

TOWN OF ERVING

SELECT BOARD / WATER COMMISSIONERS

To be held at the ERVING ELEMENTARY SCHOOL,
28 NORTHFIELD RD, ERVING, MASSACHUSETTS 01344

Jacob A. Smith, Chair
William A. Bembury
Scott Bastarache
Select Board

Bryan Smith
Town Administrator

Meeting Agenda Monday, April 24, 2023

This meeting is open to the public.

Scheduled Business

<i>Time</i>	<i>Agenda Item</i>
6:00 PM	Call to Order
6:00 PM	Joint Meeting with Finance Committee & Capital Planning Committee- Discussion Regarding IP Mill Demolition Proposal and Next Steps

Old Business

<i>Agenda Item</i>	<i>Section</i>
Surplus Equipment Request- Recreation Department- 3 rd Read	1
Discussion Regarding IP Mill Site Redevelopment: Demolition Proposal, Funding Strategies, and Next Steps	2

New Business

<i>Agenda Item</i>	<i>Section</i>
Discussion of Recommendation to Offer Voluntary Vision Insurance	3
Discussion of Tree Warden Resignation & Recommendation for Position to be Appointed	4
Discussion Regarding Highway Department Vacancy for Highway Foreman and Equipment Operator Positions	5
Review of Proposed Zoning Bylaw Revisions from Planning Board	6

Other Business

Signing of the Treasury Warrant

Unanticipated Business

Anticipated Next Meeting Dates

May 03, 2023- 7:00PM
Erving Elementary School

Note: These agenda items and estimated times are those reasonably anticipated by the Chair. Not all items listed may in fact be discussed and other items not listed may be brought up for discussion. Estimated agenda times may need to be changed on the night of the meeting for the sake of expediency. Section numbers correspond to agenda packets and are not an indication of the order of the agenda

Town of Erving

Select Board Public Meeting Participation Guidance

The Select Board welcomes residents to communicate questions, comments or concerns. Participants at Select Board meetings are notified that the meetings are both video and audio recorded, and comments provided will become part of the record. While offering public input, it is important that the Select Board is also allowed enough time to conduct their other business. The following guidelines have been established to make the best use of time at Select Board meetings.

1. To request time on the Select Board agenda, persons must contact the Town Administrator at (413) 422-2800, Ext.1102 or at SBRequests@erving-ma.gov by noon on the Tuesday before the meeting.
 - a. Requests will be submitted to the Chairperson for consideration and scheduling.
 - b. Supporting documentation related to the request must be provided to the Administrator's office by noon on the Thursday prior to the meeting. The Chairperson may remove requested agenda topics that are made without supporting documentation.
2. The Select Board encourages public participation as follows:
 - a. Town residents can bring comments before the Select Board that require discussion and are on the agenda, only after being recognized by the Chair. If your issue is not on the agenda, you may bring it up under "Future agenda items".
 - b. "Topics not anticipated" should be brought to the Chair for possible consideration prior to the meeting.
 - c. Please try to keep your comments short and to the point.
 - d. If it appears that the topic(s) being discussed will consume longer than the time allocated then, at the discretion of the Chair, the matter will be placed on an upcoming Select Board meeting agenda.
 - e. If you believe that your topic will require more time or desire to make a more formal presentation than is allowed under these guidelines, please contact the Town Administrator to ask to be put on a future agenda so that we can properly allocate enough time.
 - f. You are free to ask questions or to make your point for all to consider. However, engaging in active debate with Select Board or audience members will not be allowed.
 - g. All comments and questions must be directed to the Chair of the Select Board per MGL Chapter 30A, Section 20(g).
 - h. Participants are expected to speak from the presenter/guest table.
3. Employees and Board members who have business with the Select Board should be placed on the agenda beforehand (see Item # 1.).
4. Anyone wishing to contact the Select Board in writing may do so at:

Town of Erving, Attn: Select Board, 12 East Main Street, Erving, Massachusetts 01344

Alternatively, members of the public can complete a Select Board submission form at the meeting sign in table and office staff member will follow up.

The Select Board appreciates your cooperation in honoring these guidelines.

From Massachusetts Attorney General Official Website

What public participation in meetings must be allowed?

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. Any member of the public also has a right to make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the Chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The Chair is required to inform other attendees of such recording at the beginning of the meeting.

While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the Chair. An individual is not permitted to disrupt a meeting of a public body, and at the request of the Chair, all members of the public shall be silent. If after clear warning, a person continues to be disruptive, the Chair may order the person to leave the meeting, and if the person does not leave, the Chair may authorize a constable or other officer to remove the person.

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: DVD Blue Ray Home Theater system HBN N5200W 2007	
Estimated Value of Item: \$100	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: These assets were in our old location at 18 Pleasant Street. Now that we relocated to 12 East Main Street, there is no plans to use the equipment nor is there space.	
Recommended Disposition: Advertise on the Town website	

Department Head Signature _____

Date _____

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory	Date

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised: _____	Other info: _____	
Sold to: _____	\$ Sold for: _____	
Date disposed of: _____	Receipt attached: _____	
Chief Procurement Officer Signature		Date

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: Epson LCD Projector Model Number H561A Powerlite 2030	
Estimated Value of Item: \$200	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: These assets were in our old location at 18 Pleasant Street. Now that we relocated to 12 East Main Street, there is no plans to use the equipment nor is there space.	
Recommended Disposition: Advertise on the Town website	

Department Head Signature

Date

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory	Date

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised:	_____	Other info: _____
Sold to:	_____	\$ Sold for: _____
Date disposed of:	_____	Receipt attached: _____
Chief Procurement Officer Signature		Date

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: DVD Blue Ray Home Theater system HBN N5200W 2007	
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Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: These assets were in our old location at 18 Pleasant Street. Now that we relocated to 12 East Main Street, there is no plans to use the equipment nor is there space.	
Recommended Disposition: Advertise on the Town website	

Department Head Signature _____

Date _____

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory _____	
Date _____	

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised: _____	Other info: _____	
Sold to: _____	\$ Sold for: _____	
Date disposed of: _____	Receipt attached: _____	
Chief Procurement Officer Signature _____		
Date _____		

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: Surround Sound Equipment and Screen for showing movies	
Estimated Value of Item: \$200	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: These assets were in our old location at 18 Pleasant Street. Now that we relocated to 12 East Main Street, there is no plans to use the equipment nor is there space.	
Recommended Disposition: Advertise on the Town website	

Department Head Signature

Date

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory	Date

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised:	_____	Other info: _____
Sold to:	_____	\$ Sold for: _____
Date disposed of:	_____	Receipt attached: _____
Chief Procurement Officer Signature		Date

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: Foozeball and Ping Pong Table	
Estimated Value of Item: \$200	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: These assets were in our old location at 18 Pleasant Street. Now that we relocated to 12 East Main Street, there is no plans to use the equipment nor is there space.	
Recommended Disposition: Advertise on the Town website	

Department Head Signature

Date

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory	Date

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised:	_____	Other info: _____
Sold to:	_____	\$ Sold for: _____
Date disposed of:	_____	Receipt attached: _____
Chief Procurement Officer Signature		Date

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: HP Envy Printer 4500 and HP Printer C8963A	
Estimated Value of Item: \$10	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: Obsolete	
Recommended Disposition: Recycle	

Department Head Signature

Date

Select Board Review

Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
Board Comments:	
Select Board Signatory	Date

Chief Procurement Officer

Method of Disposition:	Under \$10,000	\$10,000 or More
<input type="checkbox"/>	Advertise Newspaper	<input type="checkbox"/> Sealed Bids
<input type="checkbox"/>	Advertise on Website	<input type="checkbox"/> Public Auction
<input type="checkbox"/>	Seek Bids	<input type="checkbox"/> Advertise on Website
<input type="checkbox"/>	Scrap Value	<input type="checkbox"/> Governmental/ Charitable Entity
Date(s) advertised:	_____	Other info: _____
Sold to:	_____	\$ Sold for: _____
Date disposed of:	_____	Receipt attached: _____
Chief Procurement Officer Signature		Date

Surplus Property Disposition Request

Department/Board/Committee Recreation Commission	Request Date: March 27, 2023
Item(s) to be disposed of: Phone and Answering Machine Panasonic KXTG 6671	
Estimated Value of Item: \$10	
Description of Item: See attached fixed asset sheet with item descriptions; including make, model, and serial #	
Reason for Request: Obsolete	
Recommended Disposition: Advertise on the Town website	

Department Head Signature

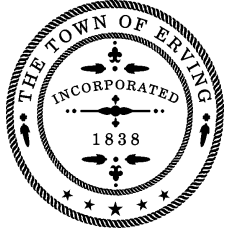
Date

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Board Decision:	Approved <input type="checkbox"/> Denied <input type="checkbox"/>
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Date disposed of:	_____	Receipt attached: _____
Chief Procurement Officer Signature		Date



TOWN OF ERVING

SELECT BOARD

12 East Main Street
ERVING, MASSACHUSETTS 01344

Tel. 413-422-2800

Fax 413-422-2808

Email: administrator@erving-ma.gov

Jacob A. Smith, Chair
William A. Bembury
Scott Bastarache
Select Board

Bryan Smith
Town Administrator

April 21, 2023

To: Select Board
Finance Committee
Capital Planning Committee
From: Bryan Smith, Town Administrator
CC: Mariah Kurtz, Town Planner

RE: IP Mill Site Redevelopment, Demolition, and Funding Options

Project & Site Information

The discussion, study, and work around the redevelopment of the former IP mill site has been ongoing since at least 2010. This includes the more recent conversation over the last several months regarding the proposal to demolish the site. The purpose of the meeting on April 24, 2023, is not meant to review all of the previous work and reports, but it is important to acknowledge that the work exists and is all available publicly. Interested individuals can visit: <https://www.erving-ma.gov/community-planning/former-international-paper-mill>.

Proposal for Demolition

Through the FY2024 capital planning process, a request was submitted by the Community Planning Office to the Capital Planning Committee to consider demolition of the complex. The Town has previously been awarded \$600,000 in funding through MassDevelopment for site readiness that the Town may lose access to if it is not utilized soon. Through the budget planning process and revised demolition concepts from Tighe & Bond, the Select Board, Finance Committee and Capital Planning Committee have discussed the option to recommend to the voters that the complex is demolished, with the exception of building #8.

Using the revised cost estimates from Tighe & Bond, with the removal of building #8, and assuming the use of \$600,000 in site readiness funds towards the project, the town would need to identify approximately \$3.7 million in funding to complete the project.

The Accountant's Office, Assessors' Office and the Treasurer's Office were asked to provide information on what a debt service would look like for a term of 3 or 5 years, as well as what a proposition 2 ½ would look like for a one-time capital expenditure and for a debt exclusion for the life of a debt service scenarios. The table on the following page provides a generalized comparison of the different options and the potential impact on the tax rate.

Former IP Mill Override Scenario Calculation Table - demolish all buildings except for #8

Amount	Type of Override	FY24 Residential & Open Space Base Tax Rate	Additional Residential Tax Rate	Total Residential Tax Rate	Tax Impact for \$100,000 value home	Tax amount for average value home (\$238,352)	FY24 Commercial, Industrial, & Personal Property Base Tax Rate	Additional Commercial Tax Rate	Total Commercial Tax Rate	Tax Impact on CIP every \$100,000
\$3,700,000	Capital Exclusion	\$8.21	\$2.45	\$10.66	\$245.00	\$583.96	\$13.47	\$4.03	\$17.50	\$403.00
\$3,700,000	3 Year Debt Exclusion	\$8.21	\$0.89	\$9.10	\$89.00	\$212.13	\$13.47	\$1.46	\$14.93	\$146.00
\$3,700,000	5 Year Debt Exclusion	\$8.21	\$0.56	\$8.77	\$56.00	\$133.48	\$13.47	\$0.91	\$14.38	\$91.00
\$1,850,000	Capital Exclusion	\$8.21	\$1.23	\$9.44	\$123.00	\$293.17	\$13.47	\$2.01	\$15.48	\$201.00
\$1,850,000	3 Year Debt Exclusion	\$8.21	\$0.44	\$8.65	\$44.00	\$104.87	\$13.47	\$0.73	\$14.20	\$73.00
\$1,850,000	5 Year Debt Exclusion	\$8.21	\$0.28	\$8.49	\$28.00	\$66.74	\$13.47	\$0.46	\$13.93	\$46.00

Table 1 This table is meant to illustrate the potential impact of a proposition 2 1/2 override. The table assumes that the FY24 base tax rate will include the 2.5% levy limit increase that is allowed by law. The tax impact calculated for \$100,000 in value is specifically looking at the proposition 2 1/2 override options. This amount would be in addition to the taxpayers existing tax costs. These are estimates based on current information, subject to change.

For reference, I have included the guidance document from the Massachusetts Department of Revenue that discusses how proposition 2 ½ overrides are handled. Additionally, I have included the proposed debt schedule from our financial advisor. The scenarios assumed even principal payments, so the amount owed annually reduces overtime as the interest amounts decrease. For the purpose of simplicity, we used a flat annual payment calculation in the table example on the previous page. Depending on the option selected by the Town, the interest costs and the exact tax calculation could be slightly different.



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Proposition 2½ Ballot Questions

Requirements and Procedures

August 2017

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PROPOSITION 2½ BALLOT QUESTIONS REQUIREMENTS AND PROCEDURES

[General Laws Chapter 59, § 21C](#)

I. INTRODUCTION

Proposition 2½ limits the amount of revenue a city or town may raise from local property taxes each year to fund municipal operations. This amount is known as the annual levy limit. However, the law allows a city or town to increase tax revenues above that limit with approval of voters at an election. It also requires a city or town to reduce its levy limit as specified by the voters.

This summary explains the election procedure established by Proposition 2½ and the different types of questions communities may ask voters to approve.

II. TYPES OF BALLOT QUESTIONS

Proposition 2½ establishes two types of voter approved increases in taxing authority. It also allows voters to mandate a reduction in taxing authority.

A. OVERRIDES

A levy limit override increases the amount of property tax revenue a community may raise in the year specified in the override question and in future years. It increases the community's levy limit and becomes part of the base for calculating future years' levy limits. The result is a permanent increase in taxing authority. [G.L. c. 59 § 21C\(g\)](#).

The purpose of the override is to provide funding for municipal expenses likely to recur or continue into the future, such as annual operating and fixed costs, although it may be used for any municipal spending purpose.

The only limitation on the amount of the override is that the new levy limit, including the override, cannot exceed the overall Proposition 2½ levy ceiling of 2½ percent of the community's full and fair cash value.

B. EXCLUSIONS

An exclusion increases the amount of property tax revenue a community may raise for a limited or temporary period of time in order to fund specific projects. The amount of an exclusion may be raised in addition to the community's levy limit. It does not increase the community's levy limit nor become part of the base for calculating future years' levy limits.

The exclusion may be used to raise additional funds only for a capital purpose, which is any purpose for which a city or town is authorized to borrow. See generally [G.L. c. 44, §§ 7 and 8](#). This includes most public building and public works projects, as well as land and equipment acquisitions.

An exclusion may be used by a community to fund its own capital spending, or its assessed share of capital spending by a regional school district or other regional governmental unit of which it is a member, whether the spending is financed by borrowing (debt exclusion) or within the annual budget (capital expenditure exclusion).

There is no limitation on the number or dollar amount of exclusions.

1. Debt Exclusions

If a capital project is being funded by debt, approval of a debt exclusion permits the community to raise the amount of the annual debt service payment for that project each year until the debt is retired. A debt exclusion may be presented to the voters to exclude the debt service on the community's borrowings, or the community's share of the debt service on a borrowing of a regional governmental unit of which it is a member. [G.L. c. 59, § 21C\(k\)](#). See Section IV-A-2 below.

Debt exclusion questions may be presented to and approved by the voters before or after the related debt is authorized or issued. An exclusion approved after repayment of the debt had begun applies prospectively, *i.e.*, to the remaining debt service payments owed on the obligation. A separate question may be presented for each borrowing or multiple borrowings may be included within a single question.

2. Capital Expenditure Exclusions

If the capital project is being funded by an appropriation, voter approval of a capital expenditure exclusion question permits the community to raise the amount of the project costs up to the amount stated in the question. This additional taxing authority is available for just the one fiscal year specified in the question. [G.L. c. 59, § 21C\(i½\)](#). A separate question may be presented for each budgeted project or multiple projects may be included within a single question.

C. UNDERRIDES

A levy limit override decreases the amount of property tax revenue a community may raise in the year specified in the override question and in future years. It decreases the community's levy limit and becomes part of the base for calculating future years' levy limits. The result is a permanent decrease in taxing authority. [G.L. c. 59, § 21C\(h\)](#).

III. ELECTION PROCEDURE

A. PLACING QUESTIONS BEFORE VOTERS

Proposition 2½ questions are placed on an election ballot by vote of the "local appropriating body," which is defined in towns as the selectboard, not town meeting. In towns without selectboards, a vote of the town council is required to present a question to the electorate. In cities, a vote of the city council, with the mayor's approval where required by law, is needed. [G.L. c. 59, § 21C\(a\)](#).

This is the only way an override or exclusion question may be placed on the ballot. They may not be placed on the ballot by a town meeting vote or any local initiative procedure authorized by law. A local initiative procedure, however, may be used as an alternative method of placing an override question on the ballot.

The board or council must vote the question exactly as it will appear on the ballot.

1. Overrides and Underrides

A majority vote of the board or council is needed to place an override or underride question on the ballot. [G.L. c. 59, § 21C\(g\)](#) and [\(h\)](#).

2. Exclusions

A 2/3 vote of the board or council is needed to place an exclusion question on the ballot. [G.L. c. 59, § 21C\(i½\)](#), [\(j\)](#) and [\(k\)](#).

B. ELECTION PROCEDURE

Proposition 2½ questions may be placed on a regular or special municipal election ballot. Questions may also be placed on the state biennial election ballot. However, those questions must be submitted to the Secretary of State for certification by the first Wednesday in August preceding the election. [G.L. c. 59, § 21C\(i\)](#).

The usual laws and procedures relating to municipal elections apply. The municipal clerk must receive written notice of the question being placed on the ballot at least 35 days before the date of the election. [G.L. c. 54, § 42C](#). The vote to place a question on the ballot must take place in sufficient time to meet this advance notice requirement.

A city or town may present Proposition 2½ questions to the voters as many times during the year as it chooses. The only constraint on the interval between these elections is the time needed to call and hold each election.

The [Office of the Secretary of State](#) is responsible for administering and enforcing election laws. Specific questions about the application of these laws to Proposition 2½ elections should be directed to the [Elections Division](#) of that office at 617-727-2828.

C. FORM OF QUESTIONS

Proposition 2½ specifies the form of each type of ballot question. This exact language must be used to properly place a question before the voters. The question forms are found in **Appendix A**.

1. Statement of Purpose

All override and exclusion questions require a statement of the purpose or purposes for which the monies from the tax "assessment" or debt "issue" will be used.

a. Specificity of Purpose

The purpose must be described in a manner that enables voters to determine the appropriation(s) or debt obligation(s) covered by the question. The degree of specificity required to do this will depend on the type of question.

(1) Overrides

Override questions are designed to increase the amount of revenue generally available for appropriation. As a result, the spending purpose in an override question may be broad in scope such as general or departmental operating purposes. More specific spending purposes may also be stated such as where a service will be reduced or eliminated without the override. Examples of acceptable spending purposes are found in **Appendix B**.

(2) Exclusions

Exclusion questions are designed to fund specific capital projects. Therefore, the borrowing or spending purpose in an exclusion question must describe the particular project(s) being funded by the question.

b. Definition of Purpose

The purpose used in an override or exclusion question must be a spending or borrowing purpose. This means a purpose for which a community's appropriating body could vote to appropriate money or authorize debt. The purpose cannot be used to provide voters with information on the impact of an unsuccessful vote on the question or the underlying events or circumstances that may cause budget difficulties. Nor may it be used to promote or advocate for the override or exclusion.

For example, language that does not meet the definition of spending purpose would be questions with the stated purpose of "restoring monies lost due to local aid reductions" or "increasing free cash." These questions do not state a spending purpose because communities do not appropriate funds for these purposes.

In addition, language that explains the impact of voter action on the question and is intended to promote the override or exclusion does not meet the definition of spending purpose. For example, "preventing substantial reductions in town services, programs and personnel and further deferral of vital capital projects," "preventing a reduction in the police department budget," "preventing the layoff of 4 police officers," "maintaining current municipal and educational services" or "restoring school athletic programs" would be inappropriate. The question must simply specify the personnel, services or programs for which the additional funds will be used. Thus, appropriate purposes for the examples above would be "funding the town's operating and capital expenses,"

"funding the police department operating budget," "funding the salaries of 4 police officers," "funding municipal and educational services," or funding school athletic programs."

Finally, the spending purposes should not be characterized in a manner intended to promote the question by including financial information usually provided during the budget process. Examples would be "funding uncontrollable increases in employee health insurance costs" or "funding a 28% increase in the town's regional school district assessment." The question should just state the spending purpose: "funding employee health insurance costs" or "funding the town's regional school district assessment."

2. Other Information

Override and capital expenditure exclusion questions must also include the total amount of additional taxing authority being requested and the fiscal year in which it will be used. This information is not included in debt exclusion questions.

Any additional information about the requested amount, the services and programs to be funded by the requested amount, and the impact the vote will have on those services cannot be included in the question or on the ballot. That type of information should be provided in the course of a balanced, comprehensive, public information effort. Public information efforts undertaken by local officials must be consistent with election and campaign finance laws. See Sections III-F and G below.

D. APPROVAL OF QUESTIONS

A question is approved if a majority of the people voting on that question vote "yes."

E. APPROVAL OF MULTIPLE QUESTIONS ON SAME BALLOT

A community may place as many questions on a regular or special municipal election ballot as it chooses. However, if the community decides to place questions on the state biennial election ballot, it is limited to three questions. [G.L. c. 59, § 21C\(i\)](#).

1. Overrides

a. Pyramid or Tier Overrides

A community may present a "pyramid" or "tier" override to the voters. A pyramid override asks voters to determine which, if any, of two or more funding levels they are willing to approve. A separate override question is placed on the ballot for each funding level, with each question stating the same purpose purposes. Tiered means that the purposes of a higher funding level include purposes in addition to the purposes of all lower funding levels. Any question is approved if a majority of the persons voting on that question voted "yes." If more than one question is approved, the question specifying the highest dollar amount governs. This rule also applies where the questions are presented as alternative proposals to the voters.

The Elections Division of the Secretary of State's Office advises communities presenting pyramid or tier overrides to include voting instructions on the ballot. The following language is recommended:

Questions 1a, 1b and 1c are separate questions. You may vote for or against each question independently. Each question requires a majority of those voting on that question to pass. If more than one question passes, the question with the highest dollar amount will prevail.

b. "Menu" Overrides

A community may place several override questions each of which will fund different services or programs on the same ballot. If voters approve more than one override question stating different purposes, the community's levy limit may be increased by the total of the amounts specified in all approved questions.

c. Multi-year Overrides

A community may seek voter approval of an override for more than one year. To do so, a separate question must be placed on the ballot for each fiscal year in which the additional levy capacity being requested will be used. The amounts and purposes in the question may be the same or different.

Appendix C provides examples of single, multi-year, pyramid, tier and menu override approaches.

2. Exclusions

A community may place several exclusion questions for different capital projects or groups of capital projects on the same ballot. The community may raise the additional amounts excluded by each question approved by the voters.

F. VOTER INFORMATION

Local officials may not publish and provide voter information materials at public expense, including a summary of the impact a “yes” or “no” vote will have on local services, unless specifically authorized by statute. See [G.L. c. 53, § 18B](#) (local acceptance required) and the following special acts that authorize certain officials to prepare and distribute voter information on municipal elections: St. 1987, c. 274 (Newton Election Commission), St. 1989, c. 630 (Cambridge Election Commission), St. 1996, c. 180 (Sudbury Selectboard), St. 1998, c. 89 (Burlington Selectboard), St. 2002, c. 238 (Dedham Selectboard), St. 2004, c. 149, §§ 285-288 (Lancaster Selectboard), St. 2006, c. 404 (Yarmouth Selectboard) and St. 2006, c. 427 (Shrewsbury Selectboard).

Questions about voter information or ballot content should be directed to the Elections Division of the [Office of the Secretary of State](#) at 617-727-2828.

G. CAMPAIGN ACTIVITIES

[General Laws Chapter 55](#) governs the raising and spending of money for ballot questions as well as political candidates. The law also regulates the conduct of public officials and employees undertaking campaign finance activities.

In general, the law regulates conduct not speech. Thus, while local officials can take a position on an override or exclusion question and speak in favor of or in opposition to it, they cannot spend public funds or use public resources, such as personnel, supplies and facilities, to promote or oppose the question. [Anderson v. City of Boston, 376 Mass. 178 \(1978\)](#). Public employees may work on an override or exclusion campaign on a volunteer basis, on their own time, in any capacity other than fundraising. They may also make personal contributions to political committees established for the purpose of promoting or opposing the ballot question.

The [Office of Campaign and Political Finance](#) (OCPF) is responsible for administering and enforcing campaign finance laws. Its website includes materials that provide guidance about the application of these laws to the conduct of local officials and employees in Proposition 2½ elections. See, for example, Interpretative Bulletins [91-01, The Use of Governmental Resources for Political Purposes](#), and [92-02, Activities of Public Officials in Support of or Opposition to Ballot Questions](#). Specific questions should be directed to OCPF at 617-727-8352.

H. REVOCAION OF QUESTIONS

Proposition 2½ does not provide for the revocation or rescission of an approved question. An override can be negated, however, by voter approval of an underride. An exclusion can be negated by not funding the related borrowing or appropriation.

IV. RELATIONSHIP TO APPROPRIATIONS

Proposition 2½ establishes a limit on the annual property tax levy and approval of an override or exclusion question only increases the amount a community may raise in taxes. It does not authorize or require spending for the purpose of the question.

Similarly, an underride only decreases the amount a community may raise in taxes. The legal power to make spending decisions is still vested in the community's appropriating body (town meeting/town council/city council).

A. USE OF ADDITIONAL TAXING AUTHORITY (EARMARKING)

Approval of an override or exclusion question establishes the maximum amount of additional taxing authority available to the community. The spending decisions made by the community's appropriating body determine if any or all of this additional taxing authority is actually used. Thus, while the additional dollars are still part of the community's general unrestricted revenues (levy) and are not a separate financing source for the purpose of making appropriations, those dollars are considered "earmarked" because they cannot be raised in the tax levy unless the community appropriates them for the purpose stated in the question.

1. Overrides

a. General Overrides

A community's levy limit is increased by the amount stated in an override for any purpose except for a stabilization fund so long as all appropriations made for the stated spending purpose and fiscal year equal or exceed that amount, *i.e.*, the first dollars appropriated for that spending purpose are deemed to come from the override. If total appropriations for the year are less than the stated amount, then the community may only increase its levy limit by the amount actually appropriated.

The additional funds raised by the override are "earmarked" for the stated spending purpose only in the first fiscal year.

b. Stabilization Fund Overrides

The additional funds raised by an override to fund a stabilization fund are earmarked for that purpose in the first fiscal year and in subsequent fiscal years upon appropriation. Any change in the purpose for which the additional levy capacity may be used in future years must be approved by a majority of voters at an election. See [Informational Guideline Release \(IGR\) No. 17-20, Stabilization Funds](#) (July).

In the first year, town meeting, town council or city council makes an appropriation into the fund of any amount up to the amount stated in the override. The community's levy limit is increased by the amount stated, or amount appropriated if less.

In subsequent years, the community's levy limit is increased only where the additional levy capacity is "appropriated" by a 2/3 vote of the selectmen, town council or city council, with the mayor's approval if required by law, for the same stabilization fund purpose. If "appropriated," the assessors raise the amount in the tax rate.

2. Debt Exclusions

a. Total Exclusion

A debt exclusion covers debt service on the amount of borrowing authorized or contemplated for the stated purpose at the time of the election. Debt service includes payments of principal on permanent debt and interest on permanent and temporary debt.

The debt service on any additional borrowing above the amount fixed at the time of election is not covered unless (1) it is a modest amount attributable to inflation, new regulatory requirements or minor project changes, or (2) another debt exclusion is approved by the voters. See Section I of [IGR No. 02-101, Proposition 2½ Debt Exclusions](#) (March).

Any premiums received on the debt issue must be offset against the stated interest cost when calculating the debt exclusion so that it reflects the true interest cost incurred to finance the project. [G.L. c. 44, § 20](#). The manner in which a premium adjustment is made depends on when the bonds or notes were sold. See Section I of [IGR No. 17-22, *Premiums and Surplus Proceeds for Proposition 2½ Excluded Debt*](#) (August) for an explanation of when and how a premium adjustment is made.

If the project has been completed, abandoned or discontinued, there may be unspent surplus debt excluded proceeds. [G.L. c. 44, § 20](#). If there are unspent surplus proceeds when the project is completed, abandoned or discontinued, the debt exclusion for that project must be reduced proportionately unless the surplus proceeds are appropriated for another debt excluded project. See Section II of [IGR No. 17-22](#), for an explanation of when and how this reduction is made.

b. Annual Exclusion

The additional taxing authority available to a community each fiscal year until the debt covered by the exclusion is retired is the total principal and interest payment due net of any reimbursement received from the state or federal government for the project. This amount represents the community's share of the project's debt service for that year. If user fees, betterments or other local revenues are being used to fund all or part of the debt service, a community may exclude the principal and interest net of the local revenue, but it is not required to do so.

If an additional borrowing for the project is not covered by the exclusion, the additional taxing authority for each year is calculated by applying the percentage the borrowing amount fixed at the time of the election bears to the total debt issued for the project.

The annual exclusion amount may be adjusted from year to year in order to moderate the impact on taxpayers, provided that (1) in any year in which the exclusion raised is more than the actual local share of the debt service due for that year, the accounting officer reserves the excess for appropriation to pay debt service costs for future years, and (2) the total amount excluded during the adjusted schedule does not exceed the amount that would be excluded otherwise. See Section II of [IGR No. 02-101](#).

3. Capital Expenditure Exclusions

A community may use all of the additional taxing authority provided by an approved capital expenditure exclusion question so long as the amount appropriated for the specified capital project for the fiscal year, net of any reimbursement received from the state or federal government for the project, equals or exceeds the amount stated in the question. This amount represents the community's share of the project cost for that year. If the community's share is less than the amount stated in the question, then the community may only increase its taxing authority by its share. If user fees, betterments or other local revenues are being used to fund all or part of the project, a community may net out the local revenue, but it is not required to do so.

B. APPROPRIATION - ELECTION SEQUENCE

A community should adopt a budget process that will result in a balanced budget by July 1, but in any event it must have a balanced budget within the limits of Proposition 2½ by the time it sets a tax rate for the year. It may establish its expenditure and revenue budgets in any order it chooses. It could first seek voter approval of an override or exclusion question and then make appropriations for the year within a fixed revenue estimate. Alternatively, the community could choose to first adopt its expenditure budget and if that budget requires additional revenue to fully fund it, then seek voter approval of an override or exclusion question. If the question is successful, the budget will be balanced and a tax rate may be set without further action. If the question is not successful, then the community will have to reduce appropriations and/or increase non-tax revenues in order to establish a balanced budget and set a tax rate. The chart in **Appendix D** summarizes the sequencing options explained in this section and Section IV-C below.

C. CONTINGENT APPROPRIATIONS

A third budgeting approach available only to towns with town meetings is to adopt a balanced budget and then appropriate additional amounts to supplement that budget expressly contingent on the subsequent approval of an override or exclusion question. [G.L. c. 59, § 21C\(m\)](#).

A contingent appropriation vote does not place a question on the ballot. The decision whether or not to present any Proposition 2½ question to the voters is still made by the selectboard. See Section III-A above. It may choose not to present a question for any or all contingent appropriations made by town meeting. It may also place a question on the ballot for less than the contingent appropriation, which if approved, makes the appropriation effective to the extent of the amount stated in the question.

1. Statutory Requirements

Contingent appropriations may be made from the tax levy, available funds or borrowing and are subject to the following statutory requirements:

- A contingent appropriation is not effective until the override or exclusion question is approved. This means that until the question is approved, a town cannot spend from the contingent appropriation.
- The statement of spending purpose in the override or exclusion question must be substantially the same purpose as the contingent appropriation. This means the question need not be worded in exactly the same way as the appropriation. However, it must describe the purpose in a sufficiently similar manner that the voters can identify the particular appropriation the question is intended to fund. In the case of operating appropriations, this may mean the selectboard does not have as much flexibility in describing the specific positions, programs or services the question is intended to fund. See Section III-C-1-a above. In addition, each contingent appropriation need not be the subject of a separate question. The selectboard retains the power to decide the content of all questions and may include several contingent appropriations within a single override or exclusion question. In that case, the question must state the purpose of each appropriation it is intended to fund.

- The deadline for obtaining voter approval of override or exclusion questions for contingent appropriations made at an annual town meeting is September 15. More than one election may be held, but the contingent appropriation is null and void if the related question is not approved by September 15.
- The deadline for obtaining voter approval of override or exclusion questions for contingent appropriations made at any other town meeting is 90 days after the close of the town meeting at which the contingent appropriation vote was taken. More than one election may be held, but the contingent appropriation is null and void if the related question is not approved by the end of the 90 day period.
- If the contingent appropriation was made from the tax levy, the tax rate cannot be submitted to the Department of Revenue for approval until the override or exclusion question has been voted upon, or the applicable deadline for holding an election has passed, whichever occurs first.

2. Appropriation Types

Town meeting may make any appropriation contingent on a Proposition 2½ ballot question even if “contingency” language was not included in the warrant article under which the vote was taken. Any language in the vote that indicates the appropriation is subject to the approval of a Proposition 2½ question is sufficient.

Contingent appropriations may be used for appropriations for operating budgets, capital projects and regional school assessments. Towns often approve a regional school debt issue contingent on passage of a debt exclusion, but no appropriation is being voted at that time as required by [G.L. c. 59, §21C\(m\)](#). While most regional school committees treat contingent debt approvals coupled with an unsuccessful election within 60 days of the date the committee authorized the debt as a disapproval for purposes of [G.L. c. 71, § 16\(d\)](#), bond counsel should be consulted regarding these votes.

Appendix E provides examples of articles and motions that may be used for contingent appropriations for operating budgets, capital projects and regional school assessments.

V. **ROLE OF DEPARTMENT OF REVENUE**

The Division of Local Services (DLS) in the Department of Revenue has general supervisory authority over local property tax administration and financial practices. It issues guidelines to assist local financial officials in the performance of their duties, renders legal opinions on local tax and finance issues, conducts training programs and approves revaluations and tax rates. DLS is also responsible under Proposition 2½ for calculating a community's levy limit and for ensuring that a community does not set a tax rate that results in a tax levy exceeding the amount allowed by the law. [G.L. c. 59, § 21D](#).

Appendix F contains additional DLS resources about Proposition 2½ and DLS contact information (address, telephone number and website).

Appendix A

PROPOSITION 2½ BALLOT QUESTION FORMS

The form of each type of Proposition 2½ question is prescribed by [G.L. c. 59, § 21C](#). To properly present a question to the voters, the following statutory language must be used:

Levy Limit Override (G.L. c. 59, § 21C(g)):

Shall the (city/town) of _____ be allowed to assess an additional \$ _____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first _____?

Yes _____ No _____

Levy Limit Underride (G.L. c. 59, § 21C(h)):

Shall the (city/town) of _____ be required to reduce the amount of real estate and personal property taxes to be assessed for the fiscal year beginning July first _____ by an amount equal to \$ _____?

Yes _____ No _____

Capital Expenditure Exclusion (G.L. c. 59, § 21C(i½)):

Shall the (city/town) of _____ be allowed to assess an additional \$ _____ in real estate and personal property taxes for the purposes of (state the purpose(s) for which the monies from this assessment will be used) for the fiscal year beginning July first _____?

Yes _____ No _____

Debt Exclusion (G.L. c. 59, § 21C(k)):

Shall the (city/town) of _____ be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to (state the purpose or purposes for which the monies from the local issue will be used)?

Yes _____ No _____

Appendix B

LEVY LIMIT OVERRIDE PURPOSES

Voter approval of a levy limit override under [G.L. c. 59, § 21C\(g\)](#) increases the amount of revenue a community may raise from the property tax on a permanent basis. An override is designed to provide a community with the ability to generate sufficient revenues to fund costs that are likely to continue into the future, such as annual operating and fixed expenses, although it may be used to provide funds for any valid municipal spending purpose.

All override questions require a statement of the purpose or purposes for which the additional monies will be used. The purpose used in the question must be a spending purpose. This means a purpose for which a community's appropriating body could vote to appropriate money. The spending purpose may be broad in scope, such as general or departmental operating purposes, or may be stated as a specific program or service.

If the override is to fund personnel costs and other expenses normally appropriated as part of departmental operating budgets, the spending purpose may be broadly stated as in the following examples:

- Funding the Town's operating budget.
- Funding operating expenses and capital expenditures.
- Providing for the general administrative cost of operating the schools, police department, fire department and other town departments.
- Funding the operating budget of the Public Schools and the Municipal Government.
- Defraying school operating expenses.
- Funding the Town's Regional School District assessment.

Specific positions, programs and services ordinarily funded within an appropriation for a municipal department or regional governmental unit may be the subject of an override question when the additional funds will be used to prevent the reduction or elimination of those services or to permit their commencement or expansion. For example, if two firefighter positions within the fire department operating budget were being eliminated, an override for the purpose of "funding two firefighter positions" would be acceptable.

A more specific spending purpose may also be used if the override is to fund a particular purpose or program that is the subject of a separate line item or special article appropriation as in the following examples:

- Defraying the costs of retirement contributions and health, life and unemployment insurance premiums.

- Funding the contractual costs of trash collection and disposal.
- Funding the Stabilization Fund.

While local officials have flexibility in describing the purposes of an override generally, less flexibility exists in describing the purposes of an override where it is being presented to fund one or more contingent appropriations because the spending purpose in the question must state substantially the same spending purpose(s) as the appropriation(s). Therefore, if, for example, an additional appropriation is made for the municipal school department operating budget or regional school district annual assessment contingent on an override, local officials would be limited to using "funding school operating expenses," "funding the Yourtown regional school district assessment" or similar language to describe the purpose of the override. They could not be as specific about the positions, programs or services that the school committee intends to eliminate from the budget if the override is unsuccessful as they might be if a contingent appropriation had not been used.

Moreover, local officials cannot use the question to provide voters with information on the underlying events or circumstances that are causing budget difficulties or to promote or otherwise advocate for the question. For example, "preventing the layoff of 4 firefighters" would be inappropriate because it explains the impact of voter action on the question and is intended to advocate for the override. The question should simply state the personnel, services or programs the additional amounts will be used to fund, which in this case would be "funding 4 firefighter positions."

Other examples of purposes in override questions that include advocacy language or would otherwise be inappropriate because they do not state spending purposes are the following:

- Restoring monies lost due to local aid reductions.
- Funding uncontrollable increases in employee health insurance costs.
- Preventing substantial reductions in public safety, education and other municipal services.
- Maintaining an adequate level of municipal services.
- Funding current positions.
- Restoring school athletic programs.

Appendix C

LEVY LIMIT OVERRIDE APPROACHES

I. **SINGLE QUESTION OVERRIDE**

Presents voters with a single choice of additional funding for general or specific spending purposes. The following are examples of single question overrides:

Example 1. General Purposes

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding the operating budgets of the Town and the Public Schools for the fiscal year beginning July 1, ____?

Example 2. General Categories

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding local and regional school, public safety, library, highway, parks and recreation and general government expenses for the fiscal year beginning July 1, ____?

Example 3. Multiple Departmental Purposes with Allocation

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding the following departmental expenses: School Department (\$750,000), Police Department (\$250,000), Fire Department (\$250,000), Public Works Department (\$250,000), Public Library (\$250,000), Parks and Recreation Department (\$150,000), Council on Aging (\$25,000) and Financial Offices, including Assessors, Collector-Treasurer, Accountant, (\$75,000) for the fiscal year beginning July 1, ____?

Example 4. Single Departmental Budget

Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, ____?

Example 5. Specific Positions/Programs/Services

Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding four full-time firefighter positions for the fiscal year beginning July 1, ____?

II. MULTIPLE QUESTION OVERRIDES

Presents voters with multiple choices of additional funding for general or specific spending purposes. There are three multiple question approaches: "menu," "multi-year" and "pyramid" or "tier" overrides.

A. "MENU" OVERRIDE

The "menu" approach presents two or more questions each of which will fund different services or programs. Each question stands on its own merits. Therefore, if the voters approve more than one question, the community's levy limit is increased by the total of the amounts specified in all approved questions.

The following is an example of a "menu" override:

Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of funding the Yourtown Public and Yourtown Valley Regional High Schools for the fiscal year beginning July 1, ____?

Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, ____?

Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the Police Department for the fiscal year beginning July 1, ____?

Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of funding the Public Library for the fiscal year beginning July 1, ____?

B. MULTI-YEAR OVERRIDE

The multi-year approach presents two or more questions each of which applies to a different fiscal year. The amounts and purposes need not be the same. Each question stands on its own merits. Therefore, if the voters approve more than one question, the community's levy limit will be increased in the fiscal year specified in each approved question by the amount in the question.

The following is an example of a "multi-year" override

1A Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, 0001?

1B Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, 0002?

C. "PYRAMID" OR "TIER" OVERRIDE

The "pyramid" or "tier" approach provides voters with a choice of two or more different funding levels for general spending purposes or for specific services or programs. A separate question is presented for each funding level. The funding levels are presented as alternative, not independent, proposals, which means a higher funding level proposed in a question also includes all lower ones. Therefore, if the voters approve more than one question, the approved question stating the highest dollar amount prevails and the community's levy limit is increased by that amount.

The following are examples of "pyramid" or "tier" overrides:

Example 1. General Purpose

1A Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, ____?

Example 2. Multiple Purposes with Allocation

1A Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of funding the school (\$500,000), police (\$250,000) and fire (\$250,000) departments for the fiscal year beginning July 1, ____?

1B Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of funding the school (\$250,000), police (\$125,000) and fire (\$125,000) departments for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the school (\$125,000), police (\$62,500) and fire (\$62,500) departments for the fiscal year beginning July 1, ____?

Example 3. Multiple "Pyramids"

1A Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?

- 1B Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$125,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, ____?
- 2A Shall the Town of Yourtown be allowed to assess an additional \$300,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?
- 2B Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?
- 2C Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, ____?

Example 4. Specific Positions/Programs

- 1A Shall the Town of Yourtown be allowed to assess an additional \$400,000 in real estate and personal property taxes for the purposes of funding 8 firefighter positions for the fiscal year beginning July 1, ____?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding 4 firefighter positions for the fiscal year beginning July 1, ____?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of funding 2 firefighter positions for the fiscal year beginning July 1, ____?

Example 5. "Tiered" Pyramid

- 1A Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools and to fund instructional staff (8 positions), textbooks, technology support (including 1 position) and equipment for Yourtown High School and to fund instructional staff (14 positions), textbooks and technology support and equipment for the other schools for the fiscal year beginning July 1, ____?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools and to fund instructional staff (8 positions), textbooks, technology support (including 1 position) and equipment for Yourtown High School for the fiscal year beginning July 1, ____?

1C Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, _____?

Appendix D

SEQUENCING OPTIONS

<p align="center"><u>Number 1</u> Election - Appropriation</p>	<p align="center"><u>Number 2</u> Appropriation - Election</p>	<p align="center"><u>Number 3</u> Contingent Appropriation - Election Towns Only</p>
<p>Election held</p> <ul style="list-style-type: none"> • Annual or special municipal • State biennial 	<p>Appropriation made by town meeting or city/town council</p> <ul style="list-style-type: none"> • Annual or special 	<p>Appropriation made by town meeting</p> <ul style="list-style-type: none"> • Annual or special
<p>Appropriation made by town meeting or city/town council</p> <ul style="list-style-type: none"> • Annual or special 	<p>Election held</p> <ul style="list-style-type: none"> • Annual or special municipal • State biennial 	<p>Election held</p> <ul style="list-style-type: none"> • Annual or special municipal, state biennial • Election deadline: <ul style="list-style-type: none"> • September 15 for appropriations made at annual town meeting • 90 days after special town meeting dissolves for appropriations made at that meeting
<p>If question passes and appropriation fails</p> <ul style="list-style-type: none"> • Question is valid • If override/capital exclusion, have until tax rate set to appropriate for same purpose • If debt exclusion, have reasonable time to authorize debt for same project 	<p>If question passes and appropriation fails</p> <ul style="list-style-type: none"> • Question is valid • If override/capital exclusion, have until tax rate set to appropriate for same purpose • If debt exclusion, have reasonable time to authorize debt for same project 	<p>If question passes</p> <ul style="list-style-type: none"> • No further action required - appropriation validated and tax increase approved to cover expenditure
<p>If appropriation passes and question fails</p> <ul style="list-style-type: none"> • Appropriation is valid • Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just question purpose, and/or community may raise non-tax revenues) • Question may be presented again 	<p>If appropriation passes and question fails</p> <ul style="list-style-type: none"> • Appropriation is valid • Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just question purpose, and/or community may raise non-tax revenues) • Question may be presented again 	<p>If question fails</p> <ul style="list-style-type: none"> • No further action required - appropriation null and void • Question may be presented at other elections, but must be approved by: <ul style="list-style-type: none"> • September 15 for appropriations made at annual town meeting • 90 days after special town meeting dissolves for appropriations made at that meeting
<p>If question and appropriation both pass or both fail</p> <ul style="list-style-type: none"> • No further action required 	<p>If question and appropriation both pass or both fail</p> <ul style="list-style-type: none"> • No further action required 	<p>If election not held by deadline</p> <ul style="list-style-type: none"> • Appropriation null and void

Appendix E

**EXAMPLES
CONTINGENT APPROPRIATION ARTICLES AND MOTIONS**

OMNIBUS BUDGET ARTICLES

APPROACH 1: SINGLE MOTION FOR CONTINGENT AND NON-CONTINGENT AMOUNTS

ARTICLE: TO ACT ON THE REPORT OF THE FINANCE COMMITTEE ON THE FISCAL YEAR ____ BUDGET AND TO RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS MONEY FOR THE OPERATION OF THE TOWN'S DEPARTMENTS AND THE PAYMENT OF DEBT SERVICE AND ALL OTHER NECESSARY AND PROPER EXPENSES FOR THE YEAR, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town vote to raise and appropriate or transfer from available funds the amounts recommended by the Finance Committee for departmental operating purposes, debt service and other town expenses in fiscal year ____, with each item to be considered a separate appropriation and the amounts shown in the column captioned "Contingent Appropriations" to be appropriated contingent upon passage of a Proposition 2½ ballot question under General Laws Chapter 59, § 21C.

PROPOSED FISCAL YEAR ____ BUDGET

THE FINANCE COMMITTEE RECOMMENDS THAT THE AMOUNTS SHOWN IN THE COLUMN CAPTIONED "NON-CONTINGENT APPROPRIATIONS" BE APPROPRIATED FROM THE TAX LEVY, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR ____ DEPARTMENTAL OPERATING PURPOSES, DEBT SERVICE AND OTHER TOWN EXPENSES, AND THAT THE AMOUNTS SHOWN IN THE COLUMN CAPTIONED "CONTINGENT APPROPRIATIONS" BE APPROPRIATED FROM THE TAX LEVY CONTINGENT UPON THE PASSAGE OF A PROPOSITION 2½ BALLOT QUESTION UNDER GENERAL LAWS CHAPTER 59, § 21C.

<u>PURPOSE</u>	<u>NON-CONTINGENT APPROPRIATIONS</u>	<u>CONTINGENT APPROPRIATIONS</u>
Selectmen's Office		
Salaries	\$ 45,000	\$ 6,000
Expenses	18,000	4,000
School Department	2,800,000	300,000
Town Planner		
Salary	0	35,000
Expenses	0	12,000
Cemetery Commission		
Salaries	8,000	
Expenses	10,000	
	(Includes \$8,000 transfer from Sale of Lots Fund)	
...
TOTAL	\$ 8,000,000	\$ 890,000

APPROACH 2: SEPARATE MOTIONS FOR CONTINGENT AND NON-CONTINGENT AMOUNTS

MOTION: I move that the town vote to raise and appropriate or transfer from available funds the amounts recommended by the Finance Committee for departmental operating purposes, debt service and other town expenses in fiscal year_, with each item to be considered a separate appropriation.

PROPOSED FISCAL YEAR _____ BUDGET

THE FINANCE COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FROM THE TAX LEVY, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR _____ DEPARTMENTAL OPERATING PURPOSES, DEBT SERVICE AND OTHER TOWN EXPENSES:

<u>PURPOSE</u>	<u>RECOMMENDED</u>
Selectboard's Office	
Salaries	\$ 45,000
Expenses	18,000
School Department	2,800,000
Town Planner	
Salary	0
Expenses	0
Cemetery Commission	
Salaries	8,000
Expenses	10,000
	(Includes \$8,000 transfer from Sale of Lots Fund)
...	...
TOTAL	\$ 8,000,000

MOTION: I move that the town vote to raise and appropriate any additional amounts recommended by the Finance Committee for the departmental operating purposes and other town expenses in fiscal year_____, contingent upon passage of a Proposition 2½ ballot question under General Laws Chapter 59, § 21C.

PROPOSED FISCAL YEAR _____ CONTINGENT BUDGET

THE FINANCE COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FROM THE TAX LEVY FOR FISCAL YEAR_____ DEPARTMENTAL OPERATING PURPOSES AND OTHER TOWN EXPENSES CONTINGENT UPON PASSAGE OF A PROPOSITION 2½ BALLOT QUESTION UNDER GENERAL LAWS CHAPTER 59, § 21C.

<u>PURPOSE</u>	<u>RECOMMENDED</u>
Selectboard's Office	
Salaries	\$ 6,000
Expenses	4,000
School Department	300,000
Town Planner	
Salary	35,000
Expenses	12,000
...	...
TOTAL CONTINGENT APPROPRIATIONS	\$ 890,000

BALLOT QUESTIONS

Under either approach, the town has the choice whether to bundle all the contingent appropriations for operating expenditures for the fiscal year into a single override question for the \$890,000 in this example, or to put separate questions on the ballot for different departments or groups of departments: for instance, one question for \$300,000 for school department operating expenses and another question for \$590,000 for operating expenses of all other town departments. The choice of how to structure the ballot questions is within the discretion of the selectboard. If the selectboard decides to include more than one contingent appropriation in a question, the purpose of each appropriation the question is intended to fund would have to be stated in the question.

OTHER APPROPRIATION ARTICLES

REGIONAL SCHOOL BUDGET ARTICLE - (Levy Limit Override)

ARTICLE __: TO SEE IF THE TOWN WILL APPROVE THE _____ REGIONAL SCHOOL DISTRICT BUDGET FOR FISCAL YEAR _____ AND RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS \$(FULL ASSESSMENT) TO PAY ITS ASSESSED SHARE OF THAT BUDGET, OR TO TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate \$(non-contingent portion) to pay its assessed share of the _____ Regional School District Budget for fiscal year _____ and that it raise and appropriate the additional \$(contingent portion) required to fully fund the assessment and thereby approve the district's budget for the year, provided that this additional appropriation be contingent on the approval of a Proposition 2½ levy limit override under General Laws Chapter 59, § 21C(g).

REGIONAL SCHOOL BUDGET ARTICLE - (Capital Outlay Expenditure Exclusion)

ARTICLE __: TO SEE IF THE TOWN WILL APPROVE THE _____ REGIONAL SCHOOL DISTRICT BUDGET FOR FISCAL YEAR ____ AND RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS \$(FULL ASSESSMENT) TO PAY ITS ASSESSED SHARE OF THAT BUDGET, OR TO TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate \$(non-contingent portion) to pay its assessed share of the _____ Regional School District Budget for fiscal year ____ and that it raise and appropriate the additional \$(contingent portion) attributable to its share of the budget for capital spending not funded by debt so as to fully fund the assessment and thereby approve the district's budget for the year, provided that this additional appropriation be contingent on the approval of a Proposition 2½ capital outlay expenditure exclusion under General Laws Chapter 59, § 21C(i½).

SEPARATE DEPARTMENTAL "CONTINGENT BUDGET" ARTICLE

ARTICLE _: TO SEE IF THE TOWN WILL RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS A SUM TO SUPPLEMENT THE FIRE DEPARTMENT'S OPERATING BUDGET FOR FISCAL YEAR ____ CONTINGENT UPON THE PASSAGE OF A PROPOSITION 2½ BALLOT QUESTION, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate an additional \$ _____ for the Fire Department's fiscal year ____ operating budget to be allocated as follows: \$ _____ for salaries and \$ _____ for expenses, provided that such additional appropriations be contingent on the passage of a Proposition 2½ ballot question.

BORROWING ARTICLE

ARTICLE _: TO SEE IF THE TOWN WILL APPROPRIATE A SUM OF MONEY BY BORROWING TO DESIGN AND CONSTRUCT A SENIOR CENTER AND TO AUTHORIZE THE TREASURER, WITH THE APPROVAL OF THE SELECTMEN, TO ISSUE ANY BONDS OR NOTES THAT MAY BE NECESSARY FOR THAT PURPOSE, AND TO APPLY THE PREMIUM RECEIVED BY THE TOWN UPON THE SALE OF ANY BONDS OR NOTES THEREUNDER, LESS ANY SUCH PREMIUM APPLIED TO THE PAYMENT OF THE COSTS OF ISSUANCE OF SUCH BOND OR NOTES, TO PAY PROJECT COSTS AND REDUCE THE AMOUNT AUTHORIZED TO BE BORROWED BY THE AMOUNT OF THE PREMIUM SO APPLIED, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town appropriate and borrow \$5,000,000 for the design and construction of a senior center and authorize the treasurer with the approval of the selectboard, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44, § 7(1), or any other general or special law, for a period not to exceed 10 years, provided, however, that this appropriation and debt authorization be contingent upon passage of a Proposition 2½ debt exclusion question General Laws Chapter 59, § 21C(k). Any premium received by the town from the sale of any bonds or notes authorized by this vote, less the costs of issuance of the bonds or notes paid from the premium, and any accrued interest may be applied to pay project costs in accordance with General Laws Chapter 44, Section 20 and the amount authorized to be borrowed to pay those costs shall be reduced by the same amount applied.

Appendix F

ADDITIONAL RESOURCES AND CONTACT INFORMATION

Division of Local Services (DLS), MA Department of Revenue

Website: www.mass.gov/dls

MAILING ADDRESS: P.O. Box 9569, Boston, MA 02114-9569

MAIN LOCATION: 100 Cambridge Street, Boston, MA 02114

MAIN TELEPHONE: (617) 626-2300

MAIN FAX: (617) 626-2330

DLS publications and Proposition 2½ data are published on the [DLS website](#).

For our [on-line tutorial and additional information](#) on Proposition 2½, please visit the [Municipal Finance Training and Resource Center](#) on the DLS website.

For questions about Proposition 2½ election or other data:

- Contact the Municipal Data Bank staff at databank@dor.state.ma.us or (617) 626-2384.

For questions about a community's levy limit calculation:

- Local officials should contact the Bureau of Accounts Representative assigned to their community.
- Others must contact the DLS Director of Policy and Administration at (617) 626-2377.

For questions about Proposition 2½ ballot questions, or municipal tax or finance law generally:

- Local officials may contact the DLS legal staff at (617) 626-2400.
- Others must contact the DLS Director of Policy and Administration at (617) 626-2377.

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition

Capital Exclusion - entire project cost

UniBank Fiscal Advisory Services, Inc.

4/14/2023

Capital Exclusion	\$ 3,700,000
Stabilization Fund	
Total	<u>\$ 3,700,000</u>

Assessed Valuation	\$ 980,561,940
Average SF House	\$ 238,352

Borrowing Rate	
Investment Rate	4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024	\$ 3,700,000.00		\$ 3,700,000.00	\$ 3.77	\$ 899.38		\$ 3,700,000.00
2025		\$ -	\$ -	\$ -	\$ -		\$ -
2026		\$ -	\$ -	\$ -	\$ -		\$ -
2027		\$ -	\$ -	\$ -	\$ -		\$ -
2028		\$ -	\$ -	\$ -	\$ -		\$ -
2029		\$ -	\$ -	\$ -	\$ -		\$ -
Total	<u>\$ 3,700,000.00</u>	<u>\$ -</u>	<u>\$ 3,700,000.00</u>		<u>\$ 899.38</u>	<u>\$ -</u>	<u>\$ 3,700,000.00</u>

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition
 Three Year repayment - entirely from borrowing

UniBank Fiscal Advisory Services, Inc.

4/14/2023

Borrowing	\$ 3,700,000
Stabilization Fund	\$ -
Total	\$ 3,700,000

Assessed Valuation	\$ 980,561,940
Average SF House	\$ 238,352

Borrowing Rate	4.30%
Investment Rate	4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024			\$ -	\$ -			\$ -
2025	\$ 1,235,000.00	\$ 159,100.00	\$ 1,394,100.00	\$ 1.42	\$ 338.87	\$ -	\$ 1,394,100.00
2026	\$ 1,235,000.00	\$ 105,995.00	\$ 1,340,995.00	\$ 1.37	\$ 325.96	\$ -	\$ 1,340,995.00
2027	\$ 1,230,000.00	\$ 52,890.00	\$ 1,282,890.00	\$ 1.31	\$ 311.84	\$ -	\$ 1,282,890.00
2028		\$ -	\$ -				\$ -
2029		\$ -	\$ -				\$ -
Total	\$ 3,700,000.00	\$ 317,985.00	\$ 4,017,985.00		\$ 976.68	\$ -	\$ 4,017,985.00

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition
 Five Year repayment - entirely from borrowing

UniBank Fiscal Advisory Services, Inc.

4/14/2023

Borrowing	\$ 3,700,000
Stabilization Fund	\$ -
Total	\$ 3,700,000

Assessed Valuation	\$ 980,561,940
Average SF House	\$ 238,352

Borrowing Rate	4.20%
Investment Rate	4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024			\$ -	\$ -	\$ -		\$ -
2025	\$ 740,000.00	\$ 155,400.00	\$ 895,400.00	\$ 0.91	\$ 217.65	\$ -	\$ 895,400.00
2026	\$ 740,000.00	\$ 124,320.00	\$ 864,320.00	\$ 0.88	\$ 210.10	\$ -	\$ 864,320.00
2027	\$ 740,000.00	\$ 93,240.00	\$ 833,240.00	\$ 0.85	\$ 202.54	\$ -	\$ 833,240.00
2028	\$ 740,000.00	\$ 62,160.00	\$ 802,160.00	\$ 0.82	\$ 194.99	\$ -	\$ 802,160.00
2029	\$ 740,000.00	\$ 31,080.00	\$ 771,080.00	\$ 0.79	\$ 187.43	\$ -	\$ 771,080.00
Total	\$ 3,700,000.00	\$ 466,200.00	\$ 4,166,200.00		\$ 1,012.71	\$ -	\$ 4,166,200.00

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition
 Five Year repayment - \$1.85 million from Stabilization

UniBank Fiscal Advisory Services, Inc.

4/14/2023

Capital Exclusion	\$	1,850,000
Stabilization Fund	\$	1,850,000
Total	\$	<u>3,700,000</u>

Assessed Valuation	\$	980,561,940
Average SF House	\$	238,352

Borrowing Rate
 Investment Rate 4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024	\$ 1,850,000.00		\$ 1,850,000.00	\$ 1.89	\$ 449.69		\$ 1,850,000.00
2025		\$ -	\$ -	\$ -	\$ -		\$ -
2026		\$ -	\$ -	\$ -	\$ -		\$ -
2027		\$ -	\$ -	\$ -	\$ -		\$ -
2028		\$ -	\$ -	\$ -	\$ -		\$ -
2029		\$ -	\$ -	\$ -	\$ -		\$ -
Total	<u>\$ 1,850,000.00</u>	<u>\$ -</u>	<u>\$ 1,850,000.00</u>		<u>\$ 449.69</u>	<u>\$ -</u>	<u>\$ 1,850,000.00</u>

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition
 Five Year repayment - \$1.85 million from Stabilization

UniBank Fiscal Advisory Services, Inc.

4/14/2023

Borrowing	\$	1,850,000
Stabilization Fund	\$	1,850,000
Total	\$	<u>3,700,000</u>

Assessed Valuation	\$	980,561,940
Average SF House	\$	238,352

Borrowing Rate	4.30%
Investment Rate	4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024			\$ -	\$ -			\$ -
2025	\$ 620,000.00	\$ 79,550.00	\$ 699,550.00	\$ 0.71	\$ 170.04	\$ 78,625.00	\$ 778,175.00
2026	\$ 620,000.00	\$ 52,890.00	\$ 672,890.00	\$ 0.69	\$ 163.56	\$ 78,625.00	\$ 751,515.00
2027	\$ 610,000.00	\$ 26,230.00	\$ 636,230.00	\$ 0.65	\$ 154.65	\$ 78,625.00	\$ 714,855.00
2028		\$ -	\$ -				\$ -
2029		\$ -	\$ -				\$ -
Total	<u>\$ 1,850,000.00</u>	<u>\$ 158,670.00</u>	<u>\$ 2,008,670.00</u>		<u>\$ 488.26</u>	<u>\$ 235,875.00</u>	<u>\$ 2,244,545.00</u>

TOWN OF ERVING, MASSACHUSETTS

Financing Projection - Mill Demolition
 Five Year repayment - \$1.85 million from Stabilization

UniBank Fiscal Advisory Services, Inc.

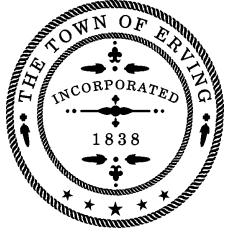
4/14/2023

Borrowing	\$	1,850,000
Stabilization Fund	\$	1,850,000
Total	\$	<u>3,700,000</u>

Assessed Valuation	\$	980,561,940
Average SF House	\$	238,352

Borrowing Rate	4.20%
Investment Rate	4.25%

Fiscal Year	Principal	Interest	Total Debt Service	Tax Rate	Average Single Family House	Foregone Interest	Total
2024			\$ -	\$ -	\$ -		\$ -
2025	\$ 370,000.00	\$ 77,700.00	\$ 447,700.00	\$ 0.46	\$ 108.83	\$ 78,625.00	\$ 526,325.00
2026	\$ 370,000.00	\$ 62,160.00	\$ 432,160.00	\$ 0.44	\$ 105.05	\$ 78,625.00	\$ 510,785.00
2027	\$ 370,000.00	\$ 46,620.00	\$ 416,620.00	\$ 0.42	\$ 101.27	\$ 78,625.00	\$ 495,245.00
2028	\$ 370,000.00	\$ 31,080.00	\$ 401,080.00	\$ 0.41	\$ 97.49	\$ 78,625.00	\$ 479,705.00
2029	\$ 370,000.00	\$ 15,540.00	\$ 385,540.00	\$ 0.39	\$ 93.72	\$ 78,625.00	\$ 464,165.00
Total	\$ <u>1,850,000.00</u>	\$ <u>233,100.00</u>	\$ <u>2,083,100.00</u>		\$ <u>506.35</u>	\$ <u>393,125.00</u>	\$ <u>2,476,225.00</u>



TOWN OF ERVING

SELECT BOARD

12 East Main Street
ERVING, MASSACHUSETTS 01344

Tel. 413-422-2800

Fax 413-422-2808

Email: administrator@erving-ma.gov

Jacob A. Smith, Chair
William A. Bembury
Scott Bastarache
Select Board

Bryan Smith
Town Administrator

April 21, 2023

To: Select Board
From: Bryan Smith, Town Administrator
CC: Jennifer Eichorn, Treasurer

RE: Insurance Year 2024- Voluntary Vision Insurance

On April 11, 2023, the Town learned from the Hampshire Group Insurance Trust (Trust) that they were proposing to offer vision insurance to member towns through MetLife. The Trust voted in favor of making this option available to member towns on April 12, 2023. As such, the Town notified the Erving Insurance Advisory Committee (IAC) on April 12, 2023, and requested a meeting of the IAC to discuss the option and whether to make a recommendation to the Select Board. A majority of the members of the IAC met on Monday, April 17, 2023, and the members voted unanimously to recommend that the Select Board offer vision insurance as presented.

Additionally, on April 13, 2023, the Town asked each bargaining unit to consider the proposed change and to let our office know if they wanted to engage in further bargaining. There has not been a request from the three current bargaining units for further negotiation. An example of the letter that was sent to the bargaining units is enclosed.

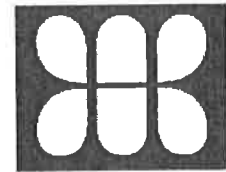
The Town does not currently offer a vision insurance option. The proposal would be to offer employees the opportunity to access this optional insurance at 100% employee cost, beginning on July 1, 2023, for Insurance Year 2024.

We regret the expedited timeline for review but because of the timing of the late notice from the Trust and with the start of Open Enrollment on April 14, 2023, we attempted to move quickly to allow the Select Board the opportunity to add this option to Open Enrollment if you are in support.

As such, I recommend that the Select Board vote to add vision insurance with the plan provided by MetLife, for Insurance Year 2024, which will begin on July 1, 2023. This vote will allow the Treasurer's Office to begin the enrollment process for interested employees.

Suggested Vote Language:

A motion to offer vision insurance by engaging MetLife as the Town's vision insurance plan provider, beginning with insurance year 2024 which starts on July 1, 2023, and to authorize Jennifer Eichorn, Treasurer, to execute all necessary agreements.



Facts & Stats

Eye doctor visits can be expensive. Vision insurance helps cover the costs of eye exams, eyeglasses and contacts.

Did you know?

Regular visits to your eye care professional may benefit more than your eyesight — they may help contribute to your overall health by potentially catching serious problems.¹

Among U.S. adults...



64%

wear prescription eyeglasses.²

With competitive employee rates, you may be able to get MetLife PPO Vision for monthly rates that are less than the average cost of...



A medium cup of coffee³

1x per week

Consider this:

*We avoided going to the eye doctor due to the high cost. Thanks to **vision insurance**, we saved on eye exams and new eyewear for the whole family.⁴ Our child is adjusting to new glasses, and I love my contact lenses. Recently, when I had my own eye exam, my doctor caught the early signs of diabetes,¹ so I followed up with my physician right away.**

* This is a fictional example. MetLife does not claim that these are typical results that members will generally achieve.

What you need to know about MetLife Vision:

- You can save⁴ on exams, glasses, contact lenses, laser vision correction⁵ and more.
- Select any licensed vision care specialist⁶ or choose from a large network of ophthalmologists, optometrists, and opticians at private practices or retail locations.
- Get the style you want. Choose from classic styles to the latest designer frames — and select what's right for you and your budget.

Enrollment period: April 14 - May 22

See how much you could save with MetLife Vision in this example.

Vision Service ⁷	Average cost without MetLife's Vision Plan ⁷	Average cost with MetLife's Vision Plan	Potential savings ⁸
Eye Exam	\$140	\$10 (co-pay)	\$130
Glasses	N/A	\$25 (co-pay)	N/A
Frame	\$140	\$8	\$132
Lenses (bifocal)	\$139	\$0	\$139
Ultraviolet (UV) coating	\$23	\$0	\$23
Anti-reflective coating	\$106	\$69	\$37
Annual premium ⁹	N/A	\$79	N/A
Total cost of services	\$548	\$191	\$352

Vision Plan Summary

Metropolitan Life Insurance Company

With your Vision Preferred Provider Organization Plan, you can:

- Go to any licensed vision specialist and receive coverage. Just remember your benefit dollars go further when you stay in network.
- Choose from a large network of ophthalmologists, optometrists and opticians, from private practices to retailers like Costco® Optical, Walmart, Sam's Club and Visionworks.

In-network value added features:

Additional lens enhancements: In addition to standard lens enhancements, enjoy an average 20-25% savings on all other lens enhancements.¹

Savings on glasses and sunglasses: Get 20% savings on additional pairs of prescription glasses and non-prescription sunglasses, including lens enhancements. At times, other promotional offers may also be available.¹

Laser vision correction:² Savings averaging 15% off the regular price or 5% off a promotional offer for laser surgery including PRK, LASIK and Custom LASIK. This offer is only available at MetLife participating locations.

In-network benefits

There are no claims for you to file when you go to a participating vision specialist. Simply pay your copay and, if applicable, any amount over your allowance at the time of service.

Frequency

Eye exam

Once every 12 months

- Eye health exam, dilation, prescription and refraction for glasses: Covered in full after a \$10 copay.
- Retinal imaging: Up to a \$39 copay on routine retinal screening when performed by a private practice provider.

Frame

Once every 24 months

- Allowance: \$130 after \$25 eyewear copay.
 - \$150 on Featured Frames
- Costco, Walmart and Sam's Club: \$70 allowance after \$25 eyewear copay. You will receive an additional 20% savings on the amount that you pay over your allowance. This offer is available from all participating locations except Costco, Walmart and Sam's Club.

Standard corrective lenses

Once every 12 months

- Single vision, lined bifocal, lined trifocal, lenticular: Covered in full after \$25 eyewear copay.

Standard lens enhancements¹

Once every 12 months

- Polycarbonate (child up to age 18) and Ultraviolet (UV) coating: Covered in full after \$25 eyewear copay.
- Progressive Standard, Progressive Premium/Custom, Polycarbonate (adult), Photochromic, Anti-reflective, Scratch-resistant coatings and Tints: Your cost will be limited to a copay that MetLife has negotiated for you. These copays can be viewed after enrollment at www.metlife.com/mybenefits.

Contact lenses instead of eye glasses

Once every 12 months

- Contact fitting and evaluation: Covered in full with a maximum copay of \$25
- Elective lenses: \$130 allowance.
- Necessary lenses: Covered in full after eyewear copay.

We're here to help

Find a Vision provider at www.metlife.com/vision

Download a claim form at www.metlife.com/mybenefits

For general questions go to www.metlife.com/mybenefits or call 1-855-MET-EYE1 (1-855-638-3931)

From: [Adam Paicos](#)
To: [Bryan Smith](#)
Subject: Vision ins.
Date: Monday, April 17, 2023 3:17:15 PM

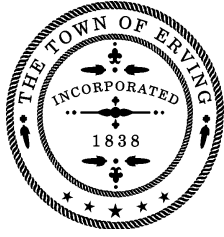
Good afternoon Bryan,
The IAC met this morning and unanimously decided to adopt the vision plan presented by town Treasurer Jennifer Eichorn.

Adam K. Paicos
President, NEPBA Local #121
Erving Police Department
71 French King Highway
Erving, MA 01344
413-625-8200 (24 hr dispatch)
413-423-3310 (office)

Notice:

When writing or responding, please remember that the Massachusetts Secretary of State has determined that email is a public record and subject to the Public Records Law, M.G.L. c. 66, and further covered by Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521.

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TOWN OF ERVING

Treasurer's Office

12 East Main Street
Erving, Massachusetts 01344

Tel. 413-422-2800 ext. 1112

Fax 413-422-2806

Email: jennifer.eichorn@erving-ma.gov

jean.fountain@erving-ma.gov

Jennifer Eichorn
Treasurer
Jean Fountain
Assistant Treasurer

April 13, 2023

Sent via email

NEPBA Local 121
Attn: Sgt. Adam Paicos, President
71 French King Highway, Erving, MA 01344
Via email: adam.paicos@erving-ma.gov

Dear Adam,

On behalf of the Town of Erving (the "Town"), I am reaching out to you regarding the possibility of offering vision insurance, which is a new benefit not currently available to employees. The Hampshire County Group Insurance Trust is offering a vision plan through Metlife for FY24. This benefit would be 100% employee paid. Here are the details:

Hampshire County Group Insurance Trust Rate Summary		
Coverage		Rates
New Vision Option (per employee per month)		
Employee Only		\$6.57
Employee + Spouse		\$13.17
Employee + Child(ren)		\$11.14
Employee + Family		\$18.37
Rates are guaranteed from July 1, 2023 - June 30, 2025		

If you have any questions or would like to meet to discuss the Hampshire County Trust's proposed vision plan, please let me know no later than Wednesday, April 19, 2023.

If the Town does not hear from your Bargaining Unit by that date, it will be interpreted that the bargaining unit is in agreement with the proposed changes. Instead, if the Bargaining Unit would like to negotiate regarding the changes, I propose meeting on one of the following dates:

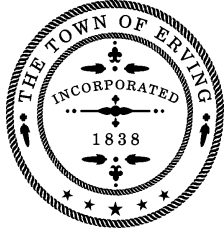
- Thursday, April 20, 2023 – 3:30PM
- Friday, April 21, 2023 – 3:30PM

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Eichorn".

Jennifer Eichorn

cc: Bryan Smith, Town Administrator



TOWN OF ERVING

SELECT BOARD

12 East Main Street
ERVING, MASSACHUSETTS 01344

Tel. 413-422-2800
Fax 413-422-2808
Email: administrator@erving-ma.gov

Jacob A. Smith, Chair
William A. Bembury
Scott Bastarache
Select Board

Bryan Smith
Town Administrator

April 21, 2023

To: Select Board
From: Bryan Smith, Town Administrator

RE: Resignation of the Tree Warden and Recommendation

Michael Gordon, Tree Warden, has submitted his letter of resignation to the Town, effective April 9, 2023. I have included a copy of his letter with this memorandum. I want to take the opportunity to recognize the work and professionalism that Mike brought to this position. His collaboration with Town departments, with residents and with our utility companies allowed us to make significant safety improvements along the roadways and to establish a tree replanting program, now in its 3rd year.

The Tree Warden position is an elected position and the filling of such a vacancy is outlined in MGL Chapter 41, Section 11. A copy of the statute is enclosed. The notice regarding the vacancy has been posted at Town Hall as of April 20, 2023. Letters of interest have been requested for submission by May 1, 2023. The Town is in the midst of needing to conduct tree work, so it is important to fill the vacancy as soon as possible.

Mike has further made a recommendation for the Town to consider transitioning the position from elected to appointed as this position works very closely with the Highway Department, contractors and the utility companies and often the work that needs to be done is conducted during the workday. If the Select Board wanted to explore this option, the procedure is described in MGL Chapter 4, Section 1B. A copy of the statute is enclosed. The process requires the vote at a Town Meeting, annual or special, as well as a vote at the Annual Town Election. If the vote occurs at a Special Town Meeting, the meeting must be at least 60 days prior to the Annual Town Election.

From: [Michael Gordon](#)
To: [Bryan Smith](#)
Cc: [Glenn McCrory](#)
Subject: [EXTERNAL]Tree Warden Resignation
Date: Sunday, April 9, 2023 6:04:32 PM

CAUTION: This email originated from outside of the Town of Erving. Do not click links or open attachments unless you recognize the sender and know the content is safe. When in doubt, please contact the Erving IT Department

Good Afternoon Bryan,

I am emailing you to let you know that I am resigning as the Tree Warden effective immediately. I have taken another job and will need to spend time focusing on that job. It has been a pleasure and often times enjoyable to serve as the Tree Warden. I also believe going forward that this position should in fact be an appointed position (rather than elected) possibly absorbed within the Highway Dept. By making this position an appointed position within the Highway Dept it would allow for the work to continue as we've been doing for a couple years now. Once settled at the new job I am hoping to be able to again serve the citizens of Erving in some capacity. Thank you all for the opportunity and support!

Respectfully Submitted, Mike Gordon

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 11	APPOINTMENT TO FILL VACANCY IN TOWN OFFICE

Section 11. As used in this section, the term "vacancy" includes a failure to elect. If a vacancy occurs in any town office, other than the office of selectman, town clerk, treasurer, collector of taxes or auditor, the selectmen shall in writing appoint a person to fill such vacancy. If there is a vacancy in a board consisting of two or more members, except a board whose members have been elected by proportional representation under chapter fifty-four A, the remaining members shall give written notice thereof, within one month of said vacancy, to the selectmen, who, with the remaining member or members of such board, shall, after one week's notice, fill such vacancy by roll call vote. The selectmen shall fill such vacancy if such board fails to give said notice within the time herein specified. A majority of the votes of the officers entitled to vote shall be necessary to such election. The person so appointed or elected shall be a registered voter of the town and shall perform the duties of the office until the next annual meeting or until another is qualified.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 41	OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS
Section 1B	APPOINTED TOWN OFFICES AND BOARDS; ACCEPTANCE BY VOTERS

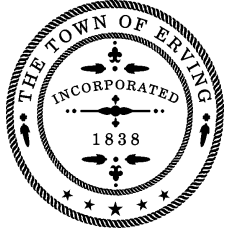
Section 1B. Any office or board, except the board of selectmen and the school committee, elected under the provisions of section 1 may become an appointed position or board by a majority vote of the annual or special town meeting and acceptance by the voters of the town at the annual town elections; provided, however, that any vote by a special town meeting taken under the provisions of this section shall take place at least 60 days prior to the acceptance of the voters at the annual town election. For purposes of this section, the positions of town treasurer and collector of taxes, elected pursuant to section 1, may be combined into 1 position and become an appointed position in the manner provided in this section. Such acceptance by the voters shall be in the form of the following question, to be placed on the official ballot:

Shall the town vote to have its elected (Title(s) of office or board) become an appointed (Title(s) of office or board) of the town? Yes ____
No ____

If a majority of votes cast in answer to said question is in the affirmative, said office or board shall become appointed in accordance with the provisions of this section.

Any incumbent of such office or board serving at the time of acceptance by the voters shall continue to hold said office and to perform the duties thereof until the expiration of the term for which said individual was elected or until said individual otherwise vacates such office; provided, however, that any individual elected to an office or board which becomes an appointed office or board at the same election, under the provisions of this section, shall hold said office and perform the duties thereof until the appointment to said office is otherwise made under the provisions of this section.

Such appointment shall be made by the board of selectmen for a term not to exceed three years, unless such mode of appointment or term is otherwise provided by law.



TOWN OF ERVING

SELECT BOARD

12 East Main Street
ERVING, MASSACHUSETTS 01344

Tel. 413-422-2800

Fax 413-422-2808

Email: administrator@erving-ma.gov

Jacob A. Smith, Chair
William A. Bembury
Scott Bastarache
Select Board

Bryan Smith
Town Administrator

April 21, 2023

To: Select Board
From: Bryan Smith, Town Administrator
CC: Glenn McCrory, Highway Superintendent

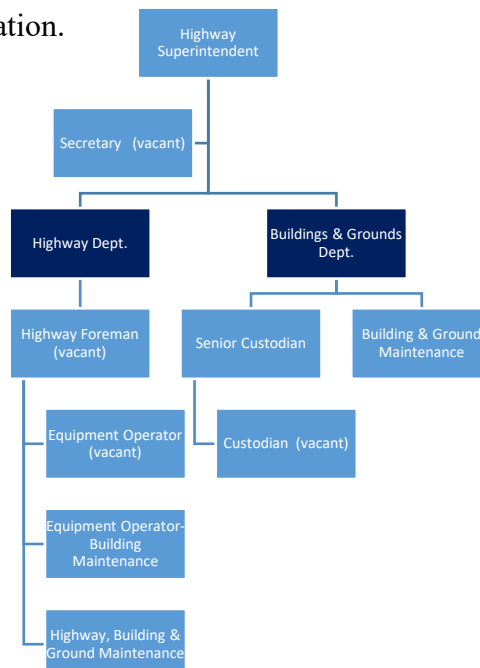
RE: Highway Department Staffing

Glenn and I would like to discuss the staffing structure of the Highway Department with the Select Board. As you are all aware, the Department has long had a foreman position that has been vacant for several years. As the work of the department has evolved in recent years with the implementation of the OSHA requirements, construction projects, contract management and with the expectations of the department we would like to request that the Select Board consider revising the vacant foreman position description and allowing the position to be filled. The Department also has a current vacancy in the Equipment Operator position. Recommended edits to that position description have been drafted for the Select Board's consideration.

Below, I have provided an organizational chart that provides a listing of the current position titles that the Highway Superintendent oversees and clarifies if the position is currently vacant or filled.

Once the Select Board has determined how to proceed with the proposed structure and position description, Glenn can provide recommendations on how to proceed with filling positions.

Thank you for your consideration.



**Town of Erving, Massachusetts
Job Description**

Position Title:	Highway Foreman	Compensation Schedule:	
Department	Highway/ Public Works	Grade Level:	
Reports to:	Highway Superintendent	FLSA Exempt:	No
SB Approved:		Essential:	Yes

Statement of Duties: The Foreman is responsible for administering and supervising the daily activities and particular functions of the Highway Department and other Public Works areas. Employee is required to perform all similar or related duties.

Supervision Required: Under general direction of the Highway Superintendent the employee plans and carries out the regular work in accordance with standard practices and previous training, with substantial responsibility for determining the sequence and timing of action and substantial independence in planning and organizing the work activities, including determining the work methods. The employee is expected to solve through experienced judgment most problems of detail or unusual situations by adapting methods or interpreting instructions to resolve the particular problem. Instructions for new assignments or special projects usually consist of statements of desired objectives, deadlines and priorities. Technical and policy problems or changes in procedures are discussed with supervisor, and carries it through to completion independently. Work is generally reviewed only for technical adequacy, appropriateness of actions or decisions, and conformance with policy or other requirements; the methods used in arriving at the end result are not usually reviewed in detail.

Supervisory Responsibility: Employee is required to lead full-time and part-time employees and to assist them in completing their assigned work. Employee also performs non-supervisory work that is of the same kind and level as is done by the employee(s) being supervised. The employee is not responsible for taking any disciplinary action and may be involved in the hiring process. Work operations are subject to substantial changes in work procedures and activities. While the timing of these fluctuations can not be anticipated, the procedures to be used can be planned in advance, e.g. the handling of storm emergencies. The number of employees supervised is relatively stable throughout the year. Substantial numbers of employees are dispersed to widely separated locations.

Confidentiality: Employee has access to confidential information obtained during performance of regular position responsibilities such information related to personnel matters.

Judgment: The work requires the employee to examine, analyze and evaluate facts and circumstances surrounding individual problems, situations, or transactions in order to determine the appropriate actions to be taken within the limits of standard or accepted operating practices or procedures. Guidelines include a large body of department and equipment policies, instructions, practices, and precedents, which may be complex or conflicting, at times. Independent judgment is used to analyze specific situations to determine appropriate actions. Employee is expected to weigh the efficiency and cost effectiveness and relative priorities in conjunction with procedural concerns in the decision making process.

Complexity: Work consists of the practical application of a variety of concepts, practices, and

Town of Erving, Massachusetts
Job Description

specialized techniques relating to a professional or technical field. Assignments typically involve evaluation and interpretation of factors, conditions or unusual circumstances; inspecting, testing or evaluating compliance with established standards or criteria; gathering, analyzing and evaluating facts or data using specialized fact finding techniques; or determining the methods to accomplish the work.

Work Environment: The nature of duties may involve the continuous presence of unpleasant or irritating elements such as considerable noise, odors, chemical fumes, traffic, dust, smoke, heat, cold, oil, dirt or grease. Work is continually performed outdoors, regardless of weather conditions. Work generally contains one or more constant elements of stress such as being on call or working during emergency situations. Employee may be required to work beyond normal business hours in response to natural or man-made emergency situations or to attend evening meetings.

Nature and Purpose of Public Contacts: The employee interacts with co-workers, the public and external contacts such as contractors or vendors doing business for the Town to explain or interpret procedures or guidelines, plan or coordinate work, or attempt to resolve problems. More than ordinary courtesy, tact, and diplomacy may be required to resolve complaints or deal with uncooperative persons.

Accountability: Consequences of errors, missed deadlines or poor judgment could result in excessive costs, personal injury, and danger to public safety, delay of service delivery, or legal repercussions to the town.

Occupational Risks: Duties regularly present potential risk of injuries from improper exposure that could result in loss of time from work. Examples of injury include burns from chemicals, steam, or fire, severe muscular strains from working with extremely heavy material, falls from heights more than three feet and illness from exposure to communicable diseases. Special safety precautions, training, or protective clothing such as gowns, coats, gloves, glasses, hats or boots may be required.

Essential Functions:

The essential functions or duties listed below are intended only as illustrations of the various type of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

1. Supervises and delegates daily tasks to employees of the Highway Department and other Public Works areas.
2. Employee may be required to serve on behalf of the department head in the event of the temporary absence of the Highway Superintendent.
3. Plans, assigns employees, and inspects the work of semi-skilled and un-skilled employees engaged in the maintenance, construction, and repair of streets, sidewalks, catch basins, manholes, sewers, storm drains, and traffic controls.
4. Participates in the construction and repair of sidewalks, fences, and town streets. This includes participation in contracting meetings and site walks for construction projects that involve contractors.
5. Attends training sessions as required in order to keep abreast or aware of updates or

Town of Erving, Massachusetts
Job Description

changes in occupational safety requirements, local, state and/or federal regulations or laws pertaining to the provision of public works services, and to maintain required licenses of certifications.

6. Develops and conducts training sessions for department employees including the instruction of safety methods and techniques and maintains training log records.
7. Oversees the work order and inventory database for the department, coordinates with other departments and vendors to resolve work orders, and is able to maintain records and develop reports on completed work.
8. Participates in the Town's Drug and Alcohol Testing Program.
9. Performs a variety of skilled and un-skilled manual work as assigned to repair and maintain municipal roadways, sidewalks, facilities, and infrastructure. Duties include, but are not limited to: street sweeping, line painting, patching roads, cleaning catch basins, maintaining & repairing drainage of Town-owned streets. The employee will help other departments with construction and maintenance projects. Performs manual labor incidental to the work of operating assigned equipment.
10. Operates a variety of light and heavy motor equipment, including but not limited to: dump trucks, sanders, snow plows, road-side mower, front-end loader, leaf collection machine, and backhoe. Services and maintains minor highway equipment.
11. Participates in the department's snow and ice removal and salt/sand applications.
12. Operates and maintains a variety of power and hand tools including but not limited to a jackhammer, chipper, weed whacker, and chainsaw.
13. Performs highway construction and maintenance projects including buildigns, repairing and patching streets and sidewalks, repairing and clearing catch basins, repairing guard rails and street signs, removes trees and shrubs, trims trees along roadways and removes debris as necessary, fabricates, installs and maintains road signs and assists with building maintenance as needed.
14. Opens and closes grave sites in support of the cemetery operation as required.

Minimum Qualifications:

Education and Experience: High School Diploma or equivalent with, three to five (3-5) years of related road maintenance and repair work experience in the area of public works with at least one to three (1-3) years in a supervisory capacity; hands-on experience in snow removal operations and ability to operate trucks, backhoes, and loaders, two (2) years of which involve supervisory responsibilities; an equivalent combination of education, training and experience which provides the required knowledge, skills and abilities to perform the essential functions of the job may be considered.

Special Requirements:

- Valid Class B Massachusetts Commercial Driver's License (CDL) with air brake endorsement.
- Class 2B Hoisting License
- 4G Hoisting License
- OSHA 10 Training & Blood Borne Pathogen Training
- CPR and First Aid certification is preferred.

Knowledge, Abilities and Skill

Town of Erving, Massachusetts
Job Description

Knowledge: Working knowledge of road repair construction and maintenance techniques and practices as well as related equipment; knowledge of technical terminology, shop and road machinery and a variety of measuring equipment; specialized knowledge, education and on the job training relative to acceptable civil engineering practices and techniques and highway operations is required. Working knowledge of snow and ice removal techniques and practices. Knowledge and ability to follow directions and coordinate construction projects in a cost -effective and safe manner. Working knowledge of the layout of streets, road infrastructure and drainage system, and geography including key landmarks of the Town.

Abilities: Ability to operate specialized heavy equipment such as large trucks, , backhoes, loaders; ability to follow oral or written instructions; ability to work independently; ability to deal with public tactfully and effectively. Ability to establish and maintain effective working relationships with department staff and contractors doing business with the town as well as state regulatory authorities. Ability to carry out essential functions under hazardous or inclement weather conditions in a safe manner. Ability to operate personal computers, tablets and handheld devices with the use of productivity software, e-mail and databases.

Skill: Proficient written and oral communications skills. Effective mechanical skills and operation of department equipment and vehicles.

Physical and Mental Requirements

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the position's essential functions

Physical Skills: Work requires some agility and physical strength to move in and about construction work sites, construction trenches, or over rough terrain; the employee may be required to stand, bend, twist, or walk for extended periods of time and often during inclement weather conditions.

Motor Skills: Duties may involve assignments requiring application of hand and eye coordination with finger dexterity and motor coordination. Examples include operating a motor vehicle, trucks, or climbing a ladder.

Visual Skills: Visual demands require constantly reading documents for general understanding, reading documents for analytical purposes; routinely reviews non-written materials (e.g. maps and blueprints). The employee must be able to determine different colors.

Town of Erving, Massachusetts
Position Description

Position Title:	Equipment Operator/ Laborer	Compensation Schedule:	
Department	Highway/ Public Works	Grade Level:	
Reports to:	Highway Superintendent	FLSA Exempt:	No
SB Approved:		Essential	Yes

Statement of Duties: Employee is responsible for the maintenance and repair of municipal roadways, sidewalks, town-owned buildings, and town infrastructure. Employee is required to perform manual labor as well as work with mechanical equipment to perform above duties.

Supervision Required: Employee works under the general supervision of the Highway Superintendent, or their designee. The employee is expected to be familiar with the work routine and use initiative in carrying out recurring assignments independently in accordance with specific instructions or guidelines. The Superintendent, or designee, will provide additional, specific instruction for new, difficult or unusual assignments, including suggesting work methods. The employee is expected to recognize instances which are out of the ordinary and is then expected to seek advice and further instructions. Reviews and checks of the employee’s work will be applied to an extent sufficient to keep the supervisor aware of progress, and to insure that completed work and methods used are technically accurate and that instructions are being followed.

Supervisory Responsibility: The employee, as a regular part of the job, is not required to supervise other town employees.

Confidentiality: Employee does not have regular access to confidential information of the department, in accordance with the State Public Records law.

Accountability: The nature of work or the operation of large, complex, or potentially dangerous equipment increases the probability that errors could be serious. Consequences of errors, missed deadlines or poor judgment may include significant monetary losses, personal injury, waste of material, and damage to buildings, equipment or personal injury.

Judgment: Numerous standardized practices, procedures, or general instructions govern the work and in some cases, may require additional interpretation. Judgment is needed to locate, select and apply the most pertinent practice, procedure, regulation or guideline.

Complexity: The work consists of a variety of duties which generally follow standardized practice, procedures, regulations or guidelines. The sequence of work and/or the procedures followed vary according to the nature of the work to perform and/or the information involved, or sought, in a particular situation.

Work Environment: The nature of duties may involve continuous presence of unpleasant or irritating elements including but not limited to loud noise, odors, chemical fumes, dust, smoke, extreme heat, cold, oil, dirt, or grease. Work is regularly performed outdoors, regardless of weather conditions. The employee is required to work beyond normal business hours on a 24/7 basis, when the Superintendent deems it necessary, in response to man-made or natural emergency situations.

Town of Erving, Massachusetts
Position Description

Nature and Purpose of Public Contact: Relationships are primarily with co-workers incidental to the purpose of the work involving giving and receiving factual information about the work. Ordinary courtesy and tact is required. Contacts with the public may occur on an occasional basis.

Occupational Risk: Duties may involve frequent, recurring exposure to hazardous working conditions such as operating moving equipment, being exposed to toxic chemicals or high voltage sources. The essential functions of the position frequently entail the possibility of serious personal injury or exposure to adverse working conditions including but not limited to traffic, loud noises, extreme temperatures and confined spaces. Special safety precautions, training and protective clothing such as coats, gloves, glasses, hard hats or safety boots is required at all times.

Essential Functions:

The essential functions or duties listed below are intended only as illustrations of the various type of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

1. Performs a variety of skilled and un-skilled manual work as assigned to repair and maintain municipal roadways, sidewalks, facilities and infrastructure. Duties include, but are not limited to: street sweeping, line painting, snow plowing and sanding, patching roads, cleaning catch basins, maintaining and repairing water, sewer and drainage of town owned streets. The employee will help other departments within the town with construction and maintenance projects. Performs manual labor incidental to the work of operating assigned equipment.
2. Operates a variety of light and heavy motor equipment, including but not limited to: dump trucks, sanders, snow plows, road side mower, front-end loader, leaf collection machine and backhoe. Services and maintains minor highway equipment.
3. Operates and maintains a variety of power and hand tools including but not limited to a jackhammer, chipper, weed whacker, and chainsaw.
4. Performs highway construction and maintenance projects including buildings, repairing, and patching streets and sidewalks, repairing and cleaning catch basins, repairing guard rails and street signs, removes trees and shrubs, trims trees along roadways and removes debris as necessary, fabricates, installs and maintains road signs and assists with building maintenance as needed.
5. Opens and closes grave sites in support of cemetery operations as required.

Town of Erving, Massachusetts
Position Description

Minimum Qualifications:

Education and Experience: Must have a High School degree or equivalent, with three to five (3 to 5) years of experience in vehicle and equipment operation as used in the maintenance and repair of municipal roadways; or an equivalent combination of education and experience.

Special Requirements: A candidate for this position must have:

- Valid Class B Massachusetts Commercial Driver's License (CDL) with air brake endorsement.
- 2B and 4G hoisting licenses OSHA 10 Training & Bloodborne pathogen Training
- CPR and First Aid Certification Preferred

Knowledge, Abilities and Skill

Knowledge: The employee must have knowledge of municipal road construction and maintenance, equipment operation and maintenance procedures, and public works department operations. Also, knowledge of the Town's geography including street layout and infrastructure is preferable. Experience and knowledge of heavy equipment.

Abilities: The employee must have the ability to understand and follow written and oral directions, the ability to complete assigned work including use of equipment in a timely and safe and efficient manner. Must be able to complete assigned work in adverse weather conditions. Ability to operate personal computers, tablets and handheld devices with the use of productivity software, e-mail and databases.

Skills: Proficient mechanical skill in the operation of tools and equipment required to perform position duties. Proficient oral communication skill.

Physical Job Requirements

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the position's essential functions.

Random State (DOT) Mandated Drug Testing is Required.

Physical Demands: Work requires moderate intermittent physical strength and effort daily, such as lifting, pulling, pushing, standing or walking for the full work day. Travel, particularly during adverse weather conditions and troublesome road conditions is required.

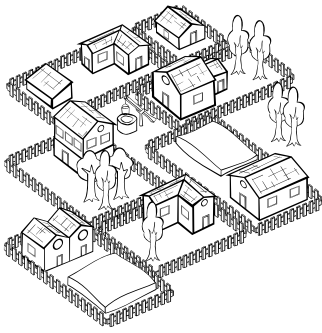
Motor Skills: Essential functions involve close hand and eye coordination and physical dexterity. Manipulation and motor control under conditions which may require extreme accuracy to avoid damage to property or equipment. The manual skills required are those which will be needed to operate department equipment and/or vehicles.

Visual Demands: Visual demands require the employee to read documents or plans for general

**Town of Erving, Massachusetts
Position Description**

understanding. The employee is required to routinely determine color differences.

DRAFT



*****ECRWSS***

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Join your neighbors and the Planning Board for a public hearing on the
2023 Zoning Bylaw updates:

Wednesday April 26, 2023 at 7:00 PM
Erving Senior & Community Center
1 Care Drive

What is the purpose of a public hearing?

The Planning Board has carefully drafted new zoning bylaw language but they need input from the community! These bylaws regulate the use of land, building, and structures and they will shape the community for years to come and should reflect the values and priorities of Erving. Come listen to a summary of the changes and have your voice heard!

Where can I get more information?

The official language on the back of this sheet outlines the sections being updated and the proposed vote at Town Meeting. The specific changes can be found in the Town Planner's office at Town Hall, at Erving Public Library, or online at <https://www.erving-ma.gov/planning-board/pages/town-erving-zoning-bylaws>

The proposed Town Meeting vote language is as follows, subject to change until the warrant is published. The date of the new bylaw will be filled in once it is finalized.

ARTICLE 1. TO SEE IF THE TOWN WILL VOTE TO AMEND AND RECODIFY THE ZONING BYLAW BY TAKING THE FOLLOWING STEPS:

1. Delete, in their entireties, the following provisions of the existing Zoning By-law, including the Zoning Map (dated November 2, 2021), adopted May 11, 2022 but not the Groundwater Map dated March 26, 2018:

- * Section 1: Purpose and Administration
- * Section 2: General Regulations
- * Section 3: Districts
- * Section 4: Use Regulations
- * Section 5: Intensity Regulations
- * Section 6: Special Permit and Site Plan Review
- * Section 7: Phasing of Growth
- * Section 8: Optimal Development Methods
- * Section 9: Definitions
- * Zoning Map Dated November 2, 2021

2. Substitute the following provisions in the document entitled “Zoning By-law, dated April XX, 2023, including the Zoning Map dated March 8, 2023 on file in the office of the Town Clerk and the Planning Board:

- * Section 230-1.0 Purpose and Authority
- * Section 230-2.0 Districts
- * Section 230-3.0 Use Regulations
- * Section 230-4.0 Dimensional and Density Regulations
- * Section 230-5.0 Nonconforming Uses and Structures
- * Section 230-6.0 General Regulations
- * Section 230-7.0 Special Residential Regulations
- * Section 230-8.0 Special Nonresidential Regulations
- * Section 230-9.0 Special Districts
- * Section 230-10.0 Administration and Procedures
- * Section 230-11.0 Definitions
- * Zoning Map Dated March 8, 2023

OR TO TAKE ANY OTHER ACTION IN CONNECTION THEREWITH.



2023 June Zoning Bylaw Update Draft Timeline

Mon June 12 – Special Town Meeting

Tues May 26 – send warrants

May 23 – Post warrant (one page summaries, some full copies of the new bylaw & handful of fully coded copies)

Mon May 22 – SB signs STM warrant

May 10 – discuss STM warrant at meeting prior to ATM

Mon April 24 – Select Board reviews and discusses scheduling STM

Wed April 26 at 7PM – Public Hearing & PB submits final draft with report to the Select Board

Tues April 18 – Second advertisement in paper runs

Tues April 11 – First advertisement in paper runs (minus 2 weeks and a day)

Mon April 10 – SB reviews draft

Tues Mar 28 – Send to SB for review

Thurs Mar 23 at 6:30PM – Regular Planning Board meeting at the Library – review sign bylaw, review draft #4

Thurs Mar 16 – Set up maps and drafts and postcards at Town Hall and Library

Wed Mar 15 – Pick up postcards and send out mailing

Thurs Mar 9 - Design postcards to be sent to residents advertising Public Hearing, send to printer.

Wed Mar 8 – Ask Ryan Clary at FRCOG to draft a new Zoning Map with the Cell Tower Overlay District removed

Thurs Mar 9 – Submit advertisement to paper & send notifications to towns/DHCD/FRCOG. Post at town hall and library

Thurs Feb 16 – Info session #1 @ the senior center

DRAFT #4
April 11, 2023

Black is existing text

Yellow is new text

Strikeout is deleted

SECTION 1.0 PURPOSE AND AUTHORITY

1.1 PURPOSE. This Zoning By-law (“this Bylaw”) has been enacted to promote and protect the public health, safety, convenience, and general welfare of the inhabitants of the Town of Erving and:

- * to plan for the orderly growth of the Town of Erving;
- to promote the prosperity and well-being of its inhabitants while retaining the rural character of the Town;
- to ~~conserve the value of land and buildings and~~ prevent blight;
- to protect natural resources and prevent pollution of the environment;
- to encourage the appropriate use of land throughout the Town;
- to mitigate and reverse the effects of climate change; to encourage multi-modal transportation;
- to protect public health and safety;
- to prevent overcrowding and undue concentration of population while providing housing guidelines appropriate for residents of all income levels;
- to embrace and encourage racial, cultural, generational, and socioeconomic diversity;
- to support the development of adequate municipal services consistent with managed growth of the Town;
- to maintain the scenic characteristics of the area as an attraction for recreational and tourist activities; and

- to preserve historical and other cultural resources. ~~in accordance with the provisions of M.G.L. Chapter 40A, and Article 89 of the Amendments to the Massachusetts Constitution.~~

1.2 AUTHORITY. This Bylaw is enacted in accordance with the provisions of the General Laws, Chapter 40A, and any and all amendments thereto, and by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

1.3 SCOPE. For these purposes, the construction, repair, alteration, reconstruction, height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot area that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land in the Town are regulated as hereinafter provided.

1.4 APPLICABILITY. Except as set forth in Section 5.1 or as otherwise provided herein, all buildings or structures hereinafter erected, reconstructed, altered, enlarged, or moved, and the use of all premises in the Town, shall be in conformity with the provisions of this Bylaw. No building, structure or land shall be used for any purpose or in any manner other than is expressly permitted within the district in which such building, structure or land is located. When the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.

~~1.8~~ **Applicability**

~~Where the application of this Bylaw imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this Bylaw shall control.~~

1.5 AMENDMENTS. This Bylaw may from time to time be changed by amendment, addition, or repeal by the Town in the manner provided in G.L. c. 40A, s.5, and any amendments thereto.

~~1.9~~ **Amendments**

~~This Bylaw may be amended from time to time in the manner described in M.G.L., Chapter 40A.~~

1.5.1 Change of Zoning Boundary. If geographic change of a zoning boundary description is proposed, words of boundary description change for insertion in the warrant shall be accompanied by a brief written statement of the nature, extent and location in the Town of the zoning map change proposed, together with three black-line prints of a diagram to scale showing the area to be changed, stating pertinent dimensions in feet.

1.5.2 Costs. The costs of publication and of mailing of notices of hearing and the costs of holding such zoning hearing and of making a public record of the proceedings at such hearing, if

such a record be made, shall be paid by the Planning Board, but the Planning Board may determine whether a fee to cover such costs shall be required of the nongovernmental proponent(s) of the zoning amendment.

1.6 SEVERABILITY. The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision herein.

1.7 ~~Validity~~

~~The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.~~

SECTION 2.0 DISTRICTS

2.1 ESTABLISHMENT OF DISTRICTS

The Town of Erving is hereby divided into the following types of districts:

- Central Village (CV)
- Village Residential (VR)
- Rural Residential (RR)
- French King District (FK)

2.2 OVERLAY DISTRICTS

The following types of overlay districts are located in the Town of Erving:

- Aquifer Protection Overlay District
- Flood Plain Overlay District
- ~~Wireless Communication Facilities Overlay District~~
- ~~Planned Unit Development Overlay District~~

2.3 ~~Location of Districts~~ ZONING MAP

The boundaries of the said districts are hereby established as defined in this section, and as depicted on the map entitled "Official Zoning Map, Erving, Massachusetts" dated May 11, 2022, as may be amended. The Zoning Map, with all explanations thereon, is hereby made a part of this Bylaw.

2.4 INTERPRETATION OF ZONING MAP ~~Boundaries of Districts~~

2.4.1 Boundary Lines Based on Roads. Boundary lines located outside of public and private ways and shown approximately parallel to their rights of way shall be regarded as parallel to them, with distances separating them being measured at right angles to the public or private way unless otherwise indicated.

2.4.2 Boundary Lines Based on Zoning Map. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said Zoning Map, by the use of identifications as shown on the Zoning Map, or by the scale of the Zoning Map.

2.4.3 Contour Lines as Boundary Lines. Where boundary lines are contour lines they are of indicated elevation above the datum mean sea level of the U.S. Geological Survey.

2.5 LOTS SPLIT BY ZONING BOUNDARIES

2.5.1 General. Where a district boundary line (other than for an overlay district) divides any lot existing at the time such line is adopted, the following conditions shall apply:

1. If the Lot has frontage within only one district, the requirements of that district shall govern the entire lot.
2. If the lot has frontage within two or more districts, the owner may either:
 - a. Follow the requirements of the more restrictive district in the entire lot, or
 - b. Follow the requirements of the less restrictive district into the more restrictive district for a distance no greater than thirty (30) feet.

2.6 CHANGING THE ZONING MAP

Any change of the Zoning Map shall constitute an amendment to this Bylaw and the procedure for making such a change shall conform to the requirements for amending this Bylaw.

SECTION 3.0 USE REGULATIONS

3.1 PRINCIPAL USES AND STRUCTURES

3.1.1 General. No **principal** building or structure shall be constructed, and no building, structure or **use of** land, or plan thereof shall be used for any purpose or in any manner other than for one or more uses hereinafter set forth as permissible. Any uses not listed in the Use

Regulation Schedule, Section 3.1.2, shall be considered prohibited. **Unless otherwise authorized,** not more than one principal structure or dwelling may be erected on a lot.

3.1.2 Use Regulation Schedule. ~~No building, structure or land shall be erected or used except as permitted in this section and all other sections of this Zoning Bylaw. No more than one principal structure or dwelling may be erected on a lot.~~ Symbols employed in the following Use Regulation Schedule shall have the following meaning:

Y – Yes, the use is permitted by right in that Zoning District.

N – No, the use is not permitted in that Zoning District.

PB – The use may be permitted if a special permit is granted by the Planning Board.

BA – The use may be permitted if a special permit is granted by the Zoning Board of Appeals.

SB – The use may be permitted if a special permit is granted by the Select Board.

A. RESIDENTIAL USES	RR	VR	CV	FK
1. Single Unit dwelling	Y	Y	Y	Y
2. Two-Unit dwelling	Y	Y	Y	Y
3. Multi-Unit Dwelling	N	PB	PB	PB
4. Temporary mobile home (see Section 7.3)	Y	Y	Y	Y
5. Mobile home or mobile home park	N	N	N	N
6. Bed & Breakfast Up to 6 rooms	Y	Y	Y	Y
7. Senior Housing (see Section 8.3) Nursing Home	PB	PB	PB	PB
8. Flexible Development (see Section 8.2)	PB	PB	PB	PB
Accessory Apartment	Y	SP	SP	Y
B. COMMUNITY USES	RR	VR	CV	FK
1. Use of land or structures for religious purposes Church, other Religious Use	Y	Y	Y	Y
2. Use of land or structures for educational purposes 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 Educational Uses exempted from zoning regulation by M.G.L. Ch.40A, Section 3	Y	Y	Y	Y
3. Child Care Center/School Aged Child Care Program	Y	Y	Y	Y

Day Care Center for children exempted from zoning regulations by M.G.L. Ch. 40A, Section 3				
4. Essential services Public Utility Facility not exempted from zoning regulation by M.G.L. Ch.40A	PB	PB	PB	PB
5. Municipal parks, playgrounds, senior center, offices, fire and police stations, municipal recreational uses, municipal wells, water storage and processing, sewage lift stations, municipal cemetery, and related building and parking facilities Municipal Uses Not covered elsewhere	Y	Y	Y	Y
6. Municipal yards and related facilities	PB	PB	PB	PB
7. Charitable or philanthropic use; Hospital	PB	PB	PB	PB
8. Community or private club, not conducted for profit	PB	PB	PB	PB
9. Private cemetery, not conducted for profit	PB	PB	PB	PB
C. AGRICULTURAL, OPEN SPACE USES	RR	VR	CV	FK
1. Agriculture, horticulture and floriculture on parcel five acres or more or two qualified acres Farming or Forestry not to include Medical or Recreational Marijuana cultivation	Y	Y	Y	Y
2. Commercial greenhouse and nursery uses on parcels five acres or more or two qualified acres Not to include Medical or Recreation Marijuana	Y	Y	Y	Y
3. Commercial greenhouse and nursery uses on parcels less than five acres or two qualified acres	PB	PB	PB	PB
4. For properties under five acres or less than 2 qualified acres in size, the raising or keeping of livestock, including poultry, horses, or cows.	SB	SB	SB	SB
5. Farm stand	Y	Y	Y	Y
6. Wildlife preserve, conservation uses, or passive recreational uses	Y	Y	Y	Y
7. Outdoor commercial recreation	PB	PB	PB	PB
D. GENERAL BUSINESS USES	RR	VR	CV	FK
1. Adult Entertainment Uses	N	N	PB	PB
2. Business or professional office, small Business, Professional Offices with less than six (6) employees	PB	PB	Y	Y
3. Business or professional office, large Business, Professional Offices with six (6) or more employees	PB	PB	Y	PB
4. Bank or financial establishment	N	N	Y	PB
5. Medical office, clinic	N	PB	Y	PB
6. Retail establishment, small Retail Store(s) — Building 2,500 sq. ft. or less excludes medical and recreational marijuana products and related paraphernalia including edibles.	PB	PB	Y	Y SP

7. Retail establishment, medium Retail Store(s) — Building greater than 2,500 sq. ft. but less than 5,000 sq. ft. excludes medical and recreational marijuana products and related paraphernalia including edibles.	N	N	Y	Y SP
8. Retail establishment, large Retail Store(s) — Building greater than 5,000 sq. ft. excludes medical and recreational marijuana products and related paraphernalia including edibles.	N	N	PB N	PB
9. Sales and storage of building materials	N	N	PB	PB
10. Personal or general service establishment	N	PB	Y	Y
11. Restaurant other	PB	PB	Y	Y SP
12. Restaurant, with drive through window	N	N	PB	PB N
13. Laundry, laundromat	N	N	PB	PB
14. Theater	N	N	PB	PB
15. Motel or hotel Inn	PB	PB	PB	PB
16. Commercial kennel	PB	N	N	PB
17. Hobby kennel	Y	PB	PB	Y
18. Landscaper or contractor yard	PB	N	N	PB
19. Veterinary office or clinic	PB	PB	Y	Y
20. Printing and publishing establishment	N	N	Y	Y
21. Indoor commercial recreation	PB	PB	PB	PB
22. For profit educational establishment Other Educational Uses not exempted from zoning regulation by M.G.L. Ch.40A, Section 3	PB	PB	PB	PB
23. Brewery, tavern, winery, or distillery	PB	PB	PB	PB
24. Sale of firearms	PB	PB	PB	PB
E. MOTOR VEHICLE RELATED USES	RR	VR	CV	FK
1. Motor vehicle light service station Gasoline Station, Automotive Repair Garage	N	N	PB	PB N
2. Repair or body shop for motor vehicles	N	N	PB	PB N
3. Motor vehicle or boat sales and service Motor Vehicle Sales	N	N	PB	PB
4. Car wash	N	N	PB	PB
5. Electric vehicle charging station	Y	Y	Y	Y
6. Public parking or garaging of automobiles not incidental to another permitted use	PB	PB	PB	PB
7. Drive-in or drive-through window or facility Drive through other	N	N	PB	PB N
F. MARIJUANA RELATED USES	RR	VR	CV	FK
1. Medical Marijuana Treatment Center	N	N	PB	PB

2. Cultivation of medical and/or recreational marijuana occupying a building(s) or greenhouse(s) no greater than 10,000 square feet	PB	PB	PB	PB
3. Cultivation of medical and/or recreational marijuana occupying a building(s) or greenhouse(s) greater than 10,000 square feet	PB	PB	PB	PB
4. Indoor cultivation of medical and/or recreational marijuana, including craft marijuana cultivator cooperatives	PB	N	PB	PB
5. Retail marijuana product stores – Marijuana product sales and related paraphernalia including edibles of medical and recreational marijuana up to 5,000 sf	N	N	PB	PB N
6. Marijuana Social Consumption Establishment	N	N	PB	PB
7. Processing and product manufacturing of medical and/or recreational marijuana	PB	N	PB	PB
8. Independent testing laboratory facility for medical and recreational marijuana	PB	N	PB	PB
9. Marijuana Microbusiness	PB	PB	PB	PB
10. Marijuana, Delivery-Only Retailer	PB	PB	Y	Y
G. INDUSTRIAL USES	RR	VR	CV	FK
1. Junk yard, dump, and landfill	N	N	N	N
2. Manufacturing, processing and laboratory	N	N	PB	PB N
3. Freight or transportation facility	N	N	PB	N
4. Quarrying, gravel mining and earth removal	N	N	N	N
5. Collection, treatment, storage, burial, incineration or disposal of radioactive waste, including but not limited to low level radioactive waste	N	N	N	N
6. Sawmill	PB	PB	N	N
7. Bulk storage, warehouse Bulk Storage, Warehousing	N	N	PB	PB N
8. Self-storage warehouse Bulk Storage, Warehousing	N	N	PB	PB N
9. Energy storage system	PB	N	N	PB
H. ACCESSORY USES	RR	VR	CV	FK
1. One or two boarders in a single unit dwelling	Y	Y	Y	Y
2. Tennis court, or similar court when accessory to a dwelling	Y	Y	Y	Y
3. Accessory Dwelling Unit in detached building (See Section 8.1)	PB	PB	PB	PB
4. Home based business (See Section 3.2.2)	Y	Y	Y	Y
5. Accessory uses or structure on the same lot with and customarily incidental to a permitted main use on the same premises, including off-street parking	Y	Y	Y	Y

6. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production	PB	PB	PB	PB
7. Family day care home, large	PB	PB	PB	PB
8. Family day care home, small	Y	Y	Y	Y
9. Adult social day care	PB	PB	PB	PB
10. Energy storage system, accessory	Y	Y	Y	Y

3.2 ACCESSORY USES

3.2.1 General. Accessory uses are allowed as set forth in the Schedule of Use Regulations, Section H. In addition, other accessory uses are allowed provided they meet the definition of “accessory use,” which is “a use incidental and subordinate to the principal use, and located on the same lot.”

3.2.2 Home Based Business. A business or profession is allowed as an accessory use out of a dwelling (“home occupation”), provided that:

1. Such use is clearly secondary to the residential use and the home occupation shall be carried on within the principal building or an accessory building on the lot or an adjoining lot in common ownership. Such adjoining lot in common ownership must be either adjacent to or only separated by a public way from the lot on which the principal building is located.
2. No more than 50% of the gross floor area of the residence shall be used for the purposes of the home occupation.
3. If the home occupation is located in an accessory building, the gross floor area devoted to the home occupation shall not exceed 50% of the gross floor area of the residence or 2,000 square feet, whichever is greater.
4. The home occupation shall be carried on by a resident of the principal dwelling and not more than two nonresidents shall be employed on the premises at any one time.
5. No external change is made which alters the residential appearance of the building on the lot.
6. Except for a permitted sign of not more than six (6) square feet, per Section 6.2, there shall be no exterior display or other exterior indication of the home occupation or other variation from the residential character of the premises.

7. No outside storage shall be allowed unless a special permit is granted by the Planning Board and such outside storage is screened from neighboring properties and the public way by a fence or an evergreen hedge of sufficient depth or height to provide screening.

8. Traffic shall not exceed volumes normally expected in a residential neighborhood. For purposes of this Bylaw, this shall be defined as 15 trips per day per dwelling unit which is approximately 150% of the average weekday trip rate for single unit homes from the Institute for Traffic Engineers Trip Generation Manual.

9. Adequate off-street parking shall be provided. Parking areas shall not be within 20 feet of a street line or within any required side or rear yard and shall be adequately screened from neighboring residential uses. Parking areas shall not have more than four spaces per dwelling unit.

10. The home occupation shall comply with the environmental performance standards listed in Section 6.3.

11. Automotive repair shops operating out of a residential dwelling and which otherwise meet the criteria for a home occupation shall require a Special Permit from the Planning Board.

SECTION 4.0 DIMENSIONAL REGULATIONS

4.1 GENERAL REQUIREMENTS.

A structure or accessory structure, shall be erected or used, or a lot shall be changed in size or shape, only in conformity with the following requirements, and not more than one (1) dwelling shall be built upon any such lot, except as provided in Section 8.1.

4.2 TABLE OF DIMENSIONAL REQUIREMENTS.

District	Min. Lot Area (sf)	Min. Lot Frontage (ft)	Front Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Max. Height (ft)	Max. Lot Coverage (%)
Central Village	21,780	125	20	10	20	45	70
Village Residential	21,780	125	20	15	20	45 formerly 35	70 formerly 50
Rural Residential	65,340 formerly 87,120	175 formerly 225	20 formerly 50	20 formerly 50	20 formerly 50	45 formerly 35	50 formerly 35

French King	65,340 formerly 87,120	175 formerly 225	20 formerly 100	20 formerly 50	20 formerly 50	45	50
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4.3 ACCESSORY STRUCTURES, BUILDINGS AND FENCES.

4.3.1 Same Lot. Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.

4.3.2 Location and Size of Accessory Structure or Building.

District	Front Yard (ft)	Side Yard (ft)	Rear Yard (ft)	Max. SF Accessory Building
Central Village	10	10	10	300
Village Residential	10	10	10	300
Rural Residential	20	20	20	300
French King Commercial	20	20	20	300

4.3.3 Height. Accessory building not more than 20 feet in height above the average grade level around the structure; provided, however, that a barn more than 20 feet in height may be allowed by special permit from the Zoning Board of Appeals.

4.3.4 Setbacks and Code Compliance. Swimming pools, game courts, and the like are accessory structures and shall comply with the State Building Code and all applicable setback requirements of this Zoning By-Law.

4.3.5 Fences.

1. Fences may be located within the front, side, or rear yard provided that they are set back from the property line by at least two (2) feet with the finished side facing towards the exterior of the property. In the case of a nonconforming lot, the fence may be set back from the property line one (1) foot).

2. Boundary fences, walls, or hedges shall be permitted provided that they do not exceed six (6) feet in height and provided that no fence which obstructs vision shall exceed thirty-six (36) inches in height within twenty (20) feet of the street line or within twelve (12) horizontal feet of a habitable room in an abutting dwelling.

4.4 — DIMENSIONAL REQUIREMENTS FOR YARDS

~~**4.4.1 Rural Residential District.** Yard dimensional requirements for preexisting nonconforming lots of 30,000 square feet or less in the Rural Residential District may be reduced to the yard dimensional requirements for the Village Residential District.~~

~~**4.4.2 Central Village and Village Residential Districts.** The Zoning Board of Appeals may reduce, by special permit, the dimensional requirements for front, rear, and side yards related to building setbacks for nonconforming lots in the Central Village and Village Residential Districts, provided that the Zoning Board of Appeals makes a determination that the proposed structure is consistent in scale or setback with the structures in abutting parcels and the immediate neighborhood. The special permit may be granted if the proposal is in accordance with the criteria of this Section 4.4, rather than Section 10.5. An Impact Statement in accordance with Section 10.5 is not required.~~

~~The applicant shall file, with the application for a special permit, a detailed plan drawn to scale of the property that shows the lot lines and dimensions of the property, the dimensional setbacks requirements as they currently exist for front, side or rear yards, the proposed location of the structure, and any proposed reduction to the dimensional requirements. In addition, the diagram shall include all utility accesses and shall be signed under pains and penalties of perjury. The applicant shall provide an explanation as to why they are requesting a reduction in setbacks from the dimensional requirements of the Zoning Bylaws. The Zoning Board of Appeals can require that a surveyed plan prepared by a Registered Surveyor be submitted if needed to make their determination.~~

The Zoning Board of Appeals shall make the following determinations before granting a special permit:

1. ~~The Zoning Board of Appeals shall specifically determine that the reduced dimensional requirement for a front, side or rear yard will have no adverse effect on adjacent properties or historic structures.~~
2. ~~The Zoning Board of Appeals shall specifically determine that the reduced dimensional requirement for a front, side or rear yard will not be a detriment to the public good and will not substantially undermine the intent of the Erving Zoning Bylaws.~~
3. ~~The impact on adjoining premises from sound, light, odor, noise, and other disturbances is avoided or minimized.~~
4. ~~The proposal will avoid or minimize topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.~~
5. ~~The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.~~

SECTION 5.0 NONCONFORMING USES AND STRUCTURES

5.1 APPLICABILITY.

Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two unit residential structure does not increase the nonconforming nature of said structure.

5.1.1 Commencement of Construction or Operation. Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than twelve months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

5.2 NONCONFORMING USES.

The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

5.2.1 Permissible Changes. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

1. Change or substantial extension of the use;
2. Change from one nonconforming use to another, less detrimental, nonconforming use. When a special permit is granted under this subsection, no use variance shall be required with regard to use or dimensional aspects of the application.

5.3 NONCONFORMING STRUCTURES.

The Zoning Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

5.3.1 Permissible Changes. The following types of changes to nonconforming structures may be considered by the Zoning Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

5.4 VARIANCE REQUIRED.

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance; the extension of an exterior wall at or along the same nonconforming distance within a required yard shall also require the issuance of a variance from the Zoning Board of Appeals.

5.5 NONCONFORMING SINGLE AND TWO UNIT RESIDENTIAL STRUCTURES.

Nonconforming single and two unit residential structures may be extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure, and that such reconstruction, extension, alteration or change does not increase the gross floor area of the structure by more than 100%.

5.5.1 Permissible Changes. The following circumstances shall not be deemed to increase the nonconforming nature of said structure and a building permit may be issued:

1. *Insufficient Area.* Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

2. *Insufficient Frontage.* Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.

3. *Encroachment.* Alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and not result in any increase in building height in the area of encroachment.

If the Building Inspector determines that proposed alteration, extension or change exceeds the one or more of the criteria set forth above, the Zoning Board of Appeals may, by special permit, allow such alteration, extension or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. In the case of voluntary demolition of a single or two unit structure, reconstruction thereafter shall be governed by Section 5.7.

5.6 ABANDONMENT OR NON-USE.

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this Bylaw; provided, however, that by special permit the Zoning Board of Appeals may reestablish a nonconforming use or structure otherwise abandoned or not used upon a finding that that the reestablished nonconforming use or structure will not result in substantial detriment to the neighborhood.

5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.

Any nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions.

5.7.1 Procedures.

1. Reconstruction of said premises shall commence within three years after such catastrophe or demolition.

2. A building may be reconstructed as of right if (a) it will be located on the same footprint as the original nonconforming structure and (b) it will not exceed the gross floor area of the original nonconforming structure.

3. A building may be reconstructed upon the grant of a special permit from the Zoning Board of Appeals if (a) the proposed reconstruction would cause the structure to exceed the gross floor area of the original nonconforming structure or (b) the proposed reconstruction would cause the structure to be located other than on the original footprint upon a finding that that the reconstruction will not result in substantial detriment to the neighborhood. Such special permit shall be obtained prior to voluntary demolition.

5.8 REVERSION TO NONCONFORMITY.

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

5.9 SUBSTANDARD LOTS.

When a prior lawful nonconforming structure is located on a lot which does not meet current dimensional requirements, such lot shall not be changed, unless the change does not result in an increase of an existing nonconformity or a new nonconformity.

5.10 EMINENT DOMAIN.

When a lot is changed by eminent domain so as to become deficient in area, frontage, building setback, or lot coverage, any structure located thereupon shall be considered a nonconforming structure subject to the rules of this Section 5.0.

~~2.1 Pre-existing Uses, Structures, and Lots~~

~~2.1.1 Continuation and Restoration~~

~~Any use or building, whether conforming to this Bylaw or not, may be continued if that use or building was lawfully existing at the time that it became nonconforming, and may be restored if destroyed by fire or other accidental or natural cause. However, if such use is discontinued or abandoned for more than 24 months, subsequent use shall comply with this Bylaw.~~

~~2.1.2 Alteration or Expansion~~

~~A. Nonconforming buildings or nonconforming uses of buildings or land may be expanded only if granted a Special Permit by the Zoning Board of Appeals (ZBA), upon the ZBA's determination that the expansion will not be substantially more detrimental to the neighborhood than the existing nonconforming use or building based on the criteria established in Section 6.1.9. A nonconforming single or two family dwelling or accessory structure may be altered, reconstructed, or otherwise structurally changed provided that it does not increase the nonconforming nature of the structure.~~

~~B. Pursuant to Section 1.2 and this Section 2.1.2, the Building Inspector may permit the repair, alteration, reconstruction, extension or structural change of a lawful, dimensionally nonconforming single family or two family dwelling or, a portion thereof, or accessory structures thereto, provided the proposed change does not constitute a change of use under this Bylaw, and one of the following conditions is met:~~

- ~~1. In the case of a building nonconforming solely because of insufficient lot frontage or lot area, or both, the proposed change shall meet all dimensional requirements for front, side and rear yards, lot coverage, and maximum height.~~
- ~~2. In the case of a dimensionally nonconforming building with sufficient lot frontage and lot area, where said building, or a portion thereof, is nonconforming, as to one of the following dimensional requirements: front, side or rear yard, lot coverage, or maximum height; provided that all other dimensional requirements met by the building prior to the proposed change shall be met after completion of the proposed change.~~

~~2.1.3 Nonconforming Lots~~

~~Requirements for lot size, frontage, and front, side, and rear yards shall not apply to a lot for a single family or two family residential use which at the time of recording or endorsement, whichever occurs sooner, was not held in common ownership with other adjoining land, conformed to the then existing requirements, and had less than the requirements of this Bylaw but at least five thousand (5,000) square feet of area and fifty (50) feet of frontage.~~

~~For Common Lot exemptions for Single and Two Family Use see M.G.L. Chapter 40 Section 6.~~

~~2.1.4 Conformance~~

~~Construction or operations under a Building or Special Permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of 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.~~

SECTION 6.0 GENERAL REGULATIONS

6.1 PARKING AND LOADING REQUIREMENTS

6.1.1 General. Adequate off-road parking must be provided to service all increases in parking demand created by new structures, additions or change of use. ~~The number and location of parking spaces must conform to the standards described in this Section unless the Planning Board, acting as the Special Permit Granting Authority, determines that an alternate provision would be adequate for all parking needs because of special circumstances such as shared parking or uses having peak parking demands at different time.~~

6.1.2 Number of Required Spaces. Unless a special permit is granted to provide relief under Section 6.1.7, the following number of spaces shall be required.

Use	Number of Required Spaces
Dwelling	2 parking spaces per dwelling unit.
Hotel, motel, guest house, and lodging house	1 space per guest unit.
Offices, Retail stores	2 spaces per 180 sq. ft. of floor area, but not fewer than 2 spaces per separate enterprise.
Restaurant, place of assembly	1 space per 3 persons maximum occupancy as allowed under the State Building Code.
Industrial Use	1 space per employee per shift.

6.1.3 Location of Required Spaces. Required spaces must be on the same lot as the use they serve, except that spaces on a separate lot in the same ownership may be credited if not further than 350 feet from the building entrance of the activity they serve.

6.1.4 Commercial Vehicles. Adequate off-road parking must be provided for commercial vehicles

6.1.5 Parking Areas for 10 or More Vehicles. The following regulations shall apply:

1. Their use shall not require backing onto a public way;
2. There shall be not more than one entrance and one exit from such lots per 300 feet of frontage. To meet this requirement, legal arrangements may be made for shared access;
3. Such lots require screening from any abutting residential use by dense shrubs and trees or opaque fencing not inconsistent with the neighborhood character;
4. The parking area shall be located to the side or rear of the property to the maximum extent feasible;

5. On site parking and loading areas sufficient to accommodate employees and truck deliveries must be provided;
6. Adequate screening of parking areas from abutting residential parcels and roadways shall be provided;
7. A minimum five (5) foot wide buffer area shall provide adequate screening of the parking area from abutting residential uses. Such buffer area shall be planted with a combination of evergreen and deciduous shrubs that are at least five (5) feet in height. Solid wood fencing may also be used which may reduce the buffer area required;
8. Adequate screening of refuse areas containing dumpsters or other containers shall be provided from abutting parcels and roadways. Solid wood fencing should be used unless an alternative acceptable to the Planning Board is approved;
9. Lighting shall be pedestrian in scale with fixtures not exceeding sixteen (16) feet in height and cut-off fixtures that direct light downward should be used; and
10. Lighting shall not produce direct illumination or glare beyond the property boundaries.

6.1.6 Loading Requirements. Adequate off-road loading facilities and space must be provided to service all needs created by new construction, whether through new structures or additions to old ones, and by change of use of existing structures. Facilities shall be so sized and arranged that no trucks need back onto or off a public way, or be parked on a public way while loading, unloading, or waiting to do so.

6.1.7 Special Permit. The SPGA or the Planning Board, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

6.2 SIGNS

6.2.1 Purpose. The following sign regulations are intended to allow the identification and location of activities or premises while protecting the visual character of the town and the safety of its residents. Any exterior sign or advertising device hereafter erected or maintained shall conform to the following regulations.

6.2.2 General Restrictions.

1. All permanent signs erected or relocated, which are greater than 6 square feet shall require a permit issued by the Building Inspector.
2. No permanent exterior sign shall flash, move or display movement or generate music or an audible message.

3. Signs may be lighted internally or externally, but illumination of all signs shall be of a white light and shall be shielded and not be directed onto adjacent property, roadways or upward.
4. Signs may be illuminated only during normal business hours.
5. Neon signs are prohibited.
6. No sign shall be placed closer than 10 feet to a public right-of-way or within any side or rear yard requirement and it shall not impair pedestrian or vehicular traffic flow or sight.
7. Freestanding signs may be up to 15 feet in height above the ground, measured from the average ground grade on the premises to the top of the sign.
8. Signs attached to a building may be either flat against the wall or perpendicular to it but shall not project more than two feet above the eaves line of the building or more than three feet from the vertical plane of the wall. Signs attached to a parapet shall not project above the top of the parapet.
9. Double-sided signs with equal and parallel faces providing identical information on both sides shall be measured on one side only in determining square footage.
10. Non-accessory signs or billboards (general advertising not related to the premises) are prohibited.

6.2.3 On Premises Signs.

1. Any residential dwelling is allowed one sign for each household residing on the premises, indicating the name of the owner or occupant or the name of the building, or other non-commercial message. Such sign may pertain to a permitted accessory use. In special instances, the Zoning Board of Appeals may issue a special permit for a larger or second sign for a residential dwelling. In determining whether to grant an increase in signage under this subsection, the Zoning Board of Appeals shall consider the respective interests of the applicant, the adjacent property owners, and the interests of Town at large.
2. One announcement or bulletin board up to 12 square feet is allowed for a public, educational, charitable or religious organization.
3. Commercial and industrial uses shall be allowed two signs, one attached to the building and one freestanding. Any commercial message on such signs shall be limited to identification of the establishment and the products or services available or produced on the premises.

4. Businesses sharing a single building are allowed one wall sign per business up to 15 square feet, and one shared freestanding sign up to 20 square feet for the entire premises bearing the name of each business located there. In special instances, the Zoning Board of Appeals may issue a Special Permit to each business for larger signs herein before specified, which have an aggregate total of not more than 30 square feet for the freestanding sign, and 20 square feet for a wall sign, upon the Board's determination that the sign will serve the informational needs of the motoring public, will not obscure the legibility of existing signs on adjacent premises, will not obstruct sight distance of traffic on the highway, employs minimum wording to enhance legibility, and is consistent with the rural character of the neighborhood and Town. The Special Permit shall specify the size and location and maximum height of the sign(s), not to exceed 20 feet in height, and impose other terms and regulations as the Zoning Board of Appeals may deem to be in the public interest.

6.2.4 Off-premises Signs. Off-premises signs are signs which are not located on the property where the business/establishment is operated. Off-premises signs are prohibited in the Town of Erving, with the following exceptions:

1. "Tourist Oriented Directional Signs" and associated "trailblazing signs," as defined by Mass Highway in the Rules and Standards for Tourist Oriented Directional Signing on Conventional Roads. Such signs shall conform to both Mass Highway regulations and the following local regulation.
2. A Special Permit granted by the Zoning Board of Appeals shall be required as evidence of community approval for "trailblazing signs." Approval of a Special Permit for "trailblazing signs" shall be subject to a finding by the Zoning Board of Appeals that such signs will promote the public interest, will not endanger the public safety, and will be of such size, location and design as to not be detrimental to the neighborhood. The Zoning Board of Appeals shall have the authority to establish and amend rules and regulations pertaining to the design and placement of "trailblazing signs" within the Town of Erving. Such signs shall not exceed nine square feet in area or 10 feet in height.

6.2.6 Electronic Changeable Message Signs (ECMS). Notwithstanding any other requirements of this Section 6.2, the following regulations shall apply to ECMS:

1. An ECMS may not flash, animate, scroll, or otherwise move, or transition from one message to another in a moving manner. The transition between messages shall be instantaneous.
2. Each message shall be continuously displayed for a minimum of 30 seconds before changing to another message.
3. The ECMS must be equipped with a control system that automatically adjusts light emission level to ambient light conditions so as to not cause glare or excessive brightness.

4. In a Residence District the ECMS may only be lit between the hours of 7:00 AM and 8:00 PM and shall be equipped with an automatic timer control that assures compliant with these restrictions.

6.2.6 Nonconforming Signs.

1. Continuance. A nonconforming sign lawfully existing at the time of adoption or subsequent amendment of this Bylaw may continue although such sign does not conform to the provisions of this section, but if the business being advertised is discontinued for a period of two years or more, then the use of the sign shall not be resumed and the sign shall be removed.

2. Maintenance. Any lawfully existing sign may be maintained, repaired or repainted, but shall not be expanded, extended or enlarged, in dimension or use, except in conformance with the provisions of this Bylaw.

3. Replacement. Any sign replacing a nonconforming sign shall conform to the provisions of this Bylaw, and the nonconforming sign shall not thereafter be displayed. If a nonconforming sign is destroyed by vandalism, act of God or other reason beyond the control of the owner, it may be restored or replaced within two years.

6.2.7 Exempt Signs. The following type of signs **are** exempt from this Bylaw:

1. Legal notices for identification, information, or providing direction created or required by governmental bodies.

2. Signs directing and guiding traffic and parking, but bearing no advertising matter, including name or products.

3. Signs of up to 5 square feet advertising rental or sale of the premises. Such signs shall be promptly removed within five days after the sale, rental or lease is consummated.

4. Tag Sale Signs, but only during the period that the sale is in progress. Allowed only for tag sales which occur no more often than once each month.

5. Seasonal Farm Stand Signs not to exceed a period of six months in a calendar year.

6. Contractor's sign which is removed within five days after the work is completed.

7. Temporary Commercial signs which are removed promptly upon completion of the activity to which they relate. Temporary commercial signs shall not exceed 12 square feet in area and 10 feet in height. Temporary Commercial signs shall not be in place more than 5 days per month.

8. A single portable or movable commercial sign is allowed during regular business hours, provided such sign stands on legs or wheels, and does not exceed 12 square feet.
9. Internal signs within a building or structure which are not viewable from a road are exempt from the provisions of this Bylaw.

6.2.8 Special Permit. The SPGA or the Planning Board, during the course of special permit or site plan review, may waive any provision of this Section, upon a finding that no substantial detriment shall result.

6.3 PERFORMANCE STANDARDS

The following regulations shall be applied whenever the Planning Board, Select Board, or Zoning Board of Appeals is engaged as Special Permit Granting Authority (SPGA), or the Planning Board is engaged in site plan approval, or the Zoning Board of Appeals is engaged in consideration of a variance petition (taken together, the "Approval Authority"), except with regard to the permitting of single or two-unit dwelling.

6.3.1 Erosion Control. Site design, building design, or construction process be modified so as to protect soil from erosion or excessive uncontrolled surface water runoff. No grading or construction shall take place on slopes in excess of 25% except under special permit from the Planning Board, which shall be granted only upon demonstration that adequate provisions have been made to protect against erosion, soil instability, uncontrolled surface water runoff, or other environmental degradation. To ensure compliance with these requirements, the Approval Authority may require topographic data at the developer's expense prior to acting upon an application for a special permit.

6.3.2 Screening. Open storage and loading or service areas shall be screened from any adjacent residence or public way by plantings. Junk, trash, or debris shall be confined out of sight.

6.3.3 Hazard. No use shall be allowed which would create hazard due to explosion, fire, or other causes. Potentially hazardous conditions shall be fenced, covered, or otherwise rendered safe.

6.3.4 Flooding. The floodway, as shown on the FIRM map for the Town of Erving, for any stream or river shall not be reduced by filling.

6.3.5 Disturbances. No use shall be allowed if it will cause vibration, odor, or flashing, more than twenty (20) feet from the boundaries of the originating premises, except for warning devices, construction work, maintenance, or other special circumstances. Normal farming practices are exempt from the noise and odor requirements of this provision.

6.3.6 Removal of Natural Materials. The removal of sod, earth, mineral aggregates, stone or rock from a parcel of land hereafter shall require a special permit except where it is incidental to the construction of an approved building or is a routine part of normal farming or house maintenance operations.

6.3.7 Hillside Areas. Hillside areas shall be retained with vegetative cover as follows:

Average Slope (by %)	Minimum % of the slope that must remain covered with vegetation
10.0-14.9	25
15.0-19.9	40
20.0-24.9	55
25.0-29.9	70
30+	85

6.3.8 Stormwater Management. All development shall comply with the stormwater management regulations promulgated by the Massachusetts Department of Environmental Protection and the U.S. Environmental Protection Agency and other reasonable requirements established by the Planning Board, Highway Superintendent, or Town Engineer.

6.3.9 Lighting. The proposed development shall not produce lighting so as to unreasonably interfere with the use and enjoyment of property within the Town. Lighting practices and systems shall reduce light pollution, light trespass and glare in order to preserve and enhance the natural, scenic, and aesthetic qualities of the Town; conserve energy and decrease lighting cost without decreasing night time safety, security, and productivity; and preserve the night sky as a natural resource to enhance nighttime enjoyment of property within the Town.

1. Shielding. All outdoor light fixtures shall be shielded downward so as to meet the goals of this Section.
2. Light Trespass. Direct light from the light source is to be confined within the property boundaries.
3. Light Intensity. Outdoor lighting shall be designed to provide the minimum intensity needed at any particular time.
4. Searchlights. The operation of laser shows or searchlights for advertising purposes is prohibited; provided however, that same may be authorized for a period of not more than fourteen days by special permit issued by the Planning Board.
5. Indoor Lighting. Indoor light sources will not be projected outside in a manner to defeat the intent of this Bylaw.

6. Flickering and Flashing Lights. No flickering or flashing lights shall be permitted. Processes, such as arc welding, which create light flashes shall be confined within buildings or shielded to prevent either direct glare or flashing.

7. Hours of Operation. Except as may be deemed appropriate for site safety or security, all external lighting, including lighting accessory to authorized signs, shall be extinguished one half hour after the facility is closed for the business day. Such lighting may be timed to resume one half hour prior to the arrival of the first employee on the premises.

6.3.10 Noise. The proposed development shall not unreasonably interfere with the reasonable use and enjoyment of property within the Town as a result of the generation of noise. Practices and systems shall reduce noise pollution in order to preserve and enhance the natural and aesthetic qualities of the Town; preserve property values; and preserve neighborhood character.

1. Hours of Operation. As a condition of any special permit or site plan approval, the Approval Authority may incorporate or require specific hours of operation for the following activities:

- a. the loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, garbage cans, or other objects or materials for sale or storage or use in a manner that causes a condition of noise pollution at any time;
- b. operating or permitting the operation of tools or equipment used in construction, drilling or demolition work;
- c. operation of construction devices.

2. Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 10 dBA above ambient when measured at the property boundary of the receiving land use, all pursuant to the MassDEP Noise Policy, 710 CMR 7.01.

6.3.11 Site Development Standards. To the extent practicable, the proposed development shall be located to preserve and enhance the natural features of the site, to avoid disturbances of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the subdivision and the Town.

1. Phasing of Development. The Approval Authority may limit the extent of a site exposed at any one time through phasing of construction operations. Effective sequencing shall occur within the boundaries of natural drainage areas.

6.3.12 Pedestrian and Vehicular Access; Traffic Management. The proposed development and/or redevelopment shall be designed with a forecast for the next five years from the time of application to minimize hazards to public health and safety as a result of traffic; provide safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles; provide off-site traffic mitigation, where required, to offset the impact of the development; reduce the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimize the impact on scenic roads, historic districts, natural resources, and community character. The Development shall not degrade safety for pedestrians, bicyclists, motor vehicle occupants, or property.

1. Access via roadways abutting residential districts shall be avoided where possible.
2. Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Approval Authority.
3. Each development shall be served by an adequate driveway. The Approval Authority may, in certain circumstances, allow additional driveways as a condition of approval where the access is shared or the project has frontage on two separate streets.
4. All driveways shall be designed to afford adequate sight distance to pedestrians, bicyclists, and motorists exiting to public ways. Improvements may be required on the public way for vehicular turning movements in or out of the site and safe pedestrian access to adjoining sidewalks, paths, walking trails or bikeways.
5. Curb cuts shall comply with the Town's General Bylaw.
6. Interior Circulation. The proposed development shall assure safe interior circulation within its site by separating pedestrian, bike ways, and vehicular traffic.
7. The Approval Authority may require a traffic report or Traffic Impact Access Study to DEP standards, prepared by a qualified traffic engineer, detailing the expected traffic impacts.
8. Sight Distance. Acceptable sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the development.
9. Mitigation. Off-site improvements may be required to mitigate the impact of the proposed development.

6.3.13 Exemptions. The following are exempt from these standards:

1. Emergency Response. Emergency responses performed by a private entity or a public agency and fire or burglar alarms.

2. Municipal Uses and Structures. All municipal uses and structures, including schools;

3. Events. Parades, fairs or outdoor entertainment between the hours of 7:00 am. and 11:00 p.m. only provided that a permit for such activity has been granted by the Board of Selectmen and that said permit is for not more than ten (10) days.

4. Religious Structures and Services. Religious services conducted by an organization which qualifies under the laws of the commonwealth as a tax-exempt religious group.

SECTION 7.0 SPECIAL REGULATIONS

7.1 ENERGY STORAGE SYSTEM

7.1.1 General. An Accessory Energy Storage System is allowed in all zoning districts by right, after site plan approval. All other Energy Storage Systems are allowed only in the RR or FK District(s), after the grant of a special permit by the Planning Board.

7.1.2 Standards. All Energy Storage Systems must meet the standards put forth in the National Fire Protection Association's NFPA 855 Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition (NFPA 855), as amended and updated, and comply with the State Fire Code 527 CMR 1.00, the State Electrical Code 527 CMR 12.00, and the State Building Code, 780 CMR 1.00 et seq.

7.1.3 Operation and Maintenance Plan. As part of the site plan approval process, the project applicant shall submit a plan for the operation and maintenance of any Energy Storage System, which shall include measures for maintaining safe access to the installation, fire suppression, stormwater management and vegetation controls, as well as general procedures for operation and maintenance of the installation.

7.2 MARIJUANA ESTABLISHMENTS

7.2.1 Purpose and Intent. It is the purpose of this article to promote public health, safety and general welfare, and to support the availability of medical and recreational marijuana in accordance with State law. To mitigate potential impacts to adjacent areas this bylaw will regulate the locations and site development to promote safe attractive business areas, prevent crime, maintain property values, protect and preserve the quality of residential neighborhoods and to protect the safety of children and young people in the vicinity of schools and public parks.

7.2.2 Special Permit Granting Authority. The Planning Board shall be the Special Permit Granting Authority (SPGA) under this Section in accordance with G.L. Chapter 40A, Sections 9 and 9A. Special permits issued by the Planning Board shall require a positive vote by a supermajority vote of Planning Board Members.

7.2.3 Requirements Regarding Allowed Locations for Marijuana Establishments. See Section 3.1 Use Regulations Schedule for locations for permitted Marijuana Establishments.

1. Marijuana Establishments shall not be located within **350 feet** of any existing public, parochial, or private school. This setback shall include the grounds on which said public, parochial, or private school. The distance between any Marijuana Establishment and any public, parochial, or private school shall be measured in a straight line, without regard to intervening structures, from the closest property line of any existing public, parochial, or private school to the property line of the Marijuana Establishment.
- ~~2. Marijuana Establishments shall not be located within 50 feet from any public recreation area or park measured in a straight line, without regard to intervening structures, from the closest property line of the recreation area to the property line of the Marijuana Establishment.~~
- ~~3. Marijuana Establishments shall not be located within 50 feet from any existing residential use. The distance between a residential use and a Marijuana Establishment shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential property to the property line of the Marijuana Establishment.~~

7.2.4 Site Development and Permitting Standards. Pursuant to Chapter 40A, Section 9A the following site improvements and amenities are required to protect public safety and neighboring property values, in addition to the special permit requirements found in Section 10.5 and the site plan review requirements found in Section 10.6. The Planning Board is empowered hereunder to review and approve special permit applications for Marijuana Establishments and impose requirements for: buffering; odor control; noise; outdoor lighting; parking; access to the site from public roads; hazardous materials; and landscaping and buildings. The purpose of these requirements is to avoid site development which may result in negative environmental, neighborhood, or public safety impacts.

- 1. Dimensional Requirements.** Any building or structure containing a Marijuana Establishment shall meet the setback requirements and other dimensional controls of the appropriate district as specified in these bylaws. For any property proposed to contain a Marijuana Establishment, the applicant for a Special Permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- 2. Parking and Loading Requirements.** On-site parking and loading shall be provided in accordance with the requirements of Section 6.1 of this Bylaw. For any property proposed to contain a Marijuana Establishment Business, the applicant for a special permit for such use shall demonstrate that the entire property shall comply with these requirements and controls following the establishment of such use thereon.
- 3. Site Screening.** Rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening shall be by a fence that is 3.5 feet tall within 5 feet of the street and 6 feet tall elsewhere on the property

and/or a 6-foot-wide vegetated planting of hardy evergreens and deciduous trees and shrubs no less than five (5) feet in height.

4. Marijuana Establishments may request a waiver from the site screening standard of rear and side property lines shall be screened from any neighboring residential, educational, childcare or recreational uses or properties. Screening shall be by a fence that is 3.5 feet tall within 5 feet of the street and 6 feet tall elsewhere on the property and/or a 6-foot-wide vegetated planting of hardy evergreens and deciduous trees and shrubs no less than five (5) feet in height as required by Section 7.2.4.3. Such waiver may be granted in the Planning Board's sole discretion.

5. Lighting and Security. Energy efficient site lighting shall be maintained at a minimum lumen as determined by the Erving Police Department to ensure adequate visibility on the property to ensure public safety. Light standards may not exceed twenty (20) feet in height and shall be reasonably shielded from abutting properties and shall incorporate full cut off fixtures to reduce light pollution. Additional security features recommended by the Erving Police Department shall be installed and maintained.

6. Noise and Odors. No noise or marijuana or other odors detectable at the property line of the Marijuana Establishment shall be allowed.

7. Hazardous Materials. Submission of a complete list of chemicals, pesticides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use. The Planning Board will require that a Hazardous Materials Management Plan be prepared to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism. The plan should include spill containment and clean-up procedures, and provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces and must be approved by the Fire Chief.

8. Signs. All signs for a Marijuana Establishment must meet the requirements of Section 6.2 of this Bylaw and the State Regulations (935 CMR 500.000) including the requirement that, no advertising signs shall be located within twenty feet of a public or private way and must be set back a minimum of twenty (20) feet from all property lines.

9. Buildings. Appearance of buildings for Marijuana Establishments shall ~~be consistent with the appearance of other buildings in Erving,~~ not employing unusual color or building design which would attract attention to the premises. In the Rural Residential zoning district new buildings for Marijuana Cultivators including Craft Marijuana Cultivators shall resemble a barn or greenhouse. Reuse of existing vacant or underutilized mill buildings in the Central Village zoning district for marijuana cultivation, product manufacturing or testing may be possible by special permit.

10. Marketing. Marijuana Establishments shall not be allowed to disseminate or offer to disseminate marijuana marketing materials to minors or suffer minors to view displays or

linger on the premises. No free samples may be provided by Marijuana Establishments to consumers.

~~**11. Cultivation:** If marijuana products are to be grown outdoors plans will need to be approved by the Planning Board to ensure they minimize public nuisances including odors, noise, and lighting to neighboring properties.~~

7.2.5 Applications. The applicant requesting permission to operate any Marijuana Establishment must file their application with the Special Granting Authority and the Town Clerk. Such application shall contain the information required by this Section and Section 10.6, and any rules and regulations established by the Special Permit Granting Authority and the State Cannabis Control Commission. The application shall also include:

1. Name and Address of the legal owner and Licensee of the Marijuana Establishment;
2. Name and Address of all persons having lawful, equity or security interests in the Marijuana Establishment;
3. Name and Address of the Manager of the Licensed Marijuana Establishment;
4. The number of proposed employees; and
5. Proposed security precautions.

7.2.6 Site Plan Review. No Marijuana Establishment shall be established prior to submission and approval of a site plan by the Planning Board, pursuant to Section 10.6. The site plan shall, at the minimum, depict all existing and proposed buildings, parking spaces, driveways, service areas, and other open uses. The site plan shall show the distances between the proposed Marijuana Establishment and all existing uses within 350 feet of the property lines of the proposed Marijuana Establishment.

7.2.7 Change in License or Owner: The Owner and Licensee of any Marijuana Establishment issued a special permit under this bylaw shall report, in writing, within 10 business days any change in the name of the legal owner of the Marijuana Establishment or any expiration or suspension of a license to the Building Inspector and Planning Board. Any failure to meet this requirement of this Bylaw will result in the immediate issuance of a cease and desist order by the Building Inspector ordering that all activities conducted under the special permit cease immediately.

7.2.8 Change of Ownership: A special permit issued under this Section shall lapse upon any transfer of ownership or legal interest of more than 10% or change in contractual interest in the subject premises or property. The special permit may be renewed thereafter only in accordance with this Section and Section 10.5.

7.2.9 Host Community Agreement. Applicant shall submit the proposed Host Community Agreement that is required between a Marijuana Establishment and the town it is operating in at the time they submit their Application.

7.2.10 Expiration. A special permit to operate a Marijuana Establishment shall expire after a period of five calendar years from its date of issuance but shall be renewable for successive five-year periods thereafter, provided that a written request for such renewal is made to the Special Permit Granting Authority at least 60 calendar days prior to said expiration and that no objection to said renewal is made and sustained based upon compliance with all conditions of the special permit as well as public safety factors applied at the time the special permit renewal is requested. In addition, a Host Community Agreement satisfactory to Erving shall be provided if requested by the Town.

4.12.1.7 ~~Severability~~

~~The invalidity of any section or provision of this article shall not invalidate any other section or provision thereof.~~

7.3 TEMPORARY MOBILE HOME

The owner or occupier of a residence which has been destroyed by fire or other natural holocaust can apply for a permit from the Building Inspector and a permit from the Board of Health to place a mobile home on the site of such residence and may reside in such mobile home for a period not to exceed **twenty four** months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

7.4 SOLAR ENERGY SYSTEMS

7.4.1 Purpose. The purpose of this Section is to establish appropriate criteria and standards for the placement, design, construction, operation, monitoring, modification and removal of new large-scale ground-mounted solar photovoltaic installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations. The provisions set forth in this Section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

7.4.2 Definitions. See Section 11.0, “Solar energy Systems.”

7.4.3 Applicability. This Section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This Section also pertains to physical modifications that materially alter the type, configuration, or size of existing installations or related equipment.

7.4.4 Location. Large-Scale Ground Mounted Photovoltaic Installations shall be allowed by right with site plan review and approval for all parcels of land under single ownership that contain 40 contiguous acres or greater. Parcels 20 contiguous acres and greater, but less than 40 contiguous acres may be approved for Large-Scale Ground Mounted Photovoltaic Installations by special permit from the Planning Board (the SPGA), upon a determination of compliance with

the General Requirements for all Large-Scale Ground-Mounted Photovoltaic Installations - Section as set forth below, and Sections 10.5 and 10.6 of this Bylaw regarding special permit and site plan review.

7.4.5 General Requirements: Large-Scale Ground-Mounted Photovoltaic Installations.

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

1. Compliance with Laws, Ordinances and Regulations. The construction and operation of all large scale solar photovoltaic installations shall meet all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code, and further comply with all other provisions of the Erving Zoning bylaws.
2. Building Permit and Building Inspection. No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.
3. Fees. The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

7.4.6 Site Plan Review. Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Erving Planning Board acting as the Site Plan Review Authority (SPRA) and obtain approval there from prior to construction, installation or modification as provided in this section. No large scale solar photovoltaic installation shall be added to, modified or changed without additional site plan review and approval from the SPRA without first obtaining a building permit.

7.4.7 Site Plan Requirements. All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts. Pursuant to the site plan review process, the project proponent shall provide a site plan showing:

1. Property lines and physical features, including roads and buildings, for the project site.
2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures, and a landscape plan (in plan view) identifying plant material to be used to screen all appurtenant structures and identifying plant material or fencing to be used to satisfy the requirement for a buffer between installation and property edge;
3. Blueprints of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures.

4. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices.
5. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
6. Name, address, and contact information for proposed system installer.
7. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any.
8. Name, contact information and signature of any agents representing the project proponent, if any.

7.4.8 Required Documents. Applicants for site plan approval shall also submit the following documents.

1. Documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.
2. An operation and maintenance plan which shall include measures for maintaining safe access to the installation, storm water controls, and general procedures for operational maintenance of the installation.
3. Proof of liability insurance.
4. Payment of financial surety that satisfies this Section.
5. Utility Notification. No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the SPRA that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off grid systems shall be exempt from this requirement.

7.4.9 Design Standards.

1. Dimensional and Density Requirements. All large-scale ground-mounted solar photovoltaic arrays shall have 75 foot set-backs to adjacent non-owned parcels, as well as compliance with the yard, space, coverage percentage, and height requirements of the zoning district(s) in which the installation is located.
2. Lighting. Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic

installation shall be directed downward and inward and shall incorporate full cut off fixtures to reduce light pollution.

3. **Signage.** Signs shall comply with Section 6.2 of this Bylaw. A sign compliant with Section 6.2 shall be required to identify the owner and provide a 24-hour emergency contact phone number. Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

4. **Utility Connections.** Reasonable efforts, as determined by the SPRA, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

5. **Appurtenant Structures.** All appurtenant structures to large-scale ground-mounted solar photovoltaic arrays shall conform to the setback requirements of the zoning district in which the installation is located. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts. All appurtenant structures shall have a Landscape Plan.

7.4.10 Safety and Environmental Standards.

1. **Emergency Services.** The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local Fire Chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall provide the name, phone number, and email of the person responsible for public inquiries throughout the life of the installation.

2. **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 the large scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

3. **Landscaped Buffer Strip.** A landscaped buffer strip is intended to provide in a reasonable time a visual barrier between the Large-scale ground-mounted solar photovoltaic installation and adjacent parcels. Except for vehicular and pedestrian pathways, the areas shall be used only for an interplanting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. The buffer must provide coverage of three feet in height from the proposed grade to the top of the majority of the planting material at time of installation. Reasonable leeway may be provided by the SPRA to allow for expected growth of the buffer strip over time. The

buffer strip shall occupy at least 20% of the depth between the property line and the mandated setback of the zoning district where the installation is located. Where considered appropriate in the judgment of the site plan review authority, walls and fences may be used in addition to in lieu of plantings. A planting plan showing the types, sizes and locations of material to be used shall be subject to the approval of the SPRA. The SPRA may waive the requirements of the visual barrier where it deems it advisable.

7.4.11 Monitoring and Maintenance.

1. Installation Conditions. The large scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good conditions. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access/road(s) unless accepted as a public way.

2. Modification Conditions. Any material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the SPRA.

7.4.12 Waivers.

1. The SPRA may waive strict compliance with any requirement of the Design Standards, Safety and Environmental Standards section of this bylaw, or the rules and regulations promulgated hereunder, where:

- a. Such action is allowed by federal, state and local statutes and/or regulations;
- b. Is in the public interest; and
- c. Is not inconsistent with the purpose and intent of this Bylaw.

2. Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the by-laws does not further the purposes or objectives of this by-law.

3. All waiver requests shall be discussed and voted on by the SPRA.

4. If in the SPRA deems additional time or information is required in the review of a waiver request, the SPRA may continue the request for a waiver until such time as the SPRA deems it is ready to vote on said request.

7.4.13 Abandonment or Decommissioning.

1. Removal Requirements. Any large scale ground mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than one hundred and fifty (150) days after the date of discontinued operations. The owner or operator shall notify the SPRA 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 solar photovoltaic installations, arrays, structures, equipment, security barriers and above ground transmission lines from the site, if any.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The SPRA may allow the owner or operator to leave landscaping or designated below grade foundations in order to minimize erosion and disruption to vegetation.

2. Abandonment. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the SPRA. If the owner or operator of the large scale ground mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within one hundred and fifty (150) days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation, and/or take any other available legal or equitable action against the owner/applicant.

3. Financial Surety. Owner/applicant(s) of large scale ground mounted solar photovoltaic projects shall provide a form of surety through escrow account cash or surety bond to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount determined to be reasonable by the SPRA, but in no event to exceed more than one hundred and twenty five (125%) percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

7.5 WIRELESS COMMUNICATIONS FACILITIES

7.5.1 The purpose of this Section governing Wireless Communication Facilities (WCF) is to establish regulations to protect Erving's community character and minimize the harm to public health, safety, and general welfare.

7.5.2 Definitions. See Section 11.0, “Wireless Communications Facilities.”

7.5.3 Special Permit Required. A Wireless Communication Facility may only be erected after the grant of a special permit. The Special Permit Granting Authority (SPGA) shall be the Planning Board. In lieu of the criteria set forth in Section 10.5, a special permit may be granted if the SPGA determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts on the Town or neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site, the determination shall include the following:

1. Communication needs served by the facility;
2. Traffic flow and safety, including parking, loading, and distance to occupied structures;
3. Impacts on neighborhood character, including aesthetics;
4. Impacts on the natural environment;
5. Impacts to historical and scenic areas;
6. Potential fiscal impact, including impact on Town services, tax base, and employment; and
7. New towers or poles shall be considered only upon a finding that existing structures of facilities cannot accommodate the applicant.

7.5.4 Design Requirements. All special permits for Wireless Communication Facilities shall be subject to the following conditions:

1. To the extent possible, Wireless Communication Facilities shall be placed on existing structures, including water tanks, towers, and electrical transmission towers;
2. To the extent possible, Wireless Communication Facilities shall be co-located to minimize the impact to the community and environment;
3. Applicants should include a plan to accommodate foreseeable future users where technically practicable without increased impact to the community and environment;
4. To the extent possible, the design of the Wireless Communication Facility shall minimize the visual impact on the community and environment. Color schemes shall be utilized which blend in with the landscape, including the skyline. Landscaping shall be required to screen as much of the support structure as possible;
5. Fencing shall be required to control access to the Wireless Communication Facility, and shall be compatible with the scenic area;

6. Wireless Communication Facilities shall be maintained in good order and repair and appearance;

7. Wireless Communication Facilities which have not been used for their intended purpose for one year shall be dismantled and removed at the owner's expense;

8. Any new tower or monopole shall not be erected nearer to the property line than a distance equal to the vertical height of the structure, nor shall it be allowed within 500 feet of any residential structure, or 1000 feet from any school for safety reasons;

9. No new towers or monopoles may be erected in any scenic or historical area as identified by the Town's Open Space Plan or Master Plan;

10. Any and all signage shall comply with this Bylaw, and no advertising devices shall be allowed on any Wireless Communication Facility;

11. Lighting shall be limited to that needed for safety, emergencies, security, and/or as required by the Federal Aviation Administration;

12. There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of any vehicles or equipment;

13. Applicant shall submit a written report inventorying existing Wireless Communication Facilities in Erving and adjacent towns and documenting why existing facilities cannot accommodate the applicant's requirements. No new facilities shall be permitted until the applicant proves, to the reasonable satisfaction of the Planning Board, that no existing facility can accommodate the applicant's requirements. New facilities will only be considered after a finding that existing facilities, or previously approved facilities cannot accommodate the proposed uses;

14. Applications for special permits may be approved with conditions upon fulfillment of the requirements contained in this Bylaw. Applicants for special permits shall be denied if the applicant cannot fulfill the requirements of this Bylaw. The SPGA may require a financial performance guarantee to ensure any of these conditions; and

15. Any replacement, modification, or additional user/carrier to an existing wireless communication facility shall require a separate special permit, subject to all of the requirements of this Bylaw.

7.5.5 Submittal Requirements. All special permit applications for a Wireless Communication Facility shall be made and filed in compliance with the procedural requirements of G.L. c. 40A, s. 9. In addition, five (5) copies of the following information, professionally prepared, must be submitted for an application to be considered:

1. A locus plan at a scale of 1"=200' which shall show all property lines, the exact location of the proposed structure(s), street, topography, landscape features, all structures within 1000 feet, setback lines, and easements;
2. A detailed site plan and elevations at a scale of 1"=10' or larger;
3. A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed site, also, a prepared rendition illustrating a view of the facility from the nearest street or streets;
4. A description of the facility including technical specifications, height, and design, a statement of capacity of the facility including the number and type panels, antennas, and transmitter and/or receivers that it can accommodate and the basis for those calculations;
5. A certification that the proposed facility complies with, or is exempt from, all applicable federal and state requirements, including regulations administered by the Federal Aviation Administration, Federal Communication Commission, and the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health;
6. An estimated cost of demolition, removal, and to extent feasible, restoration of the site to its original condition, by an appropriately licensed contractor(s) independent from the owner or installer. Any estimate submitted must be valid for at least one year; and
7. In the event the SPGA, determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant.

7.5.6 Restrictions.

1. In no event shall any tower be located closer than 150% of the vertical height of the tallest tower from any other tower.
2. Tower height shall not exceed 65 feet above the tree canopy. No Wireless Communication Facility shall exceed 90 feet on bare terrain in height as measured from the mean grade, out 25 feet, 4 points, 90 degrees apart, from the center point of the tower to the highest point. In an effort to encourage co-location of antennas or panels on any one facility, the height of the facility may be increased by 10 feet for each co-locator up to a maximum total of 120 feet. The tower must be structurally capable of providing space for six major co-locators on the tower. That tower plan must be stamped capable of the six co-locators by a Licensed Professional Engineer.
3. Traffic associated with the facility shall not adversely affect abutting ways.
4. Facilities shall be suitably screened from abutters and residential neighborhoods.

5. An annual statement shall be provided to the Board of Selectmen and Board of Assessors with the following information:

- a. The name(s) and business addresses of all service companies using the facility;
- b. An estimate of current demolition and removal costs and, to the extent feasible, restoration of the site to original condition.

6. Any restriction previously posed in any section of this Bylaw.

7.5.7 Non-Use. All structures associated with wireless communication facilities which have not been used for their intended purpose for 1 year shall be dismantled and removed at the owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town treasurer a bond or other form of financial security acceptable to said treasurer in an amount set by the Board of Selectmen. This amount may be adjusted annually based on estimated demolition, removal, and restoration costs. The amount shall be sufficient to cover demolition or removal costs in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures, or deems it was unused for 1 year. The Building Inspector shall give the applicant 45 days written notice in advance of any demolition or removal actions.

7.5.8 Exemptions.

1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission shall be exempt provided that the tower is not used or licensed for any commercial purposes and that the antennae structure shall be no higher than is required to effectively accommodate amateur radio communication needs.
2. Satellite dishes and antennas for residential use only.
3. Commercial entities using satellite dishes or antennas for which reception signals are a free service to their customers.

7.5.9 The SPGA may (but is not required to) waive strict compliance with the Restriction set forth in Section 7.5.6 of this Bylaw when the applicant can prove, with engineering evidence, that service cannot otherwise be provided.

SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS

8.1 ACCESSORY DWELLING UNIT IN DETACHED BUILDING (ADU)

8.1.1 Purpose. The purpose of permitting an ADU in a detached building is to provide homeowners with a means of obtaining rental income, companionship, security, and services, by adding moderately priced rental units to the housing stock to meet the needs of smaller households.

8.1.2 Conditions and Requirements. The Planning Board (SPGA) may issue a special permit for the installation and use of an ADU in a detached building, subject to following conditions:

1. The ADU will be a complete dwelling unit with a separate entry and contain a kitchen and bathroom.
2. The gross floor area of the ADU shall not be greater than 900 square feet. Floor area means finished living space, but does not include unfinished attic space, unfinished basement space, unfinished garage or barn space, porch, or patio. An ADU cannot be enlarged by future additions.
3. Only one ADDU may be created within a detached building or on the house lot.
4. An ADU shall be located within an existing accessory structure such as a garage or barn, or a new accessory structure located on the same lot as the principal single unit dwelling. The ADU must meet all front, side, and rear yard setbacks for the zoning district in which it is located according to Section 4.0 Dimensional Regulations, unless a special permit is issued by the SPGA.
5. The ADU must have a minimum of one (1) off-street parking space provided in addition to the off-street parking spaces required for the single-unit dwelling.
6. The design and room sizes of the ADU must conform to all applicable standards in the health, building, and other codes. A permit for an ADU may only be approved subject to obtaining any required approvals from the Board of Health, including compliance with the State Sanitary Code 310 CMR 15 (“Title V”) for septic systems, where applicable.
7. For dwellings served by on-site septic system, the owner must obtain a letter from the Board of Health stating the existing sewage disposal system is adequate for the proposed ADU before a building or special permit can be obtained.
8. An application for building permit or special permit for an ADU shall include any information necessary to show proposed interior and exterior changes and to determine compliance with the conditions of this subsection, including a plot plan and floor plans with proposed interior and exterior changes to the building.

8.1.3 Modification or Waiver. In order to encourage the development of housing units for disabled and handicapped individuals and persons with limited motility, the Building Inspector or the SPGA may allow reasonable deviation from the stated conditions where necessary to install features that facilitate access and mobility for disabled persons, all pursuant to G.L. c. 40A, s. 3.

8.2 FLEXIBLE DEVELOPMENT.

8.2.1 Purpose. The purpose of this section, Flexible Development, is to:

1. encourage the preservation of undeveloped land for its scenic beauty; to protect the natural environment, including the Town's varied landscapes and water resources and to enhance opportunities for recreational uses;
2. preserve historical and archeological resources;
3. promote more sensitive siting of buildings and better overall site planning;
4. facilitate the construction and maintenance of streets, utilities, and public services in a more economical and efficient manner;
5. offer an alternative to standard subdivision development; and
6. promote the development of housing affordable to low, moderate, and median income families.

8.2.2 Definitions. See "Flexible Development: in Section 11.0.

8.2.3 Applicability. In accordance with the following provisions, a Flexible Development project may be created, whether a subdivision or not, from any parcel or set of contiguous parcels of five (5) or more acres held in common ownership.

8.2.4 Procedures. Flexible Development may be authorized upon the issuance of a special permit by the Planning Board. Applicants for Flexible Development shall file with the Planning Board six (6) copies and an electronic copy of the following:

1. A development plan conforming to the requirements for a preliminary plan as set forth in the Subdivision Rules and Regulations of the Planning Board.
2. Where wetland delineation is in doubt or dispute, the Planning Board may require appropriate documentation.
3. Data on proposed wastewater disposal, which shall be referred to a consulting engineer for review and recommendation.
4. The Planning Board may also require as part of the development plan any additional information necessary to make the determinations and assessments cited herein.

8.2.5 Design Process. Each development plan shall follow the design process outlined below. When the development plan is submitted, applicants shall be prepared to demonstrate to the Planning Board that this Design Process was considered in determining the layout of proposed streets, houselots, and contiguous open space.

1. *Understanding the Site.* The first step is to inventory existing site features, taking care to identify sensitive and noteworthy natural, scenic and cultural resources on the site, and to determine the connection of these important features to each other.
2. *Evaluating Site Context.* The second step is to evaluate the site in its larger context by identifying physical (e.g., stream corridors, wetlands), transportation (e.g., road and bicycle networks), and cultural (e.g., recreational opportunities) connections to surrounding land uses and activities.
3. *Designating the Contiguous Open Space.* The third step is to identify the contiguous open space to be preserved on the site. Such open space should include the most sensitive and noteworthy resources of the site, and, where appropriate, areas that serve to extend neighborhood open space networks.
4. *Location of Development Areas.* The fourth step is to locate building sites, streets, parking areas, paths and other built features of the development. The design should include a delineation of private yards, public streets and other areas, and shared amenities, so as to reflect an integrated community, with emphasis on consistency with the Town's historical development patterns.
5. *Lot Lines.* The final step is simply to draw in the lot lines (if applicable).

8.2.6 Modification of Lot Requirements. The Planning Board encourages applicants for Flexible Development to modify lot size, shape, and other dimensional requirements for lots within a Flexible Development, subject to the following limitations:

1. Lots having reduced area or frontage shall not have frontage on a street other than a street created by the Flexible Development; provided, however, that the Planning Board may waive this requirement where it is determined that such reduced lot(s) are consistent with existing development patterns in the neighborhood.
2. Side and rear setbacks shall be required as set forth in the host district, but the Planning Board may reduce setbacks but not more than 50% of the required side and rear yards in the district.

8.2.7 Basic Maximum Number of Dwelling Units. The Basic Maximum Number of dwelling units allowed in a Flexible Development shall not exceed the number of lots which could reasonably be expected to be developed upon the site under a conventional plan in full conformance with all zoning, subdivision regulations, health regulations, wetlands regulations and other applicable requirements. The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

8.2.8 Density Bonus. The Planning Board may award a density bonus to increase the number of dwelling units beyond the Basic Maximum Number. The density bonus for the Flexible Development shall not, in the aggregate, exceed 20% of the Basic Maximum Number. Computations shall be rounded to the lowest number. A density bonus may be awarded in the following circumstances:

1. For each additional ten percent (10%) of the site over the open space required below and set aside as contiguous open space, a bonus of five (5%) percent of the Basic Maximum Number may be awarded. Bonus not to exceed 15% of Basic Maximum Number.
2. Where the Planning Board determines that the applicant has offered significant amenities to the Town, including but not limited to infrastructure improvements, equipment, technical assistance, or the preservation of land outside the Flexible Development, a bonus of up to 10% the Basic Maximum Number may be awarded. Bonus not to exceed 15% of Basic Maximum Number.

8.2.10 Types of Buildings. The Flexible Development may consist of any combination of single-unit or two-unit residential structures. Residential structures shall be oriented toward the street serving the premises and not the required parking area.

8.2.11 Roads. The principal roadway(s) serving the site shall be designed to conform with the standards of the Town where the roadway is or may be ultimately intended for dedication and acceptance by the Town. Private ways shall be adequate for the intended use and vehicular traffic and shall be maintained by an association of unit owners or by the Applicant.

8.2.12 Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in this computation.

8.2.13 Contiguous Open Space. A minimum of 20% of the parcel shown on the development plan shall be contiguous open space. Any proposed contiguous open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, educational or recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

1. The percentage of the contiguous open space which is wetlands shall not normally exceed the percentage of the tract which is wetlands; provided, however, that the applicant may include a greater percentage of wetlands in such open space upon a demonstration that such inclusion promotes the purposes set forth in Section 1, above. In no case shall the percentage of contiguous open space which is wetlands exceed fifty (50%) of the tract.

2. The contiguous open space shall be used for conservation, historic preservation and education, outdoor education, recreation, park purposes, agriculture, horticulture, forestry, or for a combination of these uses, and shall be served by suitable access for such purposes.

3. The contiguous open space shall remain unbuilt upon, provided that the Planning Board may permit up to 10% of such open space to be paved or built upon for structures accessory to the dedicated use or uses of such open space, pedestrian walks, and bikepaths.

4. Underground utilities to serve the Flexible Development site may be located within the contiguous open space.

8.2.14 Ownership of the Contiguous Open Space. The contiguous open space shall, at the Applicant's election, be conveyed to

1. the Town or its Conservation Commission;

2. a nonprofit organization, the principal purpose of which is the conservation of open space and any of the purposes for such open space set forth above;

3. a corporation or trust owned jointly or in common by the owners of lots within the Flexible Development. If such corporation or trust is utilized, ownership thereof shall pass with conveyance of the lots in perpetuity. Maintenance of such open space and facilities shall be permanently guaranteed by such corporation or trust which shall provide for mandatory assessments for maintenance expenses to each lot. Each such trust or corporation shall be deemed to have assented to allow the Town to perform maintenance of such open space and facilities, if the trust or corporation fails to provide adequate maintenance, and shall grant the town an easement for this purpose. In such event, the town shall first provide fourteen (14) days written notice to the trust or corporation as to the inadequate maintenance, and, if the trust or corporation fails to complete such maintenance, the town may perform it. Each individual deed, and the deed or trust or articles of incorporation, shall include provisions designed to effect these provisions. Documents creating such trust or corporation shall be submitted to the Planning Board for approval, and shall thereafter be recorded.

8.2.15 Buffer Areas. A buffer area of 25 feet shall be provided at the perimeter of the property where it abuts residentially zoned or occupied properties, except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area will be disturbed, destroyed or removed, except for normal maintenance. The Planning Board may waive the buffer requirement (i) where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or (ii) where the land abutting the site is held by the Town for conservation or recreation purposes; or (iii) the Planning Board determines that a smaller buffer will suffice to accomplish the objectives set forth herein.

8.2.16 Stormwater Management. Stormwater management shall be consistent with the requirements for subdivisions set forth in the Rules and Regulations of the Planning Board.

8.2.17 Condominium or Homeowners' Association. In order to maintain and repair any common areas or the required open space, the developer shall create a condominium or homeowner's association. The documents establishing such association shall be approved as to form by Town Counsel.

8.2.18 Decision. The Planning Board may approve, approve with conditions, or deny an application for a Flexible Development after determining whether the Flexible Development better promotes the purposes of Section 8.2.1 of this Flexible Development By-Law than would a conventional subdivision development of the same locus.

8.2.19 Relation to Other Requirements. The submittals and permits of this section shall be in addition to any other requirements of the Subdivision Control Law or any other provisions of this By-Law.

8.1 Flexible Development for Small Projects

8.1.1 Purpose

Flexible Development is an optional development device, not requiring a Special Permit, designed to encourage efficient use of Erving's topography, preserve open space and maintain the overall density allowed through the Town's zoning.

8.1.2 Method

Any parcel in the Rural Residential District may be divided into not more than three (3) lots, whether a subdivision or not, and built upon under the following alternative area and frontage requirements:

- A. The average frontage for all building lots created shall be no smaller than the minimum required under Section 5, Intensity Regulations, but individual lots may have frontage of as little as 60% of that requirement.
- B. The number of building lots created shall be no more than would have been allowed according to Section 5, Intensity Regulations for that zoning district.
- C. Individual lot area per unit may be as little as 50% of the minimum lot size required in Section 5.
- D. Opting to develop under this method does not remove the developer's obligation to conform to all other rules and laws pertaining to construction or subdivision.
- E. The ANR or Subdivision Plan creating the lots shall be endorsed by the Planning Board as Approved for Flexible Development.
- F. No further increase in the number of lots shall be allowed through subsequent land division and this restriction shall be recorded on relevant plans and deeds.

8.2 Conservation Development

8.2.1 Purpose

The purpose of a Conservation Development is to encourage the preservation of common land for conservation, agriculture, open space, forestry and recreational use; to preserve historical or archaeological resources; to protect existing or potential public or private water supplies; to protect the value of real property; to promote more sensitive siting of buildings and better overall site planning; to promote better utilization of land in harmony with its natural features and with the general intent of the Zoning Bylaw through a greater flexibility in design; and to allow more efficient provision of municipal services.

~~A Conservation Development shall consist of single and/or two family residential dwellings where the houses are arranged together into one or more groups within the development, and are separated from adjacent properties by undeveloped land. This type of development may occur as either a subdivision or as lots being created on an existing public way. The Planning Board may grant a Special Permit for a Conservation Development subject to the following provisions:~~

~~8.2.2 Procedures~~

~~A. Filing an Application. Each application for a Special Permit for a Conservation Development shall be filed with the Town Clerk with a copy filed forthwith with the Planning Board, and shall be accompanied by 10 copies of a preliminary plan of the entire parcel under consideration. The plan shall be prepared by a professional architect, professional engineer, registered landscape architect, or registered land surveyor. Applicants are encouraged to meet with the Planning Board prior to submitting a formal application.~~

~~B. Contents of Application. Said application and plan shall be prepared in accordance with information required for a definitive subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision, and shall include proposed location, bulk and height of all proposed buildings. In addition, the applicant shall provide the following information:~~

~~C.~~

- ~~1. The number of dwellings which would be constructed under this Bylaw by means of a conventional development plan considering the whole parcel, exclusive of water bodies, new access roads, slopes greater than twenty five percent (25%), wetlands, floodplain, and land prohibited from development by legally enforceable restrictions, easements or covenants, or other constraints dictated by the Erving Zoning Bylaw;~~
- ~~2. A plan of the site, including wetlands, water bodies, slopes, the capability of soils to support the proposed development, areas within the 100-year floodplain, and such other natural features as the Planning Board may request. In addition, an existing topographic map and a proposed topographic map at two-foot intervals may be requested;~~
- ~~3. A summary of the environmental issues or constraints relating to the proposed plan;~~
- ~~4. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan on them;~~
- ~~5. Identification of the conservation land proposed within the Conservation Development, with respect to use, size, shape, location, and natural resource value, and accessibility by residents of the Town or of the Conservation Development;~~
- ~~6. Materials indicating the landowner's interest in the land to be developed, the form of the organization proposed to own and maintain the common land, the substance of covenants and grants of easements to be imposed upon the use of land and structures, and a development schedule;~~
- ~~7. If necessary to determine compliance with the requirements or intent of this section, the Planning Board may require further engineering or environmental analysis to be prepared at the expense of the applicant; and~~
- ~~8. Other reasonable requirements requested by the Planning Board.~~

~~D. Review of Other Boards. Before acting upon the application, the Planning Board shall submit it with the plan to the chairperson of the following boards and departments which may review it jointly or separately: the Select Board, Zoning Board of Appeals, Board of Health, the Conservation Commission, the Fire Chief, and the Highway Superintendent. Any such board or agency to which petitions are referred for review shall submit such recommendations as it deems appropriate to the Planning Board~~

and the applicant. Failure to make recommendations within 45 days of receipt shall be deemed as a lack of opposition.

- ~~E. Public Hearing. The Planning Board shall hold a hearing under this section, in conformity with the provisions of M.G.L. Ch. 40A Section 9, and of the Zoning Bylaw and regulations of the Planning Board. The hearing shall be held within 65 days after filing of the application with the Planning Board and the Town Clerk. Notice shall be given by publication and posted as defined in M.G.L. Ch.40A Section 9. The decision of the Planning Board, and any extension, modification or renewal thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. Failure of the Planning Board to act within 90 days shall be deemed a grant of the permit applied for. Issuance of the permit requires an affirmative vote of four members of a five member board. A copy of the decision shall be mailed to the Applicant by the Town Clerk and to any person attending the Public Hearing which requests it.~~
- ~~F. Relation to Subdivision Control Law. Planning Board approval of a Special Permit hereunder shall not substitute for compliance with the subdivision control act, nor oblige the Planning Board to approve any related definitive plan for subdivision, nor reduce any time periods for board consideration under that law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which shall satisfy this section and the board's regulations under the subdivision control act.~~

~~8.2.3 Criteria for Approval~~

~~The Planning Board may grant a Special Permit under this section only if it finds that the applicant has demonstrated the following:~~

- ~~A. that the Conservation Development plan will be in harmony with the general purpose of the Bylaw and the requirements of M.G.L., Ch. 40A, and the Master Plan of the Town;~~
- ~~B. that it will not have a detrimental impact on the neighborhood;~~
- ~~C. that it will be designed with due consideration for health and safety;~~
- ~~D. that it is superior to a conventional plan in preserving land, significant site features, or landscapes;~~
- ~~E. that it minimizes environmental disruption; and~~
- ~~F. that it meets all other Special Permit Criteria identified in Section 6.~~

~~8.2.4 Minimum Requirements~~

- ~~A. The minimum area of land required for a Conservation Development shall be ten (10) acres for a subdivision or eight (8) acres for lots on an existing public way which lots do not require subdivision approval. The parcel shall be held in single ownership or control at the time of application.~~
- ~~B. The maximum number of dwellings for the development shall not exceed that which is normally allowed in the district under a conventional plan.~~
- ~~C. The development shall include lots for single and/or two family dwellings only.~~
- ~~D. Each lot shall have adequate access on a public or approved subdivision road.~~
- ~~E. Each lot shall comply with the minimum dimensions required in this provision.~~
- ~~F. Each lot shall be of a size and shape to provide a building site which shall be in harmony with the natural terrain and other features of the land.~~
- ~~G. At least thirty five percent (35%) of the total parcel of land shall be set aside as common land, not including wetlands, water bodies, floodplains, slopes greater than twenty five (25%), roadways, and land prohibited from development by legally enforceable restrictions, easements or covenants, and~~

~~other constraints dictated by the Erving Zoning Bylaw. Most of the proposed land to be conserved should be contiguous and useable for the purposes described herein.~~

- ~~H. All residential structures and accessory structures within the development shall be set back from the boundaries of the development by a buffer strip of at least fifty (50) feet in width to be kept in a natural condition.~~
- ~~I. There shall be an adequate, safe, and convenient arrangement of pedestrian circulation, facilities, roadways, driveways, and parking. There shall be no parking in the buffer strip.~~
- ~~J. Design of roads, utilities, and drainage shall be functionally equivalent to the standards contained in the Planning Boards Subdivision Control Regulations insofar as is reasonably applicable, but the Board may vary those standards to meet the particular needs of the Conservation Development.~~
- ~~K. No Conservation Development shall be approved unless the applicant can show to the satisfaction of the Planning Board that the potential for groundwater pollution is no greater from the proposed Conservation Development than would be expected from a conventional subdivision with single and/or two family houses on lots meeting the normal lot size requirements located on the same parcel. The burden of proof shall be on the applicant.~~
- ~~L. No septic system shall be allowed with a sewage flow exceeding 10,000 gallons per day (GPD). Reserve area requirements shall not be waived for any system with a flow over 2,000 GPD. Septic systems shall be placed in the development to maximize the distance between systems and may be placed within common open areas rather than on individual lots.~~

~~8.2.5 Dimensional and Density Requirements~~

- ~~A. Building lot sizes shall not be less than 32,670 square feet.~~
- ~~B. In no instance shall a designated lot have less than 125 feet of frontage on a public or approved subdivision road.~~
- ~~C. Minimum front, rear and side yard setbacks shall be 25 feet from the respective lot line.~~

~~8.2.6 Required Conservation Land~~

- ~~A. All land not devoted to dwellings, accessory uses, roads, or other development shall be set aside as common land for recreation, conservation, or agricultural uses which preserve the land in essentially its natural condition. As a general guidance, natural resource land such as wetlands or land that is suitable for extensive public recreational use, should be conveyed to the Town or to a land trust; whereas land which will be principally used by the residents of the Conservation Development should be conveyed to a home owners association.~~
- ~~B. Further subdivision of common open land or its use for other than the above listed uses, except for easements for underground utilities, water supplies and septic systems, shall be prohibited. Structures or buildings associated with recreation, conservation, or agricultural uses may be erected but shall not exceed 5% coverage of such common open land. Any portions of an underground septic system which are located within the common open land shall be marked with a permanent marker that records their location and depth.~~
- ~~C. Such common open land shall be either:
 - ~~1. conveyed to a corporation or trust owned or to be owned by the owners of lots within the development. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots in perpetuity;~~
 - ~~2. conveyed to a non profit organization, the principal purpose of which is the conservation or preservation of open space; or~~~~

- ~~3. conveyed to the Town of Erving, at no cost, and be accepted by it for a park or open space use. Such conveyance shall be at the option of the Town and shall require the approval of the voters at a Town Meeting.~~
- ~~D. In any case, where such land is not conveyed to the Town, a restriction enforceable by the Town shall be recorded to ensure that such land shall be kept in an open or natural state and not be developed for residential use or accessory uses such as parking or roadways. Such restrictions shall further provide for maintenance of the common land in a manner which will ensure its suitability for its function, appearance, cleanliness and proper maintenance of drainage, utilities and the like.~~
- ~~E. If the common land is to be conveyed to the lot owners within the development, ownership and maintenance of such land shall be permanently assured through an incorporated non profit homeowner's association, covenant, or other land agreement through which each lot owner in the development is automatically a member and each lot is subject to a charge for a share of the maintenance expenses or through a comparable arrangement satisfactory to the Planning Board. Such land agreement documents shall be submitted with the Development Plan and shall be subject to approval by the Planning Board and Town Counsel. These covenants shall also include provisions for the maintenance of all common facilities and utilities.~~
- ~~F. Such covenants shall specify how the organization will be governed and how costs will be assessed and that the organization shall remain under the control of the developer until a majority of the lots are conveyed to permanent owners.~~
- ~~G. Such covenants shall provide that in the event that the organization established to own and maintain the common open land or any other commonly owned facilities or utilities or any successor organization fails to maintain the common open land or any other commonly owned facilities or utilities in reasonable order and condition in accordance with the Conservation Development Plan, the Town may, after notice to the organization and public hearing, enter upon such land and maintain it in order to preserve the taxable values of the properties within the development and to prevent the common land from becoming a public nuisance. The covenants shall also provide that the cost of such maintenance by the Town shall be assessed ratably against the properties within the development and shall become a charge on said properties enforceable as a real estate tax and that such charge shall be paid by the property owners within thirty (30) days after receipt of a statement therefore.~~
- ~~H. Further Requirements.~~
- ~~1. There shall be no amendments or changes to an approved Conservation Development Plan without review and approval from the Planning Board.~~
 - ~~2. No lot within an approved Conservation Development may be further subdivided so as to increase the number of lots, and a notation to this effect shall be shown on any Definitive Plan of a subdivision and on the approved Site Analysis/Development Plan if not a subdivision under the Subdivision Control Law.~~
 - ~~3. No use other than residential, agricultural, forestry or recreation shall be permitted.~~
 - ~~4. The Board may grant a Special Permit hereunder for Conservation Development even if the proposed development is not subject to the Subdivision Control Law.~~

8.3 SENIOR HOUSING FACILITY.

8.3.1 Purpose. The purpose of this Section is as follows:

1. To provide for the development and use of alternative housing and nursing care for the elderly;

2. To create home health care, housing and other supportive services for the senior population outside of an institutional setting;
3. To encourage the preservation of open space;
4. To provide alternative housing for seniors that cause relatively little demand on Town services;
5. To preserve the Town's residential character;
6. To provide such accommodations in a manner harmonious with the surrounding land uses while protecting natural resources and open space;
7. To provide housing which is affordable seniors who are Erving residents.

8.3.2 Definitions. See Section 11.0, “Senior Housing Facility”.

8.3.3 Applicability. The Planning Board may grant a special permit for a Senior Housing Facility as defined in Section 11.0 as set forth in the Table of Use Regulations, subject to the requirements of this Section.

1. This Section shall not apply to Senior Housing Facilities existing on the date of adoption of this Section.

8.3.4 Dimensional Requirements and Design Standards. Dimensional requirements and design standards shall be as follows:

1. **Minimum Lot Size.** The minimum lot size (square feet) shall be that required in the district.
2. **Building Height.** Any addition or new construction shall not exceed 35 feet in height as measured in accordance with the State Building Code. This shall not preclude the reuse and renovation of existing structures which may exceed this height limit.
3. **Building Setbacks.** Buildings shall be set back as required in the district for side and rear yards.
4. **Minimum Lot Frontage.** The minimum lot frontage shall conform to the requirements of the district where such use is located.
5. **Town Services.** Facilities shall be serviced by public or private water and wastewater systems of sufficient capacity to serve the project. Any extension and/or replacement of sewer and/or water lines necessary to provide sufficient capacity shall be the responsibility of the applicant.

6. **Parking.** The minimum number of parking spaces provided on the lot shall be 0.5 spaces per bedroom, plus spaces equal to the largest employee shift, plus one visitor space per every ten bedrooms. These requirements may be reduced by the SPGA where public transit or the residents are unlikely to require such parking.

7. **Access and On-site Circulation.** Adequate on-site circulation shall be provided to and from the site, taking into consideration the adjacent sidewalks and streets and accessibility of the site and building(s) thereon for emergency vehicles. Adequate provision shall be made for off-street loading and unloading requirements of delivery vehicles and passengers using private transportation.

8. **Public Safety.** The facility shall have an integrated emergency call, telephone and other communication system to provide monitoring for its residents. There shall be sufficient site access for public safety vehicles. A plan shall be approved by the Fire Department for the emergency evacuation of residents with emphasis on ensuring the safety of residents with physical impairments.

9. **Landscaping.** Landscaping and screening is required to obscure visibility from beyond the boundaries of the premises of parking areas, dumpster locations and loading areas. The minimum setback from all property lines of such parking lots, dumpster locations, and loading areas, except for their points of ingress and egress, shall be 15 feet.

8.3.5 Accessory Uses. The operator of the Senior Housing Facility may also provide optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the Senior Housing Facility and the accessory uses shall be wholly within a residential structure and shall have no exterior advertising display. Adult social day care may be provided as an accessory use.

8.3.6 Special Permit Procedure. The procedure for a special permit under this Section shall be governed by Section 10.5.

~~SECTION 7—PHASING OF GROWTH~~

~~7.1 Purpose. The purposes of this section are: to promote orderly growth in the Town of Erving, consistent with the rate of growth over 10 years prior to the adoption of this provision; to phase growth so that it will not unduly strain the community's ability to provide basic public facilities and services; to provide the town, its boards and its agencies with information, time and capacity to incorporate such growth into the Master Plan and the regulations of the community; and to preserve and enhance existing community character and the value of property. Section 7 shall remain in effect until December 31, 2023.~~

~~7.2 Regulations~~

~~7.2.1 Scope. No building permit for a residential unit or units shall be issued unless in accordance with the Regulations of Section 7 of this Bylaw.~~

~~7.2.2 Application. The Regulations of this section shall apply to all definitive subdivision plans, divisions of land not requiring subdivision approval, and Special Permits which would result in the creation of a new dwelling unit or units. Dwelling units shall be considered as part of a single development for purposes of Phased Growth if located either on a single parcel or contiguous parcels of land which are in the same ownership at the time an application is submitted.~~

~~7.2.3 Issuance of Residential Building Permits. Except as provided below, a town-wide total of not more than twelve (12) new dwelling units shall be authorized by the Town within any one calendar year. General Applicants. Not more than two (2) dwelling units shall be authorized via a Building Permit(s) for any one applicant within any calendar year except as provided below. Special Conservation Development Projects (see 8.2). Up to four (4) building permits for one Special Conservation Development Project will be allowed in each calendar year. Building permits for up to four (4) dwelling units may be obtained by the same person receiving a Special Permit for an approved Special Conservation Development Project and those building permits will only count as one (1) unit toward the annual town-wide total of twelve (12). In a calendar year when a Special Conservation Development Project has already received the above described four (4) building permits, other Special Conservation Development Projects will be eligible to apply for building permits for up to two (2) dwelling units which will count towards the town-wide total of twelve (12).~~

~~Special Large Lot Projects. Up to four (4) building permits per calendar year may be issued for Special Large Lot Projects, which permits shall not count towards the building permit cap. To qualify for one of these building permits, a parcel must have frontage eligible for two (2) ANR (Subdivision Approval Not Required) lots and a minimum of 25 acres. The owner of such a parcel may apply for a single or a two-family dwelling. The remainder of the parcel not used for building(s) must be placed under a conservation easement that prohibits further development of the parcel.~~

~~7.3 Administration~~

~~7.3.1 Rules and Regulations. the Planning Board may adopt rules and regulations relative to the administration of this Section. The Planning Board may from time to time amend the rules and regulations. Copies of the rules and regulations shall be on file and available for review at the office of the Town Clerk.~~

~~7.3.2 Order of Processing Applications for Building Permits. The Building Inspector shall process applications for residential building permits in a chronological order determined by the date upon which the Building Inspector receives a completed application. The Building Inspector will not record an application as complete and received without verification that the applicant has complied with required development related reviews and approvals by the Conservation Commission, the Zoning Board of Appeals, the Planning Board, and the Highway Superintendent, and others as required by the General Laws of the Commonwealth of~~

~~Massachusetts and the Bylaw of the Town of Erving. As each complete application is received, the Building Inspector shall assign it a number in a chronological order along with previously received completed applications of the same category (i.e., exempted development, general applications, or special project applications). The Building Inspector shall then grant Building Permits in accordance with the provisions of Section 7.~~

~~7.3.3—Excess Permit Applications. Beginning January 1 of each year, the Building Inspector shall hold over from the previous year, and place at the head of the chronological order only those completed applications which were received previously but for which no building permit was issued. All other applicants, including those who received building permits for part of their proposed development, shall obtain their place in chronological order by submitting a complete application.~~

~~7.4—Building Permit Amendment. No change may be made to an existing building permit without the approval of the Building Inspector as required by the State Building Code.~~

SECTION 9.0 SPECIAL DISTRICTS

9.1 FLOODPLAIN OVERLAY DISTRICT (FPOD)

9.1.1 Purpose. The purpose of the Floodplain Overlay District (FPOD) is to:

1. Ensure public safety through reducing the threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions; and
6. Reduce damage to public and private property resulting from flooding waters.

9.1.2 Definitions. See Section 11.0 “Floodplain Overlay District.”

9.1.3 Overlay District. The FPOD is hereby established as an overlay district. The FPOD includes all special flood hazard areas within Erving designated as Zone A, AE, AH, AO, or A99 on the Franklin County Flood Insurance Rate Map (FIRM) dated ***issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The exact boundaries of the District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Franklin County Flood Insurance Study (FIS) report dated ***. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

9.1.4 Designation of Community Floodplain Administrator. The Town hereby designates the position of Town Planner to be the official floodplain administrator.

9.1.5 Building Permit. A building permit is required for all proposed development in the Floodplain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

9.1.6 Other Permits. An applicant for a building permit shall demonstrate to the Building Inspector that all local, state and federal permits that will be necessary in order to carry out the proposed development in the FPOD have also been obtained. **Prior to the issuance of a building permit, the applicant shall** acquire all necessary permits, and must demonstrate that all necessary permits have been acquired.

9.1.7 Floodway Encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

9.1.8 Unnumbered A Zones. In A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

9.1.9 AO and AH Zones Drainage Requirements. Within Zones AO and AH on the FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

9.1.10 Subdivision Proposals. All subdivision proposals and development proposals in the FPOD shall be reviewed to assure that:

1. Such proposals minimize flood damage;
2. Public utilities and facilities are located & constructed so as to minimize flood damage; and
3. Adequate drainage is provided.

9.1.11 Base Flood Elevation Data for Subdivision Proposals. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

9.1.12 Recreational Vehicles. In A1-30, AH, AE Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation

and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

9.1.13 Watercourse Alterations or Relocations in Riverine Areas. In a riverine situation, the Floodplain Administrator shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th floor, Boston, MA 02114
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor, Boston, MA 02110

9.1.14 Requirement to Submit New Technical Data. If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th floor, Boston, MA 02114
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor, Boston, MA 02110

9.1.15 Variances to Building Code Floodplain Standards. The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

9.1.16 Variances to this Bylaw Related to Community Compliance with the National Flood Insurance Program (NFIP). A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if:

1. Good and sufficient cause and exceptional non-financial hardship exist;
2. the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and

3. the variance is the minimum action necessary to afford relief.

9.1.17 Abrogation and Greater Restrictions Control. The floodplain management regulations found in this FPOD shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

9.1.18 Disclaimer of Liability. The degree of flood protection required by this Section is considered reasonable but does not imply total flood protection.

~~18. Severability section~~

~~If any section, provision or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.~~

9.2 GROUNDWATER PROTECTION OVERLAY DISTRICT (GPOD)

9.2.1 Purpose. The purpose of the Groundwater Protection Overlay District (GPOD) is:

1. to promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Erving;
2. to preserve and protect existing and potential sources of drinking water supplies;
3. to conserve the natural resources of the Town; and
4. to prevent temporary and permanent contamination of the environment.

9.2.2 Overlay District. The GPOD is an overlay district superimposed on the zoning districts. The GPOD shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the GPOD must additionally comply with the requirements of this district. Uses that are prohibited in the underlying zoning districts shall not be permitted in the GPOD.

9.2.3 Definitions. See Section 11.0 “Groundwater Protection Overlay District.”

9.2.4 Establishment and Delineation of Groundwater Protection Overlay District. For the purpose of the GPOD, there are hereby established within the town certain groundwater protection areas consisting of aquifers or Zone II recharge areas identified by Tighe & Bond as part of their Source Water Assessment Program Conceptual Zone II Delineation report prepared for the Massachusetts DEP, September 1999. This map is entitled “Figure 2 – Zone II Delineation, Erving Well #1, Erving Water Department, Erving, Massachusetts” at a scale of 1:25,000. This map is hereby made a part of this Bylaw and is on file in the Office of the Town Clerk and areas that are shown as Zone II recharge areas are the Groundwater Protection Overlay District.

9.2.5 GPOD Boundary Disputes. If the location of the GPOD boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the Board of Selectmen acting as Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.

9.2.6 Permitted Uses. The following uses are permitted within the Groundwater Protection Overlay District, provided that all necessary permits, orders, or approvals required by local, state or federal law are also obtained:

1. Conservation of soil, water, plants and wildlife;
2. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted;
3. Foot, bicycle and/or horse paths, and bridges;
4. Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
5. Maintenance, repair, and enlargement of any existing structure, subject to Section 9.2.7 and Section 9.2.8.;
6. Residential development, subject to Section 9.2.7 and Section 9.2.8.;
7. Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Section 9.2.7 and Section 9.2.8.;
8. Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels.

9.2.7 Prohibited Uses. The following uses are prohibited:

1. Underground storage tanks related to a Permitted Use are categorically not permitted.
2. Landfills and open dumps as defined in 310 CMR 19.006;
3. Storage of liquid petroleum products, except the following:
 - a. normal household use, outdoor maintenance, and heating of a structure;
 - b. Waste oil retention facilities required by statute, rule, or regulation;
 - c. Emergency generators required by statute, rule, or regulation; or

- d. treatment works approved under 314 CMR 5.00 for treatment of ground or surface water; provided that such storage, listed in items a. through d. above, is in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage capacity;
4. Landfilling of sludge or septage as defined in 310 CMR 32.05;
5. Storage of sludge or septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
6. Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 to receive more than 110 gallons of sewage per quarter acre under one ownership per day, or 440 gallons of sewage on any one acre under one ownership per day, whichever is greater provided that:
 - a. the replacement or repair of a system, which will not result in an increase in design capacity, or the design capacity of 310 CMR 15.00, whichever is greater, shall be exempted; or
 - b. in cluster subdivisions the total sewage flow allowed shall be calculated based on the number of percable lots in the entire parcel.
7. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
8. Storage of animal manure unless covered or contained in accordance with the specifications of the United States Natural Resource Conservation Service;
9. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material (including mining activities) to within 6 feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works;
10. Facilities that generate, treat, store, or dispose of hazardous waste subject to MGL 21C and 310 CMR 30.000, except the following:
 - a. very small quantity generators as defined under 310 CMR 30.000;
 - b. household hazardous waste centers and events under 310 CMR 30.390;
 - c. waste oil retention facilities required by MGL Chapter 21, Section 52A; and

- d. water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
11. automobile graveyards and junkyards, as defined in MGL Chapter 140B, Section 1; treatment works that are subject to 314 CMR 5.00 including privately owned sewage treatment facilities, except the following:
 - a. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the existing treatment works;
 - b. the replacement of existing subsurface sewage disposal systems with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing systems;
 - c. treatment works approved by the Massachusetts Department of Environmental Protection designed for the treatment of contaminated groundwater;
 - d. sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality.
 13. Storage of hazardous materials, as defined in MGL Chapter 21E, unless they are in free-standing containers within buildings having an impervious floor surface which will contain any spill or in above ground covered tanks with a secondary containment area adequate to contain a spill equal to 110% of the size of the container's total storage;
 14. Industrial and commercial uses which discharge process wastewater on-site;
 15. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
 16. Storage of commercial fertilizers, as defined in MGL Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;
 17. The use of septic system cleaners which contain toxic or hazardous chemicals.

9.2.8 Uses and Activities Requiring a Special Permit. The following uses and activities are permitted only upon the issuance of a special permit by the SPGA under such conditions as they may require:

1. Enlargement or alteration of existing uses that do not conform to the GPOD;

2. Application of fertilizers for non-domestic or non-agricultural uses. Such applications shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition, and sedimentation;
3. Those activities that involve the handling of toxic or hazardous materials in underlying zoning (except as prohibited under Section 4.3.6.B). Such activities shall require a special permit to prevent contamination of groundwater;
4. Construction of dams or other water control devices, ponds, pools, or other changes in water bodies or courses, created for swimming, fishing, or other recreational uses, agricultural uses, or drainage improvements. Such activities shall not adversely affect water quality or quantity;
5. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

9.2.9 Procedures for Issuance of Special Permit. The SPGA under this Section shall be the Select Board. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Department of Public Works, the Water Department and the Planning Board, that the intent of this Section, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this Section unless the application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this Section. The SPGA shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision.

1. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, the Department of Public Works and the Water Department, for their written recommendations. Failure to respond within 35 days of receipt by the Board shall indicate approval or no desire to comment by said department. The applicant shall provide seven (7) copies of the application to the SPGA.

2. The application shall be processed in accordance with G.L. c. 40A, s. 9.

9.2.10 Criteria. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 10 of this Bylaw, and any regulations or guidelines adopted by the SPGA. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the GPOD, and be designed to avoid disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

9.2.11 Regulations. The SPGA may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the Planning Board.

9.2.12 Application. The applicant shall file seven (7) copies of a site plan and attachments with the SPGA. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information:

1. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
2. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and the Board of Health. The plan shall include:
 - a. provision to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
 - b. provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - c. evidence of compliance with the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
3. Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

~~F. — The SPGA shall hold a hearing, in conformity with the provision of MGL Chapter 40A, Section 9, within 65 days after the filing of the application with the Town Clerk. Notice of the public hearing shall be given by publication and posting and by first class mailings to “parties of interest” as defined in MGL Chapter 40A, Section 11. The decision of the SPGA and any extension, modifications, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said Section 11.~~

9.2.13 Violations. Written notice of any violations of this Bylaw shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Board of Health, the Conservation Commission, the Department of Public Works, and the Water Department. The cost of containment, clean up, or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the GPOD, the Town of Erving, Building Inspector, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of Erving, the Building Inspector, the Board of Health, or any of their agents, if authorized to enter upon such premises under the terms of the special permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and operator of the premises.

~~4.3.8 Severability~~

~~A determination that any portion or provision of this overlay protection district is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.~~

~~9.3 WIRELESS COMMUNICATIONS OVERLAY DISTRICT (WCOD)~~

~~**9.3.1 Purpose.** The purpose of the Wireless Communication Overlay District (WCOD) is to designate areas in which wireless communication facilities may be located in order to protect Erving's community character and minimize the harm to public health, safety, and general welfare.~~

~~**9.3.2 Definitions.** See Section 11.0, "Wireless Communications Overlay District."~~

~~**9.3.3 Overlay District.** The WCOD shall be construed as an overlay district as identified on the Official Zoning map. All requirements of the underlying districts shall remain in full force and effect, except as may be specifically superseded herein.~~

~~**9.3.4 Special Permit Required.** A Wireless Communication Facility may only be erected in the WCOD provided that a special permit is granted. The Special Permit Granting Authority (SPGA) shall be the Planning Board. In lieu of the criteria set forth in Section 10.5, a special permit may be granted if the SPGA determines that the adverse effects of the proposed facility will not outweigh its beneficial impacts on the Town or neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site, the determination shall include the following:~~

1. ~~Communication needs served by the facility;~~
2. ~~Traffic flow and safety, including parking, loading, and distance to occupied structures;~~
3. ~~Impacts on neighborhood character, including aesthetics;~~
4. ~~Impacts on the natural environment;~~
5. ~~Impacts to historical and scenic areas;~~
6. ~~Potential fiscal impact, including impact on Town services, tax base, and employment; and~~
7. ~~New towers or poles shall be considered only upon a finding that existing structures of facilities cannot accommodate the applicant.~~

9.3.5 ~~Design Requirements.~~ Guidelines and Conditions All Special Permits for Wireless Communication Facilities shall be subject to the following conditions:

1. ~~To the extent possible, Wireless Communication Facilities shall be placed on existing structures, including water tanks, towers, and electrical transmission towers;~~
2. ~~To the extent possible, Wireless Communication Facilities shall be co-located to minimize the impact to the community and environment;~~
3. ~~Applicants should include a plan to accommodate foreseeable future users where technically practicable without increased impact to the community and environment;~~
4. ~~To the extent possible, the design of the Wireless Communication Facility shall minimize the visual impact on the community and environment. Color schemes shall be utilized which blend in with the landscape, including the skyline. Landscaping shall be required to screen as much of the support structure as possible;~~
5. ~~Fencing shall be required to control access to the Wireless Communication Facility, and shall be compatible with the scenic area;~~
6. ~~Wireless Communication Facilities shall be maintained in good order and repair and appearance;~~
7. ~~Wireless Communication Facilities which have not been used for their intended purpose for one year shall be dismantled and removed at the owner's expense;~~
8. ~~Any new tower or monopole shall not be erected nearer to the property line than a distance equal to the vertical height of the structure, nor shall it be allowed within 500 feet of any residential structure, or 1000 feet from any school for safety reasons;~~

~~9. No new towers or monopoles may be erected in any scenic or historical area as identified by the Town's Open Space Plan or Master Plan;~~

~~10. Any and all signage shall comply with this Bylaw, and no advertising devices shall be allowed on any Wireless Communication Facility;~~

~~11. Lighting shall be limited to that needed for safety, emergencies, security, and/or as required by the Federal Aviation Administration;~~

~~12. There shall be a minimum of one (1) parking space for each facility, to be used in connection with the maintenance of the site, and not to be used for the permanent storage of any vehicles or equipment;~~

~~13. Applicant shall submit a written report inventorying existing Wireless Communication Facilities in Erving and adjacent towns and documenting why existing facilities cannot accommodate the applicant's requirements. No new facilities shall be permitted until the applicant proves, to the reasonable satisfaction of the Planning Board, that no existing facility can accommodate the applicant's requirements. New facilities will only be considered after a finding that existing facilities, or previously approved facilities cannot accommodate the proposed uses;~~

~~14. Applications for special permits may be approved with conditions upon fulfillment of the requirements contained in this Bylaw. Applicants for special permits shall be denied if the applicant cannot fulfill the requirements of this Bylaw. The SPGA may require a financial performance guarantee to ensure any of these conditions; and~~

~~15. Any replacement, modification, or additional user/carrier to an existing wireless communication facility shall require a separate special permit, subject to all of the requirements of this Bylaw.~~

~~9.3.6 Submittal Requirements.~~ All special permit applications for a Wireless Communication Facility shall be made and filed in compliance with the procedural requirements of M.G.L. Chapter 40A, Sec 9. In addition, ~~5~~ copies of the following information, professionally prepared, must be submitted for an application to be considered:

~~1. A locus plan at a scale of 1"=200' which shall show all property lines, the exact location of the proposed structure(s), street, topography, landscape features, all structures within 1000 feet, setback lines, and easements;~~

~~2. A detailed site plan and elevations at a scale of 1"=10' or larger;~~

~~3. A color photograph or rendition of the facility with its antennas and/or panels. For satellite dishes or antennas, a color photograph or rendition illustrating the dish or antenna at the proposed site, also, a prepared rendition illustrating a view of the facility from the nearest street or streets;~~

- ~~4. A description of the facility including technical specifications, height, and design, a statement of capacity of the facility including the number and type panels, antennas, and transmitter and/or receivers that it can accommodate and the basis for those calculations;~~
- ~~5. A certification that the proposed facility complies with, or is exempt from, all applicable federal and state requirements, including regulations administered by the Federal Aviation Administration, Federal Communication Commission, and the Massachusetts Aeronautics Commission, and the Massachusetts Department of Public Health;~~
- ~~6. An estimated cost of demolition, removal, and to extent feasible, restoration of the site to its original condition, by an appropriately licensed contractor(s) independent from the owner or installer. Any estimate submitted must be valid for at least one year; and~~
- ~~7. In the event the SPGA, determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant.~~

~~9.3.7 Restrictions.~~

- ~~1. In no event shall any tower be located closer than 150% of the vertical height of the tallest tower from any other tower.~~
- ~~2. Tower height shall not exceed 65 feet above the tree canopy. No Wireless Communication Facility shall exceed 90 feet on bare terrain in height as measured from the mean grade, out 25 feet, 4 points, 90 degrees apart, from the center point of the tower to the highest point. In an effort to encourage co-location of antennas or panels on any one facility, the height of the facility may be increased by 10 feet for each co-locator up to a maximum total of 120 feet. The tower must be structurally capable of providing space for six major co-locators on the tower. That tower plan must be stamped capable of the six co-locators by a Licensed Professional Engineer.~~
- ~~3. Traffic associated with the facility shall not adversely effect abutting ways.~~
- ~~4. Facilities shall be suitably screened from abutters and residential neighborhoods.~~
- ~~5. An annual statement shall be provided to the Board of Selectmen and Board of Assessors with the following information:
 - ~~a. The name(s) and business addresses of all service companies using the facility;~~
 - ~~b. An estimate of current demolition and removal costs and, to the extent feasible, restoration of the site to original condition.~~~~
- ~~6. Any restriction previously posed in any section of this Bylaw.~~

~~9.3.8 Non-Use.~~ All structures associated with wireless communication facilities which have not been used for their intended purpose for 1 year shall be dismantled and removed at the

owner's expense. Prior to issuance of a building permit for a wireless communications tower, the applicant is required to post with the Town treasurer a bond or other form of financial security acceptable to said treasurer in an amount set by the Board of Selectmen. This amount may be adjusted annually based on estimated demolition, removal, and restoration costs. The amount shall be sufficient to cover demolition or removal costs in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures, or deems it was unused for 1 year. The Building Inspector shall give the applicant 45 days written notice in advance of any demolition or removal actions.

9.3.9 Exemptions.

1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communication Commission shall be exempt provided that the tower is not used or licensed for any commercial purposes and that the antennae structure shall be no higher than is required to effectively accommodate amateur radio communication needs.
2. Satellite dishes and antennas for residential use only.
3. Commercial entities using satellite dishes or antennas for which reception signals are a free service to their customers.

9.3.10 Waivers. The SPGA may (but is not required to) waive strict compliance with the Restriction set forth in Section 9.3.7 of this Bylaw when, the applicant can prove, with engineering evidence, that service cannot otherwise be provided.

SECTION 10.0 ADMINISTRATION AND PROCEDURES

10.1 PERMITS.

10.1.1 Building Inspector. The office of the Building Inspector is responsible for the issuance of building permits. He shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of this Bylaw and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this Bylaw. When a special permit, site plan approval, or variance has been may be granted with conditions, such conditions shall be enforced by the Building Inspector.

10.1.2 Certificate of Occupancy. No use or occupation of land for any purpose for which a certificate of occupancy is required shall be made, in whole or in part, until such a certificate has been issued by the Building Inspector stating that the use of land and structure, if any, complies with this Bylaw and other applicable codes in effect at the time of issuance.

10.2 ENFORCEMENT.

10.2.1 Building Inspector. The office of the Building Inspector is responsible for the enforcement of this Bylaw. The Building Inspector is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance.

1.2 Enforcement

~~The Building Inspector shall administer and enforce this Zoning Bylaw. Buildings or structures may be constructed, altered, or changed in use only upon certification by the Building Inspector that such action is in compliance with the then applicable Bylaw and that all necessary local permits have been received.~~

10.2.1 Penalties. Any person violating any provision of this Bylaw, upon conviction, shall be fined \$300 for each offense, and each day that such violation continues shall constitute a separate offense.

1.3 Penalty

~~Any person violating any of the provisions of this Bylaw may be fined Three Hundred Dollars (\$300) for each offense. Each day that such violation continues shall constitute a separate offense.~~

10.2.3 Noncriminal Disposition. In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this Bylaw may be enforced by the Building Inspector by noncriminal complaint pursuant to the provisions of M.G.L. c. 40, s. 21D. The penalty for violation of any provision of this Bylaw shall be \$25.00 for the first offense; \$50.00 for the second offense; \$100.00 for the third offense and \$200.00 for the fourth and each subsequent offense.

1.4 Filing Fees and Hiring of Outside Consultants

~~1.4.1 Filing Fees~~

~~Any application for a Special Permit, variance, and/or appeal for a commercial project (non-residential) shall be accompanied by a filing fee of \$500.00; for a residential project the filing fee shall be \$300.00, plus any additional expenses as specified in this Bylaw.~~

~~1.4.2 Hiring of Outside Consultants~~

~~A. Purpose. As provided by G.L. Ch. 44 §53G, the Erving Planning Board may impose reasonable fees for the employment of outside consultants, engaged by the Planning Board, for specific expert services. Such services shall be deemed necessary by the Planning Board to come to a final decision on an application submitted to the Planning Board pursuant to the requirement of: Town of Erving Subdivision Regulations, as they may be amended or enacted from time to time. The Planning Board may also impose fees for other consultant services, related to application review, or permit conditioning or monitoring, under any of the above referenced laws or regulations.~~

~~B. Special Account. Funds received pursuant to these rules shall be deposited with the town treasurer who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Planning Board without further appropriation as provided in G.L. Ch. 44 §53G. Expenditures from this account shall be made only in connection with a specific project or projects for which a consultant fee has been collected from the applicant. Expenditures of accrued interest may also be made for these purposes.~~

~~C. Consultant Services. In hiring outside consultants, the Planning Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Planning Board and to ensure compliance with all relevant laws, ordinances, bylaws and regulations. Specific consultant services may include but are not limited to analysis of applications, title searches, mapping of lot and/or municipal boundaries and/or right of way, and environmental or land use law. Services may also include on site monitoring during construction, or other services related to the project deemed necessary by the Planning Board. The consultant shall be chosen by, and report only to, the Planning Board and/or its administrator.~~

10.3 ZONING BOARD OF APPEALS.

10.3.1 Appointment; Organization. The Zoning Board of Appeals shall consist of three (3) regular members appointed by the Board of Selectmen, each member to be appointed for a term of three years, terms to be so arranged that the term of one member expires each year. The Selectmen shall also appoint two associate members so that the Chairman of the ZBA may designate any such associate member to sit on the board in case of absence, inability to act, or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board. The two associate members shall be appointed such that their terms do not expire the same year. Vacancies shall be filled in the same manner as appointments. The Board of Appeals shall elect one of its members as chairman and one of its members as clerk, each to serve for a one year term.

~~1.5 Zoning Board of Appeals (ZBA)~~

~~There is hereby established a Zoning Board of Appeals of three members, to be appointed by the Selectmen, each member to be appointed for a term of three years, terms to be so arranged that the term of one member expires each year. The Selectmen shall appoint two associate members so that the Chairman of the ZBA may designate any such associate member to sit on the board in case of absence, inability to act, or conflict of interest on the part of any member thereof, or in the event of a vacancy on the board.~~

10.3.2 Powers. The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Bylaw. The Board's powers are as follows:

1. To hear and decide applications for special permits when designated as the Special Permit Granting Authority.
2. To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in M.G.L. c. 40A, s. 10. The Board of Appeals shall not have the power to grant use variances.

3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.

4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

10.3.4 Regulations. The Board of Appeals may adopt rules and regulations for the administration of its powers.

10.3.5 Fees. The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

10.4 PLANNING BOARD.

10.4.1 Establishment. The Planning Board shall consist of five (5) elected members and two appointed associate members.

10.4.2 Powers. The Planning Board shall have the following powers:

1. To hear and decide applications for special permits, when designated as the SPGA in this Bylaw.

2. To hear and decide applications for site plan approval pursuant to Sections 10.5 and 10.8.

10.4.3 Associate Members of the Planning Board. Under G.L. c. 40A, s. 9, the Selectmen shall appoint one associate member for a term of one year annually so that the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy of the board.

10.4.4 Regulations. The Planning Board may adopt rules and regulations for the administration of its powers.

10.4.5 Fees. The Planning Board may adopt reasonable administrative fees and technical review fees for applications for special permits and site plan review.

10.5 SPECIAL PERMITS.

~~6.1.1 Purpose~~

~~Special Permits are intended to provide a detailed review of certain uses and structures which may have a substantial impact upon traffic, municipal services, and the community character of the Town among other considerations. The Special Permit review process is intended to insure a harmonious relationship between proposed development and its surroundings, and to insure that proposals are consistent with the purpose and intent of this Bylaw.~~

~~6.1.2 Procedure for Issuing Special Permits~~

~~Special Permits shall be granted, denied, or issued with conditions by the Planning Board according to the provisions of Chapter 40A of the Massachusetts General Laws.~~

~~6.1.10 Conformance with Bylaw Amendments~~

~~When subsequent amendments to the Bylaw are made, operations or construction under a Special Permit shall conform to the Amendments unless use or construction is commenced within 6 months after issuance of the permit.~~

10.5.1 Special Permit Granting Authority. When designated by this Bylaw, the Board of Appeals, the Select Board, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

1.6 Special Permit Granting Authority

Except as otherwise noted in this Zoning Bylaw, the Special Permit Granting Authority (SPGA) shall be the Planning Board. Special Permits shall be granted only for proposals in compliance with the provisions of this Bylaw, and with M.G.L. Chapter 40A, and upon written determination by the Planning Board that the proposal will not have adverse effects which overbalance its beneficial effects on the Town, as measured by the purposes of the Bylaw. In acting on Special Permits, the Planning Board shall consider the Special Permit Criteria listed in Section 6.

10.5.2 Criteria. Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

~~6.1.9 Criteria~~

~~In acting upon Special Permits, the Planning Board or ZBA shall consider whether:~~

- ~~A. There is sufficient Town capacity to service the premises, considering existing roads, town equipment, and other municipal services.~~
- ~~B. The impact on adjoining premises from sound, light, odor, noise, and other disturbances is avoided or minimized.~~

- ~~C. The proposal will avoid or minimize topographic change, removal of mature trees or other botanical assets, removal of cover vegetation, risk of erosion or siltation, increased storm water runoff from the site, or displacement of natural habitats.~~
- ~~D. The proposal will not cause surface or groundwater pollution, surface or subsurface drainage detrimental to abutting properties, or adverse effects upon the natural environment in the area where the use is located.~~
- ~~E. There is adequate sight distance and traffic safety at the entrance to public ways.~~
- ~~F. The proposal is compatible with the neighborhood character.~~
- ~~G. The proposal minimizes adverse effects upon historic and other cultural resources.~~
- ~~H. There are positive employment and fiscal consequences.~~
- ~~I. The activity, traffic, site plan, and building design will influence positively the Town's community character.~~
- ~~J. The activity, site plan, and building design are consistent with development of tourist activity in Erving.~~
- ~~K. Curb cuts on Route 2 (Mohawk Trail) are minimized to prevent traffic congestion and accidents.~~
- ~~L. Lighting is designed to minimize glare and light pollution and cut off fixtures will be employed to the maximum extent feasible.~~

10.5.3 Procedures. An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority and G.L. c. 40A, s. 11.

~~6.1.8 Public Hearing~~

~~After the opportunity for review by other boards has taken place, the Planning Board shall hold a hearing under this section within 65 days from the date of filing of the applications, in conformity with the provisions of M.G.L., Ch. 40A Section 9. Abutters shall be notified by mail of the Public Hearing. The decision of the Planning Board, and any extension, modification or renewal thereof, shall be made within 90 days following the closing of the public hearing, and the written record of the decision shall be filed with the Town Clerk within 14 days of the final vote or sooner as required to meet the 90 day maximum time frame. A copy of the decision shall be mailed to the Applicant by the Town Clerk and to any person attending the Public Hearing which requests it.~~

~~6.1.4 Application Fee~~

~~A fee shall be collected by the Town Clerk at the time that an application for a Special Permit is submitted. Said fee shall reflect the cost of printing, advertising and mailing for the permitting process. Additional expenses in excess of the filing fee shall be assessed to the applicant and must be paid in order for the application to be processed by the Special Permit Granting Authority.~~

10.5.4 Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this Bylaw;
2. Requirements as to installation of screening, fencing or other means of protecting adjacent property;

3. Modification of the exterior features or appearance of any structure;
4. Limitation as to size, number of occupants, or method and time of operation of any proposed use;
5. Regulation of number, design and location of access drives and other traffic features;
6. Requirement of off-street parking and other special features;
7. Installation of mechanical or other devices to limit noise, light, odor or other objectional aspects of use; and
8. Requirement for surety bonds or other security for the performance of any conditions attached to the special permit.

10.5.5 Referral. The Board of Appeals, Board of Selectmen and Planning Board, when serving as the SPGA, shall refer a special permit application to the Board of Health, Conservation Commission, and the Department of Public Works for written comments and recommendations before taking final action on said special permit application. The SPGA may refer a special permit application to any other town agency, board, or department for comments and recommendations if it so desires before taking final action on said special permit application. A public hearing on said referral shall not be required. Any such Board or Agency to which applications are referred for comment shall make its recommendations and send copies thereof to the SPGA and the applicant within thirty-five (35) days of receipt of the referral request by said board or agency or there shall be deemed no opposition or desire to comment. The SPGA shall not act upon said special permit until either comments from referred board or agencies have been received, or said thirty five (35) days have elapsed, whichever is sooner. Applications referred to more than one board or agency may be reviewed jointly by said boards or agencies.

10.5.6 Plans. Unless otherwise provided by rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.6, herein. The provisions of this Section shall not apply to applications for special permits pursuant to Section 5.0 to alter a nonconformity. The Zoning Board of Appeals shall establish procedures governing such applications by regulation.

10.5.7 Regulations. Pursuant to G.L. c. 40A, s. 9, the Planning Board may adopt rules relative to the issuance of special permits. These rules and regulations may relate to the size, form, content and style of the plans and procedures for submission and approval of such special permits, and shall not be inconsistent with the General Laws and provisions of this Bylaw. The Planning Board may from time to time amend these rules. Copies of the rules shall be on file and available for review at the office of the Town Clerk.

10.5.8 Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

10.5.9 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 36 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

~~6.1.10 Lapse of Special Permit~~

~~If substantial use or construction under a Special Permit has not commenced within one year of the date of issuance of the Special Permit, that permit shall be considered to have lapsed. Such time period shall be extended by the time required to pursue or await the determination of an appeal pursuant to M.G.L. Section 40A Section 17.~~

10.6 SITE PLAN REVIEW.

10.6.1 Purpose. The purpose of site plan review is to ensure the design and layout of certain developments permitted as a matter of right, by special permit, or by variance. Site plan review is intended to promote suitable development that will not result in a detriment to the neighborhood or the environment.

~~CURRENT BYLAW—~~

~~Site Plan Review is intended to allow the Planning Board to discuss with landowners at a preliminary stage in the development process how proposed changes in use and/or parcelization might be designed in order to achieve a harmonious relationship between the proposed changes and their surroundings.~~

10.6.2 Applicability. The following activities shall require site plan approval from the Planning Board:

1. Any new development, expansion, or change of use other than a single-unit or two-unit residence which would, under the parking schedule "Off-Street Parking Regulations" of Section 6.1, require five (5) or more parking spaces, regardless of the number of parking spaces preexisting on the premises; and
2. Any site development which involves cutting or removal of vegetation shall be permitted only upon site plan approval from the Planning Board.

~~CURRENT BYLAW—A Site Plan Review shall be required:~~

- ~~1. for any creation of lots, whether a subdivision or not, that results in the creation of four (4) or more lots; or~~
- ~~2. when a non-residential or non-agricultural development on a single lot or contiguous lots under common ownership will create more than 5,000 square feet of enclosed floor area, will include a drive through, or will have 10 or more parking spaces or 2,000 square feet or greater of parking area.~~

10.6.3 Procedure. The Planning Board shall serve as the approval authority for site plan review. All decisions shall be made by a majority of the Board, as constituted. The Planning Board shall hold a public hearing for consideration of an application of site plan approval. Said hearing shall be conducted in accordance with the procedures set forth in M.G.L. c. 40A, § 11 for special permits. The written decision of the Planning Board shall be filed with the Town Clerk within 90 days of the close of the public hearing. Failure to file the decision within 90 days of the close of the public hearing shall be constructive approval of the site plan application.

1. Pre-Application Review. A prospective applicant for site plan approval is encouraged to request a pre-application review with the staff of the Planning Board to address any questions regarding the process or the applicability of this Section 10.6.

~~At a regularly scheduled meeting of the Planning Board, the landowner or his or her designee will present documentation of the location of the parcel(s) in question, will describe the nature of the changes in use and/or parcelization that are being considered, and will present a site plan as required in Section 6.2.4. When applicable, an application for a building permit will be complete only when the application is accompanied by an approved Site Plan. For large or complex projects, the Planning Board shall have the right to retain outside consultants, such as registered engineers, planners, designers, legal counsel, or other professionals, to advise the Board regarding any or all aspects of the site plan. The Board may also require the posting of a Bond, or other security satisfactory to the Board, to assure compliance with the approved site plan and stated conditions for approval.~~

10.6.4 Site Plan Requirements. Plans subject to site plan review shall be prepared by a Registered Architect, Landscape Architect, or Professional Engineer licensed by the Commonwealth of Massachusetts. The site plan shall be prepared at a scale no greater than 1"=40', and shall show the following:

1. Locus map at a scale not greater than 1"=2,000';
2. All existing and proposed buildings and structures;
3. All existing and proposed contour elevations;
4. All existing and proposed parking spaces, driveway openings, driveways, and service areas;
5. All existing and proposed facilities for sewage, refuse, and other waste disposal;
6. All wetlands, surface water, and areas subject to the 100-flood;
7. All existing and proposed facilities for surface water drainage;
8. All existing and proposed landscape features such as fences, walls trees and planting areas, walks and lighting.
9. All contiguous land owned by the applicant or by the owner of the property.

CURRENT BYLAW

1. ~~Name of project, boundaries, locus map(s) showing site's location in Town, date, north arrow and scale of plan;~~
2. ~~Name(s) and address(es) of the owner(s) of the land, the developer (if applicable), and/or their designee;~~
3. ~~Name, title, and address of person(s) who prepared the plan;~~
4. ~~Names and addresses of all owners of record of abutting lots and those within 300 feet of the property line;~~
5. ~~All existing lot lines, easements and rights of way;~~
6. ~~Location and use of buildings and structures within 300 feet of the site;~~
7. ~~Location and use of all existing and proposed buildings and structures, including approximate height and floor area;~~
8. ~~Location of wetlands on site and within 300 feet of the property line;~~
9. ~~Location of proposed water supply well or hook-up to the public water supply;~~
10. ~~Location and date of all registered "perc" tests or proposed sewer hook-up;~~
11. ~~Location of all proposed new lot lines;~~
12. ~~Existing and proposed topography at a two-foot contour interval;~~
13. ~~Location of proposed public and private ways on the site;~~
14. ~~Location and size of proposed parking and loading areas, layout of pedestrian and vehicular circulation, and location of curb cuts, entrance(s) and exit(s) and queuing lane for any drive through;~~
15. ~~Size and location of existing and proposed sign(s);~~
16. ~~Surface drainage strategy that prevents pollution and increased drainage off site;~~
17. ~~Existing vegetation that will be left undisturbed and proposed planting areas; and~~
18. ~~Other proposed methods to screen development.~~

10.6.5 Additional Application Requirements. The applicant shall also submit the following in accordance with Section 6.4:

1. Such material as may be required regarding measures proposed to prevent pollution of surface or ground water, soil erosion, increased runoff, changes in groundwater level, and flooding.
2. Such material as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectional features from neighbors.
3. Such material as may be required regarding the projected traffic-flow patterns into and upon the site for both vehicles and pedestrians and an estimation of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

10.6.6 Waiver of Technical Compliance. The Board may, upon written request of the applicant, waive any of the technical or procedural requirements of this Section where the project involves relatively simple development plans.

10.6.7 Decision; Criteria. Site plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. The Planning Board shall use the parking, signage, landscaping and other performance standards prescribed in Section 6.0 of this Bylaw in considering all site plans, in order to promote the following goals:

1. Protection of adjacent areas against detrimental or offensive uses on the site by provisions of adequate surface water drainage, buffers against lighting, sight, sound, dust, vibration, and the allowance of sun, light, and air;
2. Convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent areas;
3. Adequacy of facilities of handling and disposal of refuse and other production by-products;
4. Protection of environmental features on the site and in adjacent area;
5. Promotion of appropriate arrangement of structures within the site and in relation to existing structures within the district and neighborhood;
6. Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood;
7. Compliance with all applicable sections of this Bylaw.

~~CURRENT BYLAW~~

- ~~A. The site plan conforms to all appropriate provisions of the Zoning Bylaw including but not limited to signage, landscaping and parking.~~
- ~~B. The site plan avoids or minimizes traffic and safety impacts of the proposed development on adjacent highways or roads, minimizes curb cuts, and maximizes the convenience and safety of vehicular and pedestrian movement within the site including off street parking and loading needs.~~
- ~~C. The architectural design, lighting, layout and landscaping of the proposed development is in harmony with the historic, rural character of the Town of Erving.~~
- ~~D. The site plan shows adequate measures to prevent pollution of surface or groundwater and to minimize erosion, flooding and sedimentation and includes a stormwater management plan prepared in accordance with good engineering, hydrologic and pollution control practices, including best management practices recommended by the DEP.~~

~~E. The proposed development, to the extent feasible:~~

- ~~1. is integrated into the existing landscape and relates harmoniously to the terrain and to the use, scale, and proportions of existing and proposed buildings in the vicinity;~~
- ~~2. provides a solar and wind orientation that encourages use of renewable energy and energy conservation;~~
- ~~3. minimizes obstruction of scenic views;~~
- ~~4. preserves unique natural or historical features;~~
- ~~5. minimizes removal of trees, vegetation, and soil and grade changes;~~
- ~~6. maximizes open space retention;~~
- ~~7. prevents pollution of surface and ground water and prevents increases to flooding;~~
- ~~8. maximizes the use of underground utilities;~~
- ~~9. screens objectionable features from neighboring properties and roadways through trees, shrubs and other landscaping features to constitute a visual buffer as well as a buffer for noise, light and odor;~~
- ~~10. minimizes curb cuts, traffic congestion and safety impacts to roads, particularly along Route 2 (the Mohawk Trail);~~
- ~~11. maximizes the use of landscaping materials to lessen the impact of the development; and~~
- ~~12. minimizes glare and light pollution and utilizes cut off fixtures to the maximum extent feasible.~~

10.6.8 Performance Guarantee. As a condition of site plan approval, the Planning Board may require that construction and site alteration permitted and specified by said approval be secured by one, or in part by one and in part by the other, of the methods set forth in M.G.L. c. 41, s. 81U (except for the statutory covenant).

10.6.9 Release of Guarantee. Performance guarantees may be released in whole or from time to time, in part, when the work has been satisfactorily completed in the opinion of the Planning Board. The Planning Board shall then release the interest of the town in such bond and return any bond or deposit to the person who furnished the same. Request for all releases shall be by certified, return receipt letter to the Planning Board and the Town Clerk and shall outline that portion of the work to be released and shall be accompanied by an engineer's or surveyor's certification that the work has been done in accordance with the requirements of the granted site plan approval. If the Planning Board determines that said construction or site alteration has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the Town Clerk, the details wherein said construction or site alteration fails to comply with the site plan approval and upon failure to do so within forty-five (45) days after the receipt by said Town Clerk of said request by the applicant, all obligations under any bond shall cease and terminate by operation of law, and any deposit shall be returned. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit as aforesaid, the said Town Clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

10.6.10 Lapse. Site plan approval shall lapse after three years from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

~~Site Plan approval shall lapse within one year unless substantial use or construction has commenced however, such time period may be extended if necessary to pursue or wait for a determination of an appeal in accordance with M.G.L. Chapter 40A Section 17.~~

10.6.11 Regulations. The Board may adopt reasonable regulations for the administration of site plan review.

10.6.12 Fee. The Board may adopt reasonable administrative fees and technical review fees for site plan review.

10.6.13 Appeal. Any decision of the Planning Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

10.7 SITE PLAN REVIEW FOR DOVER AMENDMENT USES.

10.7.1 Purpose. The purpose of this Section is to provide for site plan review of religious uses, educational uses, and child care centers otherwise “exempt” pursuant to G.L. c. 40A, s. 3. These are items B.1, B.2 and B.3 in the Table of Use and Parking Regulations.

10.7.2 Site Plan Review Required. Prior to the issuance of any building permit or certificate of occupancy, the establishment, alteration, change, extension, or reconstruction of uses B.1, B.2, or B.3, as set forth in the Table of Use and Parking Regulations, shall require site plan approval from the Planning Board pursuant to this Section.

10.7.3 Scope of Site Plan Review. Under this Section, Site Plan Review shall be limited to two inquiries:

1. Whether the use qualifies for protection under G.L. c. 40A, s. 3; and, if so,
2. What reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements, if any, should be imposed on the use.

10.7.4 Required Information. All applications for Site Plan Review shall be in writing and provide, at a minimum, the following information:

1. Name and address of applicant person or entity;
2. Name and address of property owner;
3. Description of the proposed use and any documents necessary to establish threshold compliance with G.L. c. 40A, s. 3; and
4. Reason that relief is requested from otherwise applicable zoning requirements.
5. If necessary to reach a decision on the application, the Planning Board may request further information from the applicant consistent with G.L. c. 40A, s. 3, specifying in detail the information required.

10.7.5 Required Information. All applications for Site Plan Review shall be in writing and provide the information required by Section 10.6 determined by the Planning Board to be reasonably necessary to determine the scope of regulations that shall be applied to the Dover Amendment Use.

10.7.6 Decision. The Planning Board may approve, approve with conditions, or deny an application for site plan approval. In making its decision, the Board shall be guided exclusively by G.L. c. 40A, s. 3. Denial of an application shall be based solely on lack of qualifications under G.L. c. 40A, s. 3, or an incomplete application. The Board shall file a written decision with the Town Clerk within 90 days of receipt of the application. Failure to file a decision within ninety (90) days shall constitute approval of the site plan.

10.7.7 Appeal. Any appeal of the Planning Board's decision shall be made pursuant to G.L. c. 40A, s. 17, to a court of competent jurisdiction.

10.8 REQUEST FOR REASONABLE ACCOMMODATION.

10.8.1 Purpose. Under the FHA, it is a discriminatory practice to refuse to make "a reasonable accommodation in rules, policies, practices, or services when such accommodation may be necessary to afford [a handicapped] person equal opportunity to use and enjoy a dwelling" 42 U.S.C. Section 3604(f)(3)(B). The same standard applies under the ADA, which also addresses nonresidential facilities providing services to persons with disabilities. 42 U.S.C. 12102(b)(5). See also G.L. c. 40A, s. 3. The purpose of this Section is to facilitate housing and/or services for persons with disabilities and to comply fully with the spirit and the letter of the FHA and, where applicable, the ADA.

10.8.2 Request. Any person eligible under the FHA or any provider of housing to persons eligible under the FHA, or any person eligible to operate a nonresidential facility providing services to persons eligible under the ADA, may request a Reasonable Accommodation as provided by the Fair Housing Act and/or the ADA. A Request for a Reasonable Accommodation does not affect a person's or provider's obligations to act in compliance with other applicable laws and regulations not at issue in the requested accommodation.

10.8.3 Zoning Board of Appeals. All requests for Reasonable Accommodation under the FHA and/or the ADA shall be submitted to the Zoning Board of Appeals (ZBA).

10.8.4 Information. All requests for Reasonable Accommodation shall be in writing and provide, at a minimum, the following information:

1. Name and address of person(s) or entity requesting accommodation;
2. Name and address of property owner;
3. Name and address of dwelling or facility at which accommodation is requested;

4. Description of the requested accommodation and specific regulation or regulations for which accommodation is sought;

5. Reason that the requested accommodation may be necessary for the person or persons with disabilities to use and enjoy the premises; and

6. If the requested accommodation relates to the number of persons allowed to occupy a dwelling, the anticipated number of residents, including facility staff (if any).

7. If necessary to reach a decision on the request for Reasonable Accommodation, the ZBA may request further information from the applicant consistent with the FHA and/or ADA, specifying in detail the information required.

10.8.5 ZBA Procedures. The ZBA shall decide a request for reasonable accommodation by majority vote at an open meeting. The ZBA may seek information from other Town agencies in assessing the impact of the requested accommodation on the rules, policies, and procedures of the Town. Upon written notice to the ZBA, an applicant for a reasonable accommodation may withdraw the request without prejudice. The ZBA shall consider the following criteria when deciding whether a request for accommodation is reasonable:

1. Whether the requested accommodation is reasonable;

2. Whether the requested accommodation would require a fundamental alteration of a legitimate Town policy; and

3. Whether the requested accommodation would impose undue financial or administrative burdens on the Town government.

10.8.6 Decision. After conducting an appropriate inquiry into the request for reasonable accommodation, the ZBA may:

1. Grant the request;

2. Grant the request subject to specified conditions; or

3. Deny the request.

The ZBA shall issue a written final decision on the request in accordance with G.L. c. 40A, s. 15. If the ZBA fails to render its decision on a request for reasonable accommodation within the time allotted by G.L. c. 40A, s. 15, the request shall be deemed granted. The ZBA's decision shall be filed with the Town Clerk and sent to the applicant by certified mail.

10.8.7 Appeal. The ZBA's decision pursuant to this Section may be appealed to a court of competent jurisdiction in accordance with G.L. c. 40A, s. 17 or otherwise.

10.8.8 File. The ZBA shall maintain a file of all requests for reasonable accommodation under the FHA and/or the ADA and a file of all decisions made on such requests. The file(s) may be reviewed in the Office of the ZBA upon request during regular business hours.

10.8.9 Other Laws. While a request for a reasonable accommodation is pending, all laws and regulations otherwise applicable to the premises that is the subject of the request shall remain in full force and effect.

SECTION 11.0 DEFINITIONS

In these Regulations, the following terms shall have the meanings here assigned to them:

~~**Accessory Dwelling Unit (ADU), Attached:** The alteration of an existing single-unit home with no expansion of square footage to create one additional dwelling unit consisting of no more than four rooms and no more than 800 square feet of living area. The Accessory Apartment shall be occupied by no more than two people. The owner of the property shall permanently occupy the principal or accessory residence. Adequate off-street parking shall be provided.~~

Accessory Dwelling Unit (ADU), Detached: Accessory dwelling unit, detached shall mean the creation of one additional dwelling unit on a single-unit house lot in an existing or new detached accessory structure. The accessory apartment shall consist of no more than 900 square feet of living area. A detached accessory dwelling unit shall not be a trailer or camper, as defined in this Bylaw.

Accessory Building or Structure: A subordinate building or structure, the use of which is incidental to the main or principal use on the lot, as permitted in the Zoning district. Where an accessory building is attached to the main building, such accessory building shall be counted as part of the main building.

Accessory Use: A use located on the same lot with (or in) the main building or main use which is subordinate and customarily incidental to the use of the main building or the land.

Adult Day Care Facility: A "Social Day Care (SDC) Program" or "Adult Day Health" Program as those terms are defined by the Commonwealth's Executive Office of Elder Affairs (EOEA), serving not more than 15 persons.

Adult Use: Shall include and be defined as follows:

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade printed matter, books, magazines, picture periodicals, motion picture films, video cassettes, or coin operated motion picture machines for sale, barter or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "sexual conduct" as that term is defined in M.G.L. c. 272, s. 31; "Sexual Devices" or an establishment having for sale sexual devices which shall mean any artificial human penis, vagina or anus or other device primarily designed, promoted or marketed to physically stimulate or manipulate the human genitals, pubic area or

anal area, including: dildos, penisators, vibrators, penis rings, erection enlargement or prolonging creams or other preparations or an establishment with a segment or section devoted to the sale or display of such materials.

Adult Live Entertainment Establishments: Establishments which feature live entertainment which consists of entertainers engaging in "sexual conduct" or "nudity" as defined in M.G.L. c. 272, s. 31.

Adult Mini Motion Picture Theater: An enclosed building with a capacity for less than 50 persons used for presenting material distinguished or characterized by emphasis on matter depicting, describing or relating to "sexual conduct" as defined in M.G.L. c. 272, s. 31 (as defined below) for observation by patrons therein.

Adult Motion Picture Theater: An enclosed building with a capacity of 50 or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "sexual conduct" as defined in M.G.L. c. 272, s. 31, for observation by patrons therein.

Applicant: An owner, or the authorized agent or representative of the owner.

Approval Authority: For the purposes of Section 6.3, the Approval Authority shall mean the Planning Board, Select Board, or Zoning Board of Appeals when engaged as Special Permit Granting Authority (SPGA), or the Planning Board when engaged in site plan approval, or the Zoning Board of Appeals when engaged in consideration of a variance petition (taken together, the "Approval Authority"), except with regard to the permitting of single or two-unit dwelling.

Bed and Breakfast: A dwelling in which overnight accommodations are provided or offered for transient guests for compensation.

Brewery: Any plant or premise where malt beverages are produced from the fermentation of malt with or without cereal grains or fermentable sugars, or of hops.

Building: A combination of any materials, whether portable or fixed, having a roof to form a structure for the shelter of persons, animals or property. The word "building" shall be construed where the text requires, as being followed by the words "or part(s) thereof. "

Building, Principal: The main or most important building on a lot in which is conducted the principal use of the lot. Attached structures such as garages, greenhouses, and similar structures are to be considered as part of the principal building.

Building Height (in feet): The vertical distance from the average finished exterior grade on the street side of a building to the highest point of the roof or parapet for flat or shed roofs, to the deck line for mansard roof, or the mean level of the highest gable or slope of a hip pitch or sloped roof. Height limitations shall not apply to chimneys, spires, cupolas, TV antennae, or other parts of structures which do not enclose potentially habitable floor space.

Campground: A parcel of land used or intended to be used, let, or rented for temporary short-term occupancy (not to exceed 90 days) by campers or transient tourists utilizing tents, trailer coaches, or other types of movable or temporary shelter.

Car Wash: A facility using mechanical equipment for purposes of cleaning automobiles and other vehicles, having not more than 4 bays.

Certified: Shall mean certified by a Planning Board, as applied to a plan or other instrument required or authorized by the Subdivision Control Law to be recorded, and shall mean bearing a certificate or endorsement signed by a majority of the members of the Planning Board.

Child Care Center: A day care center or school age child care program, as those terms are defined in G.L. c. 15D, s. 1A.

Commercial: Of or relating to the buying, selling and trading of goods and services.

Commercial Kennel: A structure or parcel of land used for the harboring or care of more than fifteen (15) dogs that are more than six (6) months old. There may be retail sales to pet stores or puppy brokers or boarding for a fee. Commercial Kennels must be located on a lot five acres or greater. In addition, the location on the parcel where the dogs are harbored or exercised must be set back 200 feet from each lot line to minimize the impacts to neighbors from noise and odors.

Commercial Recreation, Indoor: Theater, motion picture house, bowling alley, dance hall, pool room, and the like.

Commercial Recreation: Outdoor: Boat livery, outdoor ice skating rink, recreational camp, ski ground, riding academy or stable, golf driving range, miniature golf course, and the like.

Contractor's or Landscaper's Yard: Facility serving entities engaged in building, HVAC, electrical, plumbing, or landscaping services.

Disposal Facility: A place where garbage, refuse, etc, is deposited.

Distillery: Any plan or premise where distilled spirits are produced, manufactured or distilled.

Drainage: The flow of surface and subsurface water.

Drive-In or Drive-Through: A business or commercial establishment that incorporates facilities which allow customers to purchase or perform business or commercial activities while seated in a motor vehicle.

Dwelling: Any building designed for residential use and containing kitchen and sanitary facilities.

Dwelling Unit: Living quarters for a single household with cooking, living, sanitary, and sleeping facilities substantially independent of those of any other unit. Not more than one (1) household is permitted per dwelling unit.

Dwelling, Multi-Unit: A dwelling containing three (3) or more units separated by vertical walls or horizontal floors.

Dwelling, Single-Unit: A building containing one dwelling unit.

Dwelling, Two-Unit: A building containing two dwelling units, also known as a duplex.

Electronic Changeable Message Sign (ECMS): A sign or portion thereof, which utilizes lights (including but not limited to light emitting diodes (LED) or screens, to form a message in the form of copy, text or images, and is capable of changing message through electronic controls. ECMS shall include prices of motor fuels displayed in LED's. Time and temperature signs shall not be deemed ECMS.

Energy Storage System: A system to store energy as defined in G.L. c. 164, s. 1.

Energy Storage System, Accessory: A system to store energy as defined in G.L. c. 164, s. 1 that is accessory to a Small-Scale, Medium-Scale, Large-Scale, or Very Large-Scale Ground-Mounted Solar Electric Generating Installation and located on the same lot.

Essential Services: Services provided by a private utility or public utility through erection, construction or alteration or maintenance of gas, electrical, steam or water transmission or distribution systems and collection, communication, supply or disposal systems. Facilities necessary for the provision of "essential services" include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, street name signs, hydrants and other similar equipment and accessories in connection herewith. Specifically excluded from this definition are buildings necessary for the furnishing of adequate service by such private or public utilities for the public health, safety or general welfare and private utility substations and/or transformer stations or similar facilities.

~~**Family**—One or more persons, all of whom are related by birth, marriage or adoption, living as a unit, or not more than five (5) persons not legally related, living together as a single housekeeping unit. Any unrelated individual over five (5) shall constitute another family~~

Family Day Care Home, Large: Any private residence operating a facility as defined in M.G.L. c. 15D s. 1A.

Family Day Care Home, Small: Any private residence operating a facility as defined in M.G.L. c. 15D, s. 1A.

Flexible Development: For the purposes of Section 8.2, the following definitions shall apply:

Affordable Unit: A dwelling unit, whether for sale or for rent, that is eligible for inclusion on the Subsidized Housing Inventory of the Department of Housing and Community Development.

Flood Plan Overlay District: For the purposes of Section 9.1, the following definitions shall apply:

Development: Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

Floodway: The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. [Base Code, Chapter 2, Section 202]

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

Historic Structure: any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
(1) By an approved state program as determined by the Secretary of the Interior or
(2) Directly by the Secretary of the Interior in states without approved programs.
[US Code of Federal Regulations, Title 44, Part 59]

New Construction: Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14]

Recreational Vehicle: A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. [US Code of Federal Regulations, Title 44, Part 59]

Regulatory Floodway: see **Floodway**.

Special Flood Hazard Area: The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, or AH. [Base Code, Chapter 2, Section 202]

Start of Construction: The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns. Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Base Code, Chapter 2, Section 202]

Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59]

Substantial Repair of a Foundation: When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC]

Variance: A grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

Violation: the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development

without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Groundwater Protection Overlay District: For the purposes of Section 9.2, the following words and phrases shall have the following meaning:

Aquifer: Geological formation composed of rock and sand, or gravel that contains significant amounts of potentially recoverable water.

Groundwater Protection District: The zoning district defined to overlay other zoning districts in the Town of Erving. The groundwater protection district may include specifically designated recharge areas.

Impervious Surface: Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

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

Recharge Areas: Areas that collect precipitation or surface water and carry it to aquifers. Recharge Areas may include areas designated as Zone I, Zone II, or Zone III.

Toxic or Hazardous Materials: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Erving. Toxic or hazardous materials include, without limitation, synthetic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis, and all substances defined as Toxic or Hazardous under Massachusetts General Laws (MGL) Chapter 21C and 21E and 310 CMR 30.00, and also includes such products as solvents and thinners in quantities greater than normal household use.

Zone II: The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at a safe yield with no precipitation), as defined in 310 Code of Massachusetts Regulations (CMR) 22.00.

~~**Home Based Business:** Any home occupation which can meet the requirements of Section 3.2~~

Hobby Kennel: A structure or parcel of land used for the harboring or care of five (5) to fifteen (15) dogs that are more than six (6) months old, with no retail sales to pet stores or puppy brokers or boarding for a fee. Hobby Kennels must be located on a lot two acres or greater. The harboring or care of four (4) dogs or less is not considered a Kennel for the purposes of Erving's Zoning Bylaw.

Hotel: A building containing rooms used or designed to be used for sleeping purposes by transient guests where the only kitchen and dining facilities provided are for public use within the building or in an accessory building.

~~**Inn:** An historic structure used or designed for overnight lodging for transient guests, and which may also provide a restaurant to lodgers and the public. An inn shall be located in a building fifty (50) years or more in age. A guest(s) may not stay at an Inn for more than 90 days in any six-month period.~~

Industry: The production and sale of goods or materials.

Junkyard: an area or structure used for the storage and/or sale of old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris; waste, junked, dismantled or wrecked automobiles, or parts thereof; iron steel, and other old or scrap ferrous or nonferrous materials; and any item that contains a hazardous material as defined by the Mass. Department of Environmental Protection (DEP).

Laboratory, Research: Laboratory or research establishments including biotechnology companies, but excluding laboratories categorized as Level 3 or Level 4 by the National Institutes for Health.

Living Area: The outside dimensions of a dwelling unit commonly used as living quarters excluding attached garage, porch and breezeways.

Lot: A plot or parcel of land with definite boundaries, ascertainable by recorded deed or plan, having frontage on a street and occupied or capable of being occupied by one principal building.

Lot Coverage: The area of a lot occupied by structures, walkways, drives, parking or other impervious or semi-pervious surfaces.

Lot Frontage: The boundary of a lot coinciding with a street line provided that there must be both rights-of-access and potential vehicular access across that boundary to a potential building site and the street has been determined by the Planning Board to provide adequate access to the premises under the provisions of the Subdivision Control Law and the Erving Subdivision Regulations currently in effect. Lot frontage shall be measured continuously along one street line between side lot lines or, in the case of corner lots, between one side lot line and the midpoint of the corner radius. The portion of a lot fronting on a discontinued road, or a road which is not continuously constructed to a point beyond the border of the subject lot, does not constitute frontage for purposes of Approval Not Required Plans. Access to a building lot must be via the front lot line which provides the Minimum Lot Frontage required.

Lot Line (Front): The line separating the lot from the public way across which access is gained to the property.

Lot Line (Rear): The lot line opposite to and most distant from the front lot line.

Lot Line (Side): Any lot line not a front lot line or rear lot line.

Lumber or Wood Processing Plant: Any business that uses logs as a raw material, including sawmills, pulp mills and mechanized cordwood mills.

Manufacturing: the fabrication of raw materials or assembly of parts or materials fabricated off site.

Marijuana Establishments: For the purposes of Section 7.2, the following definitions shall apply:

Craft Marijuana Cultivator Cooperative: A marijuana cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the Commonwealth, or an appropriate business structure as determined by the Cannabis Control Commission, that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and marijuana products for delivery to marijuana establishments but not to consumers.

Marijuana Delivery-Only Retailer: An entity that is authorized to deliver directly to Consumers, Registered Qualifying Patients or Caregivers from a licensed Marijuana Retailer and does not provide a retail location accessible to the public.

Host Community Agreement: A marijuana establishment seeking to operate in Erving shall execute an agreement with the host community setting forth the conditions for having a marijuana establishment located within the host community. Such Host Community Agreement shall include, but not be limited to, all stipulations of responsibilities between Erving and the marijuana establishment. A Host Community Agreement between a marijuana establishment and a host community will include a community impact fee for the host community; provided, however, that the community impact fee shall be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment and shall not amount to more than 3 percent of the gross sales of the marijuana establishment or a greater amount if allowed by the State. Such Host Community Agreement shall be effective for 5 years and can be renewed for successive 5-year periods at the option of the Town. Any cost to Erving imposed by the operation of a marijuana establishment shall be documented and considered a public record.

Independent Testing Laboratory: A laboratory that is licensed by the State Cannabis Control commission and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or marijuana establishment for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the Cannabis Control Commission.

Licensee: A person or entity licensed by the State Cannabis Control commission to operate a marijuana establishment.

Marijuana Cultivator: An entity licensed to cultivate, process and package marijuana, to deliver marijuana to marijuana establishments and to transfer marijuana to other marijuana establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment: A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

Marijuana Microbusiness: A co-located Marijuana Establishment that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, pursuant to 935 CMR 500.000 et seq., in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other Marijuana Establishments.

Marijuana Product Manufacturer: An entity licensed to obtain, manufacture, process and package marijuana and marijuana products, to deliver marijuana and marijuana products to marijuana establishments and to transfer marijuana and marijuana products to other marijuana establishments, but not to consumers.

Marijuana Products: Products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Retailer: An entity licensed to purchase and deliver marijuana and marijuana products from marijuana establishments and to deliver, sell or otherwise transfer marijuana and marijuana products to marijuana establishments and to consumers.

Marijuana Social Consumption Establishment: An entity licensed to purchase Marijuana or Marijuana Products from a cultivator, manufacturer or Microbusiness, sell Marijuana or Marijuana Products to Consumers at an approved premise, and allow Consumers to consume Marijuana or Marijuana Products at this premise.

Medical Marijuana Treatment Center: Also known as a Registered Marijuana Dispensary (RMD) - An entity registered and approved by the Cannabis Control Commission in accordance with G.L. c.94I and 935 CMR 501.00 that acquires, cultivates, possesses, processes (including development of related products such as edible marijuana or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of cannabis or marijuana for medical use. The cultivation and processing of medical marijuana is considered to be a manufacturing use and is not agriculturally exempt from zoning.

Mobile Home: A movable or portable dwelling unit on a chassis, designed for connection to utilities when in use and designed with or without the necessity of a permanent foundation for year-round living. This definition shall not include those vehicles known as camping or travel trailers or motor homes.

Mobile Home Park: Premises which have been planned and improved for the placement of mobile homes for non-transient use.

Motel: Attached, semi-detached, or detached dwelling units having separate outside entrances, parking space convenient to each unit and providing lodging for transient clientele.

Motor Vehicle Light Service Station: A building or premises used for the dispensing, sales or offering for sale of motor fuels directly to users of motor vehicles. Other sales activities and any repairs shall be activities minor in scope and clearly subordinate to the sale of motor fuels, oils and lubricants. No drive-through facilities are permitted without further zoning relief.

Motor Vehicle Repair: A building or use which is designed or intended to be used for the storage, servicing, repair, maintenance, or cleaning of motor vehicle equipment.

Motor Vehicle Sales or Leasing: Premises for the sale or lease of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

Occupancy: The state of habitation by people.

Office, Business or Professional, Large: Office serving business, real estate, insurance, accountant, architect, attorney, or the like with 6 or more employees.

Office, Business or Professional, Small: Office serving business, real estate, insurance, accountant, architect, attorney, or the like with less than 6 employees.

Office, Medical/Dental, or Clinic: Office serving physician, dentist, psychologist or psychiatrist, or other trained medical provider.

Public Way: Publicly controlled way accepted by the Town, County, or State government for use as a road or street.

Qualified Acre: A parcel 2 acres or more where the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture.

Recorded: Recorded in the Franklin County Registry of Deeds except that as affecting registered land, it shall mean filed with the Recorder of the Land Court.

Restaurant, Drive-Through: A restaurant that incorporates facilities such as a drive-through window that allows customers to purchase food or drinks while seated in a motor vehicle.

Restaurant, Other: Premises for which the principal use is the preparation and sale of food or drink to be consumed on-site.

Retail Establishment, Large: A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with more than 5,000 sf gross floor area.

Retail Establishment, Medium: A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with more than 2,500 sf gross floor area but less than 5,000 sf gross floor area.

Retail Establishment, Small: A facility selling new or used goods to an end user but not otherwise specifically listed in the Table of Use Regulations in a building with less than 2,500 sf gross floor area.

Senior Housing Facility: For the purposes of Section 8.3, the following definitions shall apply:

Assisted Living Facility: A residential development subject to certification by the Executive Office of Elder Affairs under M.G.L. c. 19D and 651 CMR 12.00.

Continuing Care Facility: A facility regulated by M.G.L. c. 93, § 76.

Independent Living Facility: A facility providing apartments for rent, with optional services on the site for the convenience of residents, including but not limited to transportation, barber/beauty services, sundries for personal consumption, laundry services and other amenities, provided such uses serve primarily the residents and staff of the facility.

Long Term Care Facility: A facility, including a convalescent or Senior Housing Facility, rest home, infirmary maintained in towns, and charitable homes for the aged, as defined and regulated in 105 CMR 150.001.

Senior Housing: Housing for persons over the age of 55 subject to the Senior Housing Laws, as defined herein.

Senior Housing Facility: An Assisted Living Facility, Continuing Care Facility, Independent Living Facility, or Long Term Care Facility, whether operated as a free-standing facility or in combination with another type of facility on the same lot or adjacent lot in common control.

Senior Housing Laws: Collectively and separately, the Fair Housing Act, 42 USC Section 3607(b), 24 CFR Subtitle B, Ch. 1, Section 100.300 et seq. and M.G.L. c. 151B, § 4.

Service Establishment, General: Shop for lawn mower or small appliance repair, upholstery or furniture repair, bicycle repair person, printer, blacksmith, carpenter, caterer, lawn mower service person, mason, painter, or roofer.

Service Establishment, Personal: A facility providing personal services such as hair salon, barber shop, tanning beds, dry cleaning, print shop, photography studio, and the like.

Sign: Any permanent or temporary structure, device, letter, word, model, banner, pennant, insignia, symbol, trade flag, or representation used as, or which is in the nature of an advertisement, announcement, or direction, or is designed to attract the eye, either by its presence or by intermittent or repeated motion or illumination, which is on a public way or on private property within public view of a public way or public park or reservation.

Sign Area: The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background, whether open or enclosed, on which they are displayed and frame around the sign and any extensions. The supporting structure is not included and only one side of a sign shall be counted in computing the total square feet of signs.

Sludge: The semi-solid or liquid residual generated from a municipal, commercial, or industrial wastewater treatment plant.

Solar Energy System: For the purposes of Section 7.4, the following definitions shall apply:

As-of-Right Siting: As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner, local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

Building Inspector: The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of this Bylaw.

Building Permit: A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar photovoltaic installations.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250kWDC.

On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site Plan Review Authority: For purposes of this Bylaw, Site Plan Review Authority refers to the Town of Erving Planning Board.

Store: Any place of business where goods or products are sold at wholesale or retail rates.

Street: A way meeting the description of one of the ways contained within the definition of "subdivision" in M.G.L., Chapter 41, Section 81-L.

Structure: Anything constructed or erected the use of which requires a fixed location on the ground, or attachment to something located on the ground to give support or shelter, including buildings, sheds, billboards, fences, satellite dishes, tanks, or the like, or the parts thereof, and swimming pools. The word "structure" shall be construed where the text requires, as being followed by the words "or part(s) thereof "

Subdivision: A division of land which creates one or more lots which do not have frontage on an existing public way as further defined in M.G.L., Chapter 41, Section 81L.

Tavern: An establishment where alcoholic beverages may be sold with or without food, to be served to and drunk by patrons in plain view of other patrons, all entrances to which shall open directly from a public way. The business conducted therein shall be open to public view from the sidewalk level and the establishment shall be properly lighted. No window facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said tavern.

Travel Trailer, Camp Trailer or Motor Home: A mobile unit either supported on its own wheels, or those of another vehicle, which is intended as a temporary dwelling not for permanent residency. Such trailers may be occupied for a maximum of 90 days per year, but for no more than 30 90 consecutive days, and shall be maintained so as to remain mobile. No permanent structure or service, including but not limited to electrical, gas or septic, may be attached to it. This definition does not include Mobile Homes.

Veterinary Office or Clinic: A building providing for the diagnosis and treatment of ailments of animals other than human, including facilities for overnight care, but not including crematory facilities.

Warehouse: A building used primarily for the storage of goods and materials, for distribution, but not for sale on the premises, but not including open storage or bailing of junk, scrap metal, rags, waste paper or used rubber.

Warehouse, Self Storage: A facility where individuals rent containers or units of space within a large warehouse to store possessions.

Wetlands: Areas defined by the Massachusetts Wetlands Protection Act including swamps, marshes, ponds, lakes, watercourses, and areas subject to flooding.

Winery: Any plant or premise where wine is produced, rectified, blended or fortified from fruits, flowers, herbs or vegetables.

Wireless Communications Facilities: For the purposes of Section 7.5, the following definitions shall apply:

Wireless Communication Facility: Fixtures and/or equipment used by a public utility or a Federal Communication Commission licensed commercial entity for the transmission and reception of radio signals including: (1) reception and transmission equipment and fixtures such as antennas, communication dishes, and similar devices; and (2) Buildings, towers, and monopoles that are erected and used primarily to support such equipment. A Wireless Communication Facility may also include accessory mechanical, electronic, or teletronic equipment necessary to operate such a facility, provided however that the facility shall be for transmission and reception, and not a principal facility for conducting a communications business.

Wireless Communication Services: the provision of the following types of services: (1) cellular telephone service; (2) personal communications; and (3) enhanced specialized mobile radio service.

Wireless Communication Towers: A structure (with antennas if any) designed to facilitate wireless communication services.