remove an abandoned, hazardous, or decommissioned large- or medium-scale ground-mounted solar energy system. As a condition of special permit approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

9.2.7.3 Financial assurance. Proponents of large-scale ground-mounted solar photovoltaic installations shall be required to provide a form of surety to cover the cost of removal and restoration of the site in the event the site is abandoned. The amount and form of surety shall be determined by the Planning Board, but in no event shall the amount exceed 125% of the cost of removal. Applicants shall submit a fully inclusive cost estimate of the costs associated with the removal of the large-scale ground-mounted solar energy system prepared by a qualified engineer. The cost estimate accounts for inflation over the life of the system. All subsequent owners/operators of the system shall continue to provide a form of surety acceptable to the Town until the commercial-scale solar energy system has been removed. The surety account or bond will be managed by the Treasurer's office.

SECTION 10  
**Administration and Enforcement**

**10.1. Enforcement by Building Inspector; compliance with laws and regulations required.**

This bylaw shall be enforced by the Building Inspector appointed by the Select Board as provided in the State Building Code.

10.1.1 No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this bylaw and any other applicable Town bylaws and regulations, the State Sanitary Code and the Board of Health regulations, the Planning Board's subdivision control regulations, and the Wetlands Protection Act, if applicable.

10.1.2 No permit or license shall be granted for a new use of a building, structure or land which use would be in violation of this bylaw.

**10.2. Construction and use to comply with permits.**

10.2.1 Special permits or building permits issued on the basis of plans and applications approved by the Select Board, Board of Health, Planning Board or the Board of Appeals authorize only the use, arrangement and construction as set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this bylaw and punishable as provided herein.

10.2.2 Construction or operation under a building or special permit shall conform to any subsequent amendment of this bylaw unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and 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.

**10.3. Frontage requirement for building lots.**

No building permit shall be issued by the Building Inspector unless the lot on which the construction is proposed has at least the required minimum frontage on an accepted public way, or on a way shown on an approved and recorded subdivision plan, or on a way otherwise qualifying or approved by the Planning Board under the Subdivision Control Law.





SECTION 11  
**Amendment and Validity**

**11.1. Amendment.**

11.1.1 This bylaw may be amended from time to time in an Annual or Special Town Meeting in accordance with MGL c. 40A, § 5. Any change to the Zoning Map of the Town or to the Table of Uses set forth in Section 4.11 of this bylaw shall be made only at an Annual Town Meeting and not at a Special Town Meeting.

11.1.2 No zoning bylaw or amendment thereto shall be adopted until after the Planning Board has held a public hearing thereon, for which a notice has been published, posted and mailed as provided in MGL c. 40A, § 5, and has made a report with recommendations to the Town Meeting or after 21 days shall have elapsed after such hearing without submission of such report.

- a. Any nonresident property owner may request that notice of hearing by the Planning Board on any zoning bylaw amendment be sent by mail to him (her) by the Town Clerk. Such request must be filed annually with the Town Clerk no later than January 1, accompanied by a fee in an amount set from time to time by the Select Board. A separate, conspicuous statement shall be included annually with all tax bills sent to nonresident property owners informing them of this provision.

**11.2. Validity.**

11.2.1 In their interpretation and application, the provisions of this bylaw shall be held to be minimum requirements. Wherever the requirements of this bylaw are at variance with the requirements of any other lawfully adopted regulations or bylaws, or with deed restrictions or covenants, the most restrictive, or the one imposing the higher standards, shall govern.

11.2.2 This bylaw, or any amendment thereto, shall take effect on the date on which such adoption or amendment is voted by the Town Meeting.

11.2.3 This bylaw repeals and replaces any previous zoning bylaws adopted by the Town Meeting of the Town of West Stockbridge and any subsequent amendments made thereto.

11.2.4 The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof.

## Appendix

### Chapter A300

#### ROAD ACCEPTANCES AND DISCONTINUANCES

**[The following roads and portions of roads have been accepted and/or discontinued by the Town of West Stockbridge.]**

**§ A300-1. List of acceptances and discontinuances.**

For the purposes of this table, "A" refers to an acceptance; and "D" refers to a discontinuance.

<b>Enactment</b>	<b>Action</b>	<b>Name/Description</b>
2-3-1930 ATM, Art. 16	D	Portion of highway leading from the State-Line-West-Center highway
2-3-1930 ATM, Art. 21	A	Moscow Road
2-4-1935 ATM, Art. 15	A	Alford Brook Club Road
2-4-1935 ATM, Art. 16	D	Portion of John Wilson Road replaced by Alford Brook Club Road
2-6-1939 ATM, Art. 18	A	Road reaching from Great Barrington Road on the east to the main road to Alford on the west
2-6-1939 ATM, Art. 19	D	From "Johnson corner" to the intersection of road recently completed
2-15-1954 ATM, Art. 14	D	Church Street
2-24-1958 ATM, Art. 20	A	Baker Street, Parcels 123, 124, 125, E106, E107
2-24-1958 ATM, Art. 21	A	Moscow Road, Parcels 149, 150, E111, E112
2-23-1965 ATM, Art. 22	D	Rockdale Mill Road
2-23-1965 ATM, Art. 24	D	Approximately 700 feet of Smith Road
2-23-1965 ATM, Art. 24	A	Approximately 700 feet joining two sections of Smith Road
2-22-1971 ATM, Art. 21	A	Maple View Drive
2-22-1971 ATM, Art. 28	A	Portion of Deerhill Road commencing at Lenox Road and extending approximately 600 feet

<b>Enactment</b>	<b>Action</b>	<b>Name/Description</b>
2-20-1973 ATM, Art. 32	A	Peaceable Hill Road
2-20-1973 ATM, Art. 38	D	Water Street, also known as "Paper Mill Road," lying between Route 41 and the former State Line Branch of the NYNH&H Railroad
8-12-1974 STM, Art. 5	D	A certain Town road running from the west side of Route 41 south of Balgen Machine Shop, crossing the New Haven Railroad, the Williams River and Cobb Road, to the east side of Main Alford Road
4-8-1985 ATM, Art. 1	D	Most northerly 3 feet of South Street, from its intersection with the easterly line of Maple Street to a point 150 feet easterly of said intersection
5-12-1986 ATM, Art. 26	D	Portion of Pixley Hill Road that runs approximately 40 feet 7 inches westerly from Route 41
5-12-1986 ATM, Art. 26	D	Portion of Glendale Road that runs from Route 41 18 feet 6 inches westerly on Glendale Road
6-15-1987 ATM, Art. 30	A	Iron Mine, Iron Ore and Bobolink (1.3 miles)
6-25-1990 ATM, Art. 34	A	Day Farm Road
5-14-2018 ATM, Art. 11	D	Orchard Street, commencing at South Street, to where South Street meets the line of Hotel Street

## **Chapter A305**

### **GENERAL LAW ACCEPTANCES**

[The following table lists Massachusetts General Laws accepted at Town Meeting.]

#### **§ A305-1. List of acceptances.**

The following General Laws have been accepted by the Town of West Stockbridge:

<b>Enactment</b>	<b>Acceptance Date</b>	<b>Citation</b>	<b>Subject Matter</b>
Art. 3	4-6-1891	Acts of 1890, Ch. 347	Establishment of public libraries
Art. 11	4-4-1892	Acts of 1890, Ch. 264	Public cemeteries
Art. 16	4-5-1909	MGL c. 209, § 1	Protection of forest or sprout lands from fire
	1-29-1916	Acts of 1890, Ch. 386	Australian Ballot System
Art. 6	11-21-1924	MGL c. 41, § 55	Appointment of Town Accountant
Art. 26	2-24-1958	MGL c. 53, §§ 117-121	Town caucus for nomination of officers
	11-29-1962	MGL c. 71, §§ 16 – 16I	Regional school district
Art. 1	6-8-1965	MGL c. 71, §§ 16 – 16I	Regional school district
Art. 27	2-19-1968	MGL c. 48, §§ 42, 43, 44	Appointment and duties of Fire Chief
Art. 4	1-12-1976	MGL c. 40, § 6B	Purchase of uniforms for Fire and Police Departments
Art. 29	5-2-1977	MGL c. 41, § 97A	Establishment of Police Department
Art. 31	5-2-1977	MGL c. 131, § 39A	Berkshire Scenic Mountains Act
Art. 1	11-16-1981	MGL c. 90, § 20A 1/2	Collection of parking citations
Art. 4	10-29-1984	MGL c. 40, § 8D	Establishment of Historical Commission
Art. 5	1-28-1985	MGL c. 59, § 5, cl. 17C, 37A and 41B	Tax exemptions for surviving spouse or minor child of a deceased person over age 70, blind persons, and persons over age 70
Art. 22	5-6-1991	Acts of 1990, Ch. 291	Enhanced 911 service
Art. 7	6-29-1994	MGL c. 40, §§ 42A-42J	Collection of overdue water charges and abatements

<b>Enactment</b>	<b>Acceptance Date</b>	<b>Citation</b>	<b>Subject Matter</b>
Art. 8	6-29-1994	MGL c. 80, § 13B	Acceptance and approval of deferred payments of capital costs by Water Commission
Art. 16	5-13-2019	MGL c. 44B, §§ 3-7	Massachusetts Community Preservation Act

**Disposition List****Chapter DL****DISPOSITION LIST**