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## **ARTICLE 1: VALIDITY OF BYLAWS**

### **SECTION 1**

The following provisions shall constitute The General Bylaws of the Town of Berkley which shall be in lieu of all bylaws heretofore in force.

### **SECTION 2**

These bylaws shall not be suspended for any reason, but may be added to, amended, or deleted. A public hearing shall be held by the Board of Selectmen on any such changes at least ten days prior to presentation at any town meeting for acceptance.

### **SECTION 3**

The acceptance of these bylaws shall not void or nullify any General Law or Act previously accepted and adopted by vote of the town.

### **SECTION 4**

The validity of any section or provision of these bylaws shall not affect the validity of any other section or provisions hereof. Neither shall disapproval by the Attorney General of any provision, clauses, sentence, or part of these bylaws invalidate- or affect any other provision, clause, sentence, or part thereof.

## **ARTICLE 2: TOWN MEETINGS**

### **SECTION 1**

Every town meeting shall be called by a warrant directed to a constable or other duly appointed person, and by bulk rate mailing to every residence in the Town, at least fourteen (14) days before any town meeting.

Every election shall be called by a warrant directed to a constable or other duly appointed person, by posting in five places in the Town, to be set by the Board of Selectmen no less than seven (7) days before such election.

### **SECTION 2**

The annual town election shall be held on the Saturday following the first Monday in May.

Town officers to be elected shall be as follows:

- For a three year term of office: Moderator.
- For a three year term of office with one of these elected each year: Treasurer, Collector of Taxes, and Town Clerk.
- For a three year term of office: Highway Surveyor and Tree Warden.
- For a three year term of office, one member to be elected each year of the following three member boards: Board of Selectmen, Board of Health, Board of Assessors, Library Trustees, and Cemetery Commissioners.
- For a three year term of office, five members of the School Committee, two members to be elected in each of two years, and one member in a third year.

For a five-year term of office, five members of the Planning Board, one member to be elected each year. To accomplish this, the next election shall have a three-year term and a four-year term, the election thereafter shall have a four-year term, and the election thereafter shall have a four-year term and a five-year term. Beginning in 2024, one member shall be elected each year for a five-year term

### **SECTION 3**

The annual Town Meeting shall be held on the first Monday in June.

### **SECTION 4**

Every article intended for insertion in the warrant for Annual or Special Town Meetings must be presented in writing to the Selectmen, in accordance with law, not less than four weeks prior to the town meetings. Each of the articles, unless inserted by the Selectmen, shall be signed personally by not less than ten (10) registered voters for the Annual Town Meeting, or by not less than one hundred (100) registered voters for a Special Town Meeting, or as specified in Massachusetts General Laws, Chapter 39, SECTION 10.

#### **SECTION 5**

The Constable or other person duly appointed to serve the warrant for a Town Meeting or Election shall, within twenty-four (24) hours, deliver to the Town Clerk the original warrant with his return endorsed thereon stating fully the manner in which he served the same.

### **ARTICLE 3: PROCEDURES AT TOWN MEETINGS**

#### **SECTION 1**

The procedure at town meetings shall be governed by the "Rules of Practice" contained in "Robert's Rules of Order of Parliamentary Practice", except as modified by law or by these bylaws.

#### **SECTION 2**

Any town meeting such as a "yearly town meeting" or "special town meeting" shall require a quorum of 100 voters present for the legal voting on any town issues according to MGL Chapter 39, SECTION 13.

#### **SECTION 3**

Each annual or special town meeting shall be called to order by the Moderator promptly at the appointed hour. In absence of the Moderator, such meeting shall be called to order by the Town Clerk, who shall preside until a temporary Moderator is chosen to act during the absence of the Moderator.

#### **SECTION 4**

Immediately after the meeting has been called to order by the Moderator, the Town Clerk shall read the warrant and the return by the person who served the same, unless the meeting votes that the reading of the articles in the warrant be omitted.

#### **SECTION 5**

- a. Unless otherwise provided by law or bylaw, all motions shall require only a majority vote.
- b. If two thirds, four fifths, or nine tenths vote of a town meeting is required by statute, the count shall be taken, and the vote shall be recorded in the records by the clerk; and provided, further, that if the vote is unanimous, a count need not be taken, and the clerk shall record the vote was unanimous.
- c. Every article in the warrant shall be taken up in its order in the warrant, unless otherwise voted by the meeting, and no motion or resolution, the subject of which is not set forth in some article in the warrant, shall be entertained excepting for the purpose of obtaining the sense of the meeting.

#### **SECTION 6**

The vote on any motion, provided the meeting so votes shall be taken by a "Yes" or "No" ballot with the use of the check list. Any warrant article authorizing the Treasurer to borrow by bonding in excess of \$750,000.00 (seven hundred fifty thousand dollars) shall be voted only by means of a "YES" or "NO" ballot, so that an accurate count can be taken and sealed.

#### **SECTION 7**

No person, except registered voters of the town, shall be admitted to any Annual or Special Town Meeting unless permission is granted by the Moderator or by a vote of the Town Meeting. If ordered by the Moderator, or by vote of the meeting, the voting lists of the town shall be used to check the names of registered voters.

#### **SECTION 8**

No vote shall be reconsidered except upon motion to that effect or upon a notice of such motion given at the same session of the meeting and within one (1) hour after the result of such vote has been declared. A two-thirds vote of those present shall be required.

#### **SECTION 9**

A motion, if required by the Moderator, shall be put in writing before being submitted to the meeting.

#### **SECTION 10**

It shall be mandatory that the Finance Committee make a report on any motion carrying an expenditure or appropriation of money.

#### **SECTION 11**

The Town Clerk shall provide and have in readiness for use at town meetings a sufficient supply of "Yes" and "No" ballots. Such ballots shall not be distinguished from each other in size, shape, color, paper, ink, in size and style of type, or in any other way which would make it possible to distinguish what was printed on said ballot other than by examination of the word printed thereon.

### **ARTICLE 4: TOWN OFFICERS**

#### **SECTION 1**

The Selectmen shall exercise a general supervision over matters affecting the interests or welfare of the Town, and in all matters not otherwise provided by law or bylaw.

#### **SECTION 2**

The Selectmen may appear either personally or by counsel before any committee of the Legislature, or Board, or Commission to protect the interests of the Town but they are not authorized by this bylaw to commit the Town to any course of action.

#### **SECTION 3**

The Board of Selectmen shall appoint a Police Chief, Constables, Police Officers and as many other town officials as deemed necessary to terms prescribed by Massachusetts General Laws.

#### **SECTION 4**

The Selectmen are hereby authorized to accept gifts or grants of money for the improvement or maintenance of a town department.

#### **SECTION 5**

The Board of Public Welfare shall be comprised of members of the Board of Selectmen.

#### **SECTION 6**

The Town Clerk shall have custody of the Town Seal.

#### **SECTION 7**

All conveyances under seal which may hereafter be executed by the Town, pursuant to a vote of the Town or otherwise, shall be sealed with such seal and subscribed by a majority of the Board of Selectmen.

#### **SECTION 8**

The Town Clerk shall keep true copies of all deeds and instruments and vital statistics of the Town in a properly indexed file kept for such purpose alone.

#### **SECTION 9**

It shall be the duty of the Town Clerk to see that every conveyance of any interest to the Town in land is properly recorded in the Registry of Deeds.

#### **SECTION 10**

All fees collected by any Officers or agents of the Town shall be paid to the Town Treasurer with an accounting made thereof and a suitable receipt shall be furnished said officer or agent for said fee or fees by the Treasurer or Assistant Treasurer.

## SECTION 11

The Selectmen shall annually review, update and cause to be published the fees for the following departments:

The Building Inspector Department; The Fire Department; the Wiring Inspector Department; Gas Inspector Department and for Special Permits.

### **ARTICLE 5: FEES OF THE TOWN CLERK**

Furnishing a certificate of birth, death, or marriage.....	\$ 5.00
Entering a delayed record or a correction of birth, death, or marriage.....	\$ 5.00
For recording a certificate of adoption or home birth.....	\$ 10.00
For entering a notice of intention of marriage and issuing a certificate thereof.....	\$ 20.00
For entering a certificate of marriage filed by persons outside of the Commonwealth.....	\$ 7.00
For filing a certificate of a person conducting business under any other title than his real name.....	\$ 30.00
For furnishing a certified copy of the certificate of a person conducting business Under other title than his real name or a statement of discontinuance, retirement, or withdrawal from such business .....	\$ 10.00
For recording order granting locations of poles, piers, abutments or conduits, alterations or transfers thereof, and increase in numbers of wires and cable or attachments under the provisions of Chapter 166, SECTION 22 of General Laws.....	\$ 50.00
Additional Streets.....	\$ 15.00
For filing a copy of written instruments or declarations of trust by the trustees of an association or trust, or any amendment thereof, as provided by Chapter 182, SECTION .....	\$ 20.00
For making certified copies of records..... plus cost of document	\$ 5.00
For recording any other documents.....	\$5.00
For furnishing certification of residency or voter status.....	\$ 5.00

## **ARTICLE 6: TOWN CONTRACTS**

### **SECTION 1**

No officer of board of the town shall make any contract on behalf of the town in which such officer or any member of such board is directly or indirectly financially interested, unless he is the lowest bidder on competitive bids.

### **SECTION 2**

Every officer, board or committee of the town, when authorized to purchase any supplies or property, or erect, construct, or repair any building, shall in each case when the estimated cost of the entire amount of supplies or property to be purchased, worked or other matter exceeds ten thousand dollars (\$10,000.00), shall make a written contract thereof, and for contracts that exceed fifty thousand dollars (\$50,000.00) inviting proposals thereof by advertising in one or more newspapers in general circulation in the town. Such notices of proposals shall state time and place for opening the proposals, and also reserve the right to reject any and all proposals.

### **SECTION 3**

The provision of the preceding section shall not apply in cases of special emergency requiring immediate action for the preservation of life, or the protection of property.

### **SECTION 4**

No personal property of the town shall be sold by any officer or board unless by vote of the town, except, if its resale or salvage value is ten thousand (\$10,000.00) dollars or less, by authorization of the Board of Selectmen. Such authorization shall in each case be in writing, certify that the proposed selling price is fair and be filed with the Town Treasurer.

## **ARTICLE 7: FINANCE COMMITTEE**

### **SECTION 1: MEMBERSHIP AND ORGANIZATION**

a). There shall be a Finance Committee consisting of seven (7) legal voters of the Town who shall be chosen by an appointing committee consisting of the Moderator, the Chairman of the Board of Selectmen and the Chairman of the last Finance Committee: three (3) to serve for three (3) years, three (3) to serve for two (2) years and one (1) to serve for one (1) year and each shall serve for three (3) years thereafter. Members shall serve without pay. After conclusion of each Annual Town Meeting the committee shall organize by choosing a chairman and a secretary.

b). Whenever a vacancy occurs in the committee by resignation, failure to qualify, or otherwise, the same shall be filled by the Committee. If the committee so votes a member who absents himself from four consecutive meetings may be deemed to have resigned. The term of any person appointed to fill a vacancy shall expire at the close of the next Annual Town Meeting, and the vacancy shall then be filled by the exercise of the appointive power under which the original appointment was made.

c). No elective Town officer or town employee shall be eligible to serve on said Committee.

d). A quorum of the Finance Committee shall consist of a simple majority of the appointed active members of said committee. An active member is a member appointed by the appointing committee or if applicable by the Finance Committee. Active members do not include any vacancies by lack of appointment, resignation, failure to qualify, or otherwise.

### **SECTION 2: DUTIES AND RESPONSIBILITIES**

a). The Finance Committee shall consider matters relating to the appropriation , the borrowing, and expenditure of money by the Town, its indebtedness, the administration of its various offices and departments, and all other matter that impact the fiscal well-being of the town and may make

recommendations to the town or to any board, officers or committee relative to the municipal fiscal affairs. IT shall be the duty of the Committee to make an annual report of its activities, with appropriate recommendations of the Annual Town Meeting each year.

- b). The Finance Committee shall also require the Selectmen, the School Committee, and the departments not under their supervision, and all other town officers to furnish to said committee, in writing, not later than January 15<sup>th</sup> of each year, their report of the previous year and detailed estimates of amounts deemed by them necessary for the administration of their respective departments for the fiscal year ending on the 30<sup>th</sup> day of June. Such estimates shall be in such form and detail, and the Committee shall require.

In addition to expenditure forecasts, said Town departments, committees and officers shall prepare estimates of income expected or anticipated in the ensuing year which will be generated in connection with the administration of their respective offices, departments, or committees.

- c). The Committee shall at each Annual Town Meeting present and explain such budget with advice and recommendations, and it shall also at each Special Town Meeting give its advice and recommendations with reference to any appropriation of the town funds or other municipal matter coming before such Special Meeting
- d). It shall be the duty of the Committee to consider for all town meetings all articles in the Warrant, which involve an appropriation of money, and to report thereon at the town meeting. The Selectmen shall, immediately upon voting to include in the warrant any article, transmit a copy thereof to the committee, which shall thereupon take the same under consideration. On the copies of the warrant provided by the Selectmen for the Town meeting members at each town meeting, there shall appear a short statement of the report and recommendations of the committee. The committee shall also consider and report upon other warrant articles and other matters, which, in the committee's judgment, affect the financial interest of the town.

### **SECTION 3: INFORMATION GATHERING.**

- a). The Finance Committee shall give opportunity to the towns various boards, departments, and officers to be heard and explain such estimates and recommendations as they had submitted to the Finance Committee.
- b). The Finance Committee shall have the authority at any time to investigate the books, accounts, and management of any department of the town, and to employ such experts and other assistance as it may deem advisable for that purpose, and the books and accounts of all of the departments and officers of the Town of Berkley shall be open to the inspection of the finance committee and of any person employed by it. The finance committee may appoint subcommittees and delegate to them such of its powers as it deems to be in the best interests of the Town of Berkley.
- c). The Committee shall have the authority to summon any of the town officers before it for such information and investigation, as it shall deem necessary, as it may consider necessary to the proper discharge of its duties.

### **SECTION 4**

The Finance Committee and Selectmen shall have quarterly meetings.

## **ARTICLE 8: CARE OF BURIAL GROUNDS AND LOTS**

### **SECTION 1**

The town will accept and forever hold in trust any money or securities which may hereafter be deposited with the Town Treasurer for the perpetual care, preservation, improvement, or embellishment of any public or private place, or any lots or graves therein, therein, agreeably to the provisions of the statutes of the Commonwealth.

## **SECTION 2**

The Town Treasurer is authorized to enter into agreement in behalf of the town with the holders of the burial rights in any lot in the cemeteries of the town to keep forever such lot and the structures of grass thereon, in good and neat condition, so far as the same can be done by an expenditure not exceeding the income from any securities, which such holder may have deposited with the Town Treasurer for such purpose.

## **SECTION 3**

Money and securities received under the provisions of the preceding section shall not be mingled with other money or securities of the town, but shall be kept and invested separately as a cemetery fund and unless otherwise specially provided for in terms of the gift, the income only shall be used.

## **ARTICLE 9: USE OF STREETS, SIDEWALKS, AND PUBLIC PLACES**

### **SECTION 1**

No person except officers of the town in the lawful performance of their duties, and those acting under their orders shall obstruct any sidewalk or street or any part thereof, or break or dig the ground of the same, without first obtaining a written permit from the Selectmen therefore. Every person receiving such permit shall execute a written agreement to indemnify and save harmless the town against all loss, damage, or cost suffered or claimed on account of the existence of such obstruction or excavation, and shall leave the street or way at the completion of the work in as good condition as the same was before the work was commenced.

### **SECTION 2**

No person shall throw, place or cause to be thrown or placed upon any street, roadside or sidewalk, or on the shore of any private way, without consent of the owners any dirt, ashes, stones, hoops, boards or other wood with nails projecting there from, shavings, sawdust, manure nails, spikes, screws, glass, containers, filth, rubbish, or any noxious or refuse liquid or solid matter of substance.

### **SECTION 3**

No person shall permit horses or grazing beasts or swine or fowl, to run at large in this town, or to feed by the roadside either with or without keeper.

### **SECTION 4**

No person shall accost or address another person with profane, obscene, or indecent language, on any street or public place, or in any public building, and no person shall be indecent, or disorderly on any street, or in any public place or building.

### **SECTION 5**

No person shall by any noise, gesture or other means, wantonly and designedly frighten any horse in any street or other place in town.

### **SECTION 6**

No person shall, without written permit from the Selectmen, on any street or public place (except public playgrounds) throw or shoot any ball, stone, arrow, snowball, stick, brick or other missile or hard substance, or engage in any game, exercise, or amusement in any street or public place where the same interferes with the safe and convenient use thereof, or where such act disturbs the safety of persons or property, or the peace and quiet of any person; and no person shall coast or skate on any street or public place except such as are designated by the Selectmen.

### **SECTION 7**

No person shall without lawful authority to do so, deface, injure, or destroy any tree, fence, sign, guidepost, mailbox, stonewall or any boundary marker, electric light, telegraph or telephone pole on any street or public way in this town.

### **SECTION 8**

To assure the safe view of vehicles and of pedestrians across the corner, no shrub two (2) feet overall



diameter or larger, and no hedge or fence shall extend higher than two (2) feet above the main finished pavement centerline grade throughout that part of the front yard required on such lot, fifty (50) feet along the street frontage of each such yard from their street corner unless; The fence is a wire fence in which the openings are not less than four (4) inches minimum dimension or 1. The fence is a wire fence that has openings that are not less than two

(2) inches minimum diameter and is set back at least five (5) feet from the corner property line or 2. Any fence that is set back at least ten (10) feet from the corner property line. Enforcement by the Highway Surveyor or his designee.

## **SECTION 9**

No person shall permit a tree, branch thereof, hedge, brush or shrubbery growing on his land to extend over or overhand any street, sidewalk or highway so as to interfere with the full use of such street, sidewalk or highway. Enforcement by the Highway Surveyor or his designee.

## **ARTICLE 10: NONCRIMINAL DISPOSITION OF CERTAIN VIOLATIONS OF BYLAWS AND RULES AND REGULATIONS**

### **SECTION 1: DEFINITIONS**

- District Court - The district court having jurisdiction thereof.
- Enforcing Person - Any constable or police officer of the town.
- Offender - Person or person's firm, corporation, trust, or other organized group, found to be in violation as defined below.
- Violation - infringement, breach, failure to keep or observe a specific Town Bylaw or a Rule and Regulation of either the Soil Conservation Board, Special Permit Granting Authority, Building Department, Planning Board, Board of Health, or Conservation Commission; or a special condition attached to a permit issued by any of the preceding boards, authorities, departments, or commissions.

### **SECTION 2: NOTICE**

Pursuant to the authority of General Laws Chapter 40, SECTION 21D to which reference is made for any procedural matters not specified herein, any enforcing person, as defined above, taking cognizance of a violation, as defined above, may as an alternative to initiating criminal proceedings, give the offender a written notice to appear before the clerk of the district court having jurisdiction thereof not later than twenty-one (21) days after date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of such offender the specific offense charged, and the time and place for his/her required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgement that such notice has been received. The enforcing person shall, if possible deliver to the offender a copy of said notice at the time and place of the violation. If it is not possible to so deliver said copy of said notice, said copy shall be mailed or delivered by the enforcing person within fifteen (15) days after said violation. Certified mail shall be used to show that such notice has been mailed in accordance with this bylaw and General Laws Chapter 40, Section 21D.

### **SECTION 3: DISPOSING OF NOTICE BY OFFENDER**

Any offender notified to appear before the clerk of a district court as herein before provided may so appear and confess the offense charged; either personally or through a duly authorized agent or by mailing to the Town Clerk with the notice such specific sum of money not exceeding three hundred (\$300) dollars as the Town shall fix as penalty for a violation as described above. Such payment shall if mailed, be made by postal note money order or check, and all monies received shall be placed in the general fund. The payment to the Town Clerk of such sum shall operate as a final disposition of the case.

### **SECTION 4: CONTESTING THE NOTICE BY OFFENDER**

If any person so notified to appear and desires to contest the violation alleged in the notice to appear and also to avail himself/herself of the procedure established pursuant to this section of General Laws Chapter 40, Section 21D, he/she may, within twenty-one (21) days after the date of this notice, request hearing in writing. Such hearing shall be held before district court judge, clerk magistrate or assistant clerk, as the

court shall direct, and if the judge, clerk magistrate or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the offender so notified to appear, the offender shall be permitted to dispose of the case by paying the specific sum of money fixed as a penalty as aforesaid or such lesser amount as the judge, clerk magistrate, or assistant clerk shall order, which payment shall operate as a final disposition of the case.

#### **SECTION 5: SEVERABILITY**

The provisions of this bylaw shall be deemed severable. In the event that any section, paragraph, or part of this bylaw shall be held invalid or unconstitutional by any court of competent jurisdiction, the decision of such court shall not effect or impair the validity of any other section, paragraph, or part of this bylaw.

#### **SECTION 6: PENALTIES**

A included pursuant to this bylaw and Appendix A hereafter where any conflict exists within a bylaw being enforced through Non-criminal Disposition regarding the penalty to be applied, the penalty schedule provided in Appendix A shall govern. Where the enforcing agent elects or is required to issue criminal complaint to enforce the bylaw the penalty prescribed within the actual bylaw shall apply. The Town resolves to amend all bylaws so to be consistent with the penalty schedule provided in Appendix A.

### **Appendix A**

A non-conclusive list of those bylaws subject to non-criminal disposition and their respective penalties is herein provided. Non-criminal disposition may be applied to other regulations not Listed here, so long as they meet General Laws Chapter 40, Section 21D standards.

- Use of Streets, Sidewalks, Public Places (Article 9) penalty of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses.
- Alarm Systems (Article 11) penalty of \$25.00 per offense; \$100.00 for intentional false alarms
- Soil Conservation (Article 12) penalty of \$300.00 for first offense
- Hazardous Excavations (Article 14) penalty of \$200.00 per offense
- Abandoned Wells or Cesspools (Article 15) penalty of \$100.00 first offense; \$200.00 second offense; \$300.00 for third and subsequent offenses.
- Street Numbering (Article 16) penalty of \$25.00
- Mobile Homes (Article 20) penalty of \$25.00
- Zoning (Article 21) penalty of \$100.00 per offense.
- Animal Control (Article 22) penalty of \$25.00 per violation.
- Traffic Control (Article 31) penalty of \$25.00 for first offense; \$50.00 for second offense; \$100.00 for subsequent offenses.
- Marijuana ByLaw (Article 33) \$ 300.00 per offense
- Open Burning (Article 34) \$25.00 first offense; \$50.00 second offense; and \$100.00 for third and subsequent offense.

### **ARTICLE 11: ALARM SYSTEMS**

#### **SECTION 1: PURPOSE**

It is determined that the number of false alarms being made to the Police and Fire Departments hinders the efficiency of those departments, lowers the morale of department personnel, constitutes a danger to the general public in the streets during responses to false alarms, and jeopardizes the response of volunteers; and that the adoption of this bylaw will reduce the number of false alarms and promote responsible use of alarm devices in the Town of Berkley.

#### **SECTION 2: DEFINITIONS**

For the purpose of this bylaw the following definitions shall apply:

(a). “*Alarm System*” means: an assembly of equipment and devices such as a solid state unit which plugs directly into a 110 volt AC line, arranged to signal the presence of a hazard requiring urgent

attention and to which police and/or fire fighters are expected to respond. Fire alarm systems and alarm systems which monitor temperature, smoke, humidity or any other condition not directly related to the detection of an unauthorized intrusion into a premises or an attempted break at a premises are included.

(b). *"False Alarm"* means:

1. The activation of an alarm system through mechanical failure, malfunction, improper installation or negligence of the user of an alarm system or of his employees or agents.

2. Any signal or oral communication transmitted to the Police or Fire Department requesting or requiring or resulting in a response on the part of the Police or Fire Department when in fact there has been no unauthorized intrusion, robbery, burglary, attempted threat, or fire or threat of fire, illness, injury or threat of life.

3. For the purpose of this definition, activation of alarm systems for the purposes of testing with prior approval of the Police or Fire Departments, or while there is an on-duty police officer or fire fighter, by acts of vandals, by acts of God, including but not limited to, power outages, hurricanes, tornadoes, earthquakes and similar weather or atmospheric disturbance shall not be deemed to be a false alarm.

(c). *"User"* means: the occupant of the premises containing the alarm systems.

(d). *"Contractor"* means: any firm or corporation in the business of supplying and installing alarm devices or serving the same.

### **SECTION 3: ADMINISTRATOR**

There shall be in the Town an Administrator for alarm devices who shall have the powers and duties granted under this bylaw.

The Chief of Police or his designee shall be the Administrator under the direction and control of the Board of Selectmen which is authorized to adopt regulations for the administration of this bylaw.

### **SECTION 4: ALARM\_APPEAL\_BOARD**

There shall be in Town an Alarm Appeal Board which shall have the powers and duties granted under this bylaw. The Alarm Appeal Board shall consist of the Board of Selectmen.

### **SECTION 5: REGISTRATION REQUIRED**

Each alarm user shall register his alarm device or devices with the Administrator prior to use; provided that alarm devices in use as of the effective date of this bylaw may be registered no later than sixty (60) days from such date.

### **SECTION 6: CONFIDENTIAL\_INFORMATION**

All information in the possession of the Administrator, the Police Department or the Fire Department concerning particular alarm users and particular alarm devices shall be confidential and shall not be divulged without the written consent of the alarm user or users concerned.

### **SECTION 7: CONTROL\_AND CURTAILMENT OF SIGNALS EMITTED BY ALARM SYSTEMS**

(a) Every user shall submit to the Police and/or Fire Chief the user's name, address, daytime and nighttime telephone numbers and the names and telephone numbers of at least two other persons who are authorized to respond, after notification by the Police and/or Fire Department, to an emergency signal transmitted by an alarm system and who can open the premises wherein the alarm system is installed.

(b) All alarm systems installed after the effective date of this bylaw which use an audible horn or bell shall be equipped with a device that will shut off such horn or bell within ten (10) minutes after activation of the alarm system. All existing alarm systems must have a shutoff device installed within six (6) months of passage of this bylaw.

(c) Any alarm system emitting a continuous and uninterrupted signal for more than ten (10) minutes which cannot be shut off or otherwise curtailed due to the absence or unavailability of the alarm user or those persons designated by him under paragraph (a) of this section and which disturb the peace, comfort or repose of a community, a neighborhood, or a considerable number of inhabitants of an area where the alarm system is located, shall constitute a public nuisance.

(d ) No alarm system which is designated to transmit emergency messages or signals of intrusion to the Police Department will be tested until the Police Dispatcher has been notified.

#### **SECTION 8: PENALTIES**

Upon receipt of three (3) or more false alarms within a calendar year or for failure to pay the false alarm charge for said notice.

1. The user shall be assessed twenty-five (\$25.00) dollars as a false alarm service fee for each false alarm in excess of three (3) occurring within a calendar year. The user shall submit payment to the Town Treasurer within fifteen (15) days of such notice.
2. The Police or Fire Chief may in writing order the user:
  - a. To discontinue the use of the alarm.

#### **SECTION 9: NOTIFICATION AND APPEAL**

##### *a. False Alarm Charges*

1. The Administrator shall notify the responsible alarm user of any false alarm charge by mail or by service in hand by a police officer. Within thirty (30) days after the mailing of such notice, the alarm user may file with the Administrator information to show the false alarm was not a false alarm within the meaning of this bylaw.

2. The Administrator shall consider such information, reaffirm or rescind the false alarm charge, and notify the alarm user of his decision by mail or by service in hand by a police officer. Within thirty (30) days after the mailing of such notice, the alarm user may file with the Alarm Appeal Board an appeal in writing.

##### *b. Appeal to the Alarm Appeal Board.*

1. Upon receipt of a timely appeal from a false alarm charge, the Alarm Appeal Board shall hold a hearing to consider it and shall mail notice of the time and place of said hearing to the alarm user taking the appeal at his last known address at least fourteen (14) days before the hearing. On the basis of information provided by the alarm user and other information introduced at the hearing, the Board shall affirm the charge if it finds that the charge was properly imposed or rescind the charge if the charge was not properly imposed.

##### *c. Notice to include instructions.*

1. Each notice of a false alarm charge or the reaffirmation of such a charge shall refer to and provide instructions concerning the alarm user's right to further recourse by filing information with the Administrator or an appeal with the Alarm Appeal Board, as the case may be.

#### **SECTION 10: APPEAL FEES**

a. There shall be a fee of ten (\$10.00) dollars for each appeal to the Alarm Appeal Board.

b. The amount of the fee for taking an appeal may be raised or lowered from time to time at the discretion of the Alarm Appeal Board.

#### **SECTION 11: CHARGES AND FEES PAID INTO THE GENERAL FUND**

Charges for false alarms and appeal fees will be collected by the Administrator and deposited in the general fund.

#### **SECTION 12: TOWN ASSUMES NO RESPONSIBILITY FOR DEVICES**

Notwithstanding the provisions of this bylaw, the Town, its departments, officers, agents and employees shall be under no obligation whatsoever concerning the adequacy, operation or maintenance of any alarm device or of the alarm monitoring facilities at the Police and Fire Departments. No liability whatsoever is assumed for the failure of such alarm devices or for monitoring facilities or for failure to respond to alarms or for any other act or omission in connection with alarm devices. Each alarm user shall be deemed to hold and save harmless the Town, its departments, officers, agents, and employees from liability in connection

with the alarm user's alarm device.

#### **SECTION 13: PENALTY FOR CERTAIN VIOLATIONS**

Any person who performs or causes to be performed any of the following acts shall be subject to a fine of up to One Hundred (\$100.00) dollars for each such act:

- (a) Intentional causing of a false alarm, in accordance with Massachusetts General Laws
- (b) Whoever fails to comply with SECTION 5 paragraph (a) or SECTION 7 paragraphs (a), (b), (c) or
- (d) shall constitute violations of this bylaw.

#### **SECTION 14: ENFORCEMENT OF THIS BYLAW**

The Town, upon authorization by the Administrator may institute civil proceedings to enforce the provisions of this bylaw.

#### **SECTION 15: EXCEPTIONS**

The provisions of this bylaw shall not apply to alarm devices on premises owned or controlled by the Town, nor to alarm devices installed in a motor vehicle or motor vehicle trailer.

#### **SECTION 16: SEVERABILITY**

The invalidity of any part of this bylaw shall not affect the validity of the remaining parts or in any way act thereon.

### **ARTICLE 12: SOIL CONSERVATION**

#### **SECTION 1: PURPOSE**

This bylaw sets forth the process for submission and review of Earth Alteration Applications before the Soil Conservation Bylaw. The purpose of the Earth Alteration Permit is to assure that proposed operations will be conducted in a manner that is consistent with land use objectives of the Town of Berkley.

#### **SECTION 2: DEFINITIONS**

##### **ABUTTER**

The term "abutter" as used in this bylaw shall mean all property owners of record sharing a common boundary line with the site and further include any other owner of record whose property is located within 300 feet of the site boundaries.

##### **ALTERATION**

The term "alteration" as used in this bylaw shall mean either:

1. The removal of earth from a site
2. The depositing (bringing in) earth to a site;
3. The physical changing of contours of earth, by more than two (2) feet, on a site.

##### **BOARD**

The term "Board" as used in this bylaw shall mean the Soil Conservation Board as established under SECTION 3 of this bylaw.

##### **CONSOLIDATED SOIL**

A homogeneous layer composed of solid rock or cemented earthen material

##### **EARTH**

The term "earth" as used in this bylaw shall include any non-organic material normally and naturally composing part of the world's surface, including, but not limited to soil, loam, sand, stone, gravel and peat, and unprocessed unconsolidated deposits, but excluding water.

##### **MASSACHUSETTS SOIL EVALUATOR**

A person approved by the Massachusetts Department of Environmental Protection (MassDEP) as capable of evaluating the suitability of soils at a specific site for the use of an on-site subsurface sewage disposal system; and is currently listed on the most recent MassDEP list of approved Soil Evaluators.

##### **MUNICIPAL REGULATORY AUTHORITY**

Berkley Soil Conservation Board.

UNCONSOLIDATED SOIL

A formation composed of loose and unstratified, unsorted earthen materials, or particles such as clay, silt, sand, gravel or stones.

**SECTION 3: MEMBERS**

A Soil Conservation Board is hereby established in the Town of Berkley for the purpose of regulating the alteration of earth from the land located within the Town and enforcing the provisions of this Bylaw. The Board shall be comprised of the three (3) members of the Board of Selectmen and two (2) citizens at large, the latter of whom shall be registered voters of the Town of Berkley, appointed by the Board of Selectmēn. No person engaged in the business of altering earth shall serve on such ~~Board~~; and, should any member of the Board of Selectmen so qualify; the other members of the Board shall appoint a substitute member to serve in his or her stead. The Board shall elect a chairman and may appoint a secretary. The secretary need not be a member of the Board and shall keep a true record of the proceedings of the Board which shall be public records, or pass any vote or take any action relative thereto.

**SECTION 4: PERMITS**

Except as herein provided, no earth shall be altered from any land within the Town until a written permit from the Board, stating the land to which it applies, has been issued after a public hearing, a notice of which setting forth the time, place and purpose of said meeting, and the land with reference to which application has been made, shall have been published in one or more newspapers in general circulation in the Town, at least fourteen (14) days prior to the day

set for the hearing, and shall have been mailed Certified Mail, return receipt requested, to all abutters. All other provisions concerning the hearing shall be in conformance with Massachusetts General Laws, Chapter 40A, sections relative to the granting of special permits.

**SECTION 5: EXEMPTIONS**

A permit shall not be required for the alteration of earth in the course of excavation incidental to the construction of the foundation of buildings, walks, driveways, septic systems, nor swimming pools. A permit shall not be required for the alteration of earth in the ordinary and customary agricultural, horticultural or floricultural use of land. (Note: Excavation in the building of farm ponds and excavations that will result in the lowering or raising of an existing elevation by more than two (2) feet shall not be deemed normal and customary within the meaning of the foregoing). A permit shall not be required for the excavation and/or earth alterations made or done to complete the construction of ways and the installation of drainage and municipal services pursuant to a definitive subdivision plan submitted to and approved by the Berkley Planning Board under the Subdivision Control Law. Note: however, a permit will be required for the excavation and/or earth alteration made or done to complete the construction of such ways or installation of drainage and municipal services whenever existing elevations will be altered either in lowering or raising by more than two (2) feet. Under such circumstances, an earth alteration permit will be required in addition to approval by the Planning Board. The Soil Conservation Board may also issue a permit without a hearing for any alteration or use within the Town or not more than one hundred (100) yards of earth for any other purpose which is not commercial.

**SECTION 6: APPLICATIONS**

The application shall include the following information, and any other information the Board may require in its rules and regulations, and shall not be acted upon until all such information is provided.

- A. The location of the site upon which alteration is proposed, identified by both Berkley Assessor's Map and Lot number, and by street address and identified by the Registry of Deeds book and page references.
- B. The name and address of the Applicant.
- C. The name and address of the Owner.
- D. The name and address of the Operator.
- E. A certified list from the Assessor's Office of the names and addresses of all abutters, as published on the most recent Assessor's tax list.
- F. A site plan submitted to the Board in conformance with the rules and regulations of the Board.

- G. An estimated number of cubic yards of earth proposed for alteration based on field data from the engineering firm issuing the Site Plan.
- H. Under this bylaw the Board shall establish a filing fee, and the Board shall also establish a fee for the issuance of permits which shall be no more than sufficient in the opinion of the Board to reimburse the Town for the cost of applying and enforcing this bylaw; and the Board shall also establish a reasonable removal fee to be held for further appropriation at a future Town Meeting; and no permit shall be issued until such fees are paid. The fees collected under this bylaw shall, at intervals determined by the Board, be paid over to the Town Treasurer.
- I. Plan to show all relationship to any existing wetlands and/or Order of Conditions from the Conservation Commission for the entire project must accompany the application and at least one plan with a majority of the signatures from the Conservation Commission indicating this is the plan they have reviewed and approved.

#### **SECTION 7: PERFORMANCE SPECIFICATIONS**

All work performed under an earth alteration permit granted under this bylaw shall be done in accordance with the following specifications which shall be deemed to be incorporated therein by reference:

- A. An earth alteration permit shall not be issued for alteration of earth within three hundred (300) feet of a public way or within two hundred and fifty (250) feet of a private way or within two hundred and fifty (250) feet of an abutter, unless the Board determines that such removal will not undermine the way or otherwise endanger the safety of public travel upon it, nor impair the convenience and welfare of the public or the amenities of living in the houses upon such way, nor injuriously affect the abutting owners, as further set out in SECTION 8 hereof.
- B. All trees are to be cut and removed in compliance with all local, state and federal laws and regulations.
- C. All loam and topsoil must be scraped and stockpiled on the site for use in later landscaping. Upon completion of all earth alteration, the loam or topsoil must be spread back over the entire area and the re-graded area must then be seeded with an acceptable material and maintained until the grass heights have reached the two (2) inch minimum. No loam or topsoil may be removed from the site, except when necessary for or incidental to the construction of a road, or other permanent facility which changes the character or use of the land: but in such case the Board shall require evidence of good faith in the intent of the applicant to complete such road or other facility, and shall make such evidence part of its records.
- D. All public ways utilized for earth alteration operations must be paved to minimize dust and mud. All access roads leading to public ways shall be paved for a distance of not less than one hundred fifty (150) feet back from the public way. Any spillage on public ways, within one thousand (1,000) feet of the access road, shall be cleaned by the operator on a daily basis following working hours.
- E. Earth must be altered to contours set forth in the approved Site Plan.
- F. Unless the site conditions or specific needs set out in the permit application expressly requires alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points; and so that the total discharge at peak flow is not increased; and so that the hydrograph of any post development stream is not more than that of the predevelopment stream.
- G. Any earth alteration in the vicinity of or within wetland areas governed by Massachusetts General Laws Chapter 131 or other wetland related laws, shall also be subject to orders of conditions from the Conservation Commission. Whether such proposed earth alteration projects fall within the jurisdiction of the Conservation Commission shall be determined by the Conservation Commission and applicable local, state and federal laws and regulations.
- H. The Board shall also establish rules and regulations relative to all other design or alteration standards that it deems necessary and these rules and regulations will be attached to the permit as additional conditions as outlined in section 8 hereof.
- I. No excavation/removal/processing of consolidated and unconsolidated soil will be allowed below the mean annual high groundwater elevation. The natural mean annual high groundwater shall be established by a licensed/certified Massachusetts Soil Evaluator and

the elevation shall be noted on a monument placed on the property and shown on the topographic and/or site plan for the property. The soil evaluation conducted to determine the mean annual high groundwater elevation shall be witnessed by the municipal regulatory authority or its authorized agent. The exemptions for the excavation/removal of soil shall be for properly permitted residential, general business, municipal construction, septic drinking and environmental/geophysical monitoring wells, road and cranberry bogs or other similar agricultural uses

#### **SECTION 8: CONDITIONS**

In issuing a permit, the Board may impose reasonable conditions, which shall be written upon and shall constitute part of the permit, requiring the restoration of the land within a designated period, by grading, leveling, or filling and by replacing sufficient topsoil for planting cover to the end that no substantial injury to health, safety, convenience, welfare, natural beauty, and economic prosperity of the neighborhood, town, and the inhabitants will be caused by the acts authorized by such permit, all as set out by this bylaw. Conditions may in like manner be imposed to provide adequate protection for the neighborhood, the aquifer, and the Town from nuisances that may arise from the course of such removal. If such alteration is carried on in such a way as to injuriously affect the welfare of the town, by an increase in the amount of products removed or otherwise, and the Town is not adequately protected by the conditions imposed by the permit, the Board may impose additional restrictions. The Board may, and in the case of the alteration for commercial purposes, such as soil stripping and gravel operations, shall require a bond or other security to enforce the performance of conditions listed in this paragraph, and may also revoke or suspend a permit if the conditions are not complied with.

#### **SECTION 9: REASONS FOR DENIAL**

No permit shall be issued if any of the following conditions exist and cannot be rectified through the use of reasonable conditions as provided by SECTION 8 to the satisfaction of the Soil Conservation Board:

- A. Any vehicular traffic of a type or quantity so as to adversely affect the immediate neighborhood.
- B. Any conditions dangerous to premises and residents in the neighborhood through fire, explosion, emission of wastes or other causes.
- C. Any creation of noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisances or serious hazards so as to adversely affect the immediate neighborhood.
- D. Rock quarry and/or associated rock processing operations.

#### **SECTION 10: DURATION OF PERMIT**

A permit issued under this bylaw shall expire upon completion of the earth alteration and subsequent re-grading for which the permit was issued, and in any event no longer than one year from the issued date. If it appears that the operations for which such permit was issued have been carried on continuously; and in good faith, but have not been completed and that all conditions presently applicable have been complied with, the permit may be renewed for an additional year without a hearing. The expiration or revocation of the permit shall not affect the obligation of the holder thereof to comply with the conditions attached to the permit, or release him or the surety on his bond from the obligations thereof or require the return of any deposit made by him until such conditions have been complied with.

#### **SECTION 11: ENFORCEMENT**

If the Board shall find that there has been a violation of this bylaw, the Board shall send by registered mail to the offender a written warning. If such violation continues, then any penalties authorized by the Massachusetts General Laws may be imposed. The penalty for earth alteration in violation of this bylaw shall be a fine of not more than three hundred (\$300) dollars for the first offense after such warning; any subsequent violation shall result in permit revocation and/or any other remedy available at law or in equity. Each day on which earth removal takes place shall constitute a separate offense for the person removing the same. If the offender holds a permit issued under this bylaw, such permit shall be revoked.

#### **SECTION 12: ENDANGERMENT TO PUBLIC HEALTH OR SAFETY**

When the Board finds that any excavation hitherto made for the purpose of earth removal is maintained in



such a way as to endanger the public health or safety or to constitute a nuisance, the Board shall request the Board of Health to take such steps as are authorized by law to protect the public health and safety, or to cause such nuisance to be abated.

#### **SECTION 13: EXISTING OPERATIONS**

Whenever the Board shall find that the alteration of any earth has previously been undertaken in a particular location, and was in continuous operation at the time when notice of the warrant for the Town Meeting at which this bylaw was adopted was given, a permit for the further continuance of such operation within the same territorial limits shall be issued subject to conditions in the same manner as other permits.

#### **SECTION 14: SEVERABILITY**

The invalidity of any part of this bylaw shall not affect the validity of the remaining parts or in any way act thereon.

### **ARTICLE 13: BOARD OF HEALTH**

#### **SECTION 1**

There shall be a Board of Health comprised of three (3) members who shall make such reasonable rules and regulations not inconsistent with law, as they may deem necessary to protect the general health, welfare, and safety of the town.

#### **SECTION 2: SEPTIC SYSTEMS**

Each subsurface sewage disposal area must be on the same contiguous lot of land as the building or dwelling for which it is to serve.

### **ARTICLE 14: HAZARDOUS EXCAVATIONS**

Every owner of land which has been excavated shall erect barriers or take other suitable measures within five (5) days after such owners have been notified in writing by the Board of Selectmen that, in their opinion, such excavation constitutes a hazard to public safety. Any person violating this section shall be subject to a penalty provided in Chapter 40, SECTION 21 and Subsection 19.

### **ARTICLE 15: ABANDONED WELLS OR CESSPOOLS**

Every owner of land where there is located an abandoned well or cesspool shall provide a covering for such well or cesspool capable of sustaining a weight of over 1,000 pounds or fill the same to the level of the ground. Any person violating this section shall be subject to a penalty provided by Chapter 40, SECTION 21, and Subsection 20.

### **ARTICLE 16: STREET NUMBERING**

Street numbers shall be provided for each dwelling and each business, industrial and other building in the Town of Berkley by the owner of such structures by ninety (90) days after approval by the Attorney General in accordance with the following:

1. The numbers shall be made of permanent weatherproof material, shall be at least three (3) inches in height and shall be clearly visible from the street or nearby roadway upon which the dwelling or building fronts.
2. The numbers shall be placed on each structure or on a suitable support near the main entrance to the structure so as to be visible.
3. The numbers shall be those assigned to each structure in accordance with the street numbering survey completed by the Board of Assessors on file in the office of the Assessors.
4. New Buildings. The owner of any property seeking a building permit for a new building or structure shall apply for and receive a building number designation from the Board of Assessors or their designate prior to submitting application to the building official for a permit, and no building permit shall be issued without designation of such building number.

5. It shall be the responsibility of each property owner in the town to obtain a number as- signed to his affected structure or structures within three (3) months of the effective date of this bylaw.
6. This bylaw shall be enforced by the Board of Selectmen of the Town of Berkley either directly or through an inspector to be appointed by them. Failure to comply with this bylaw shall subject the offending property owner to a fine not exceeding ten (\$10.00) dollars.

#### **ARTICLE 17: JUNK DEALERS**

##### **SECTION 1**

No person shall be a collector of or a dealer in junk, old metals, of second hand articles, or a keeper of a shop for the purchase, sale or barter of junk, old metals, or second hand articles, unless licensed therefore by the Selectmen. The Board of Selectmen shall receive at least five (\$5) dollars for each license granted. Any dealer who openly displays his wares for sale shall do so with due discretion in regard to the health, and safety and welfare of the town.

#### **ARTICLE 18: MOTOR VEHICLE LICENSES (Classes 1, 2, &3)**

Class 1, 2, and 3 motor vehicle licenses shall be issued under General Laws of Chapter 140, SECTION 58. All class 3 licenses shall be subject to the following:

(1) No land or premises shall hereafter be used as a Motor Vehicle Junk Yard unless the area used as such is screened or fenced so that the use is not visible from a public way or abutting property. Minimum distance said screen or fence shall be seventy-five (75) feet from the centerline of an established public way.

(2) Hours of operation will be limited from 8 A.M. to 8 P.M. Monday through Saturday only.

#### **ARTICLE 19: SUBDIVISION CONTROL**

##### **SECTION 1**

There shall be a Board of Appeals for the Subdivision Control Law consisting of members appointed by the Selectmen in the manner prescribed by SECTION 81Z of Chapter 41 of the General Laws.

#### **ARTICLE 20: MOBILE HOMES OR HOUSE TRAILERS**

##### **SECTION 1**

No permit, except a temporary or replacement permit, for a house trailer or mobile home to be used for dwelling purposes shall be issued by the Inspector of Buildings.

##### **SECTION 2**

A temporary permit for a house trailer or mobile home may be issued by the Inspector of Buildings to any applicant who is, at the time of the application, in the process of actual construction, erection or making major repairs to a dwelling house on the same premises for which a permit is sought.

##### **SECTION 3**

Any house trailer or mobile home located in the Town before this bylaw becomes enacted may be replaced on said lot by succeeding house trailers or mobile homes by the same owner, provided that each succeeding house trailer or mobile home is of the same or larger floor area and is of newer manufacture than the one that preceded it. A replacement permit shall be required from the Inspector of Buildings for each replacement unit.

##### **SECTION 4**

An unoccupied house trailer or mobile home may be parked on one's property if it remains on its wheels and is not connected to any public utilities or sanitation facilities, and shall not be subjected to the provisions

of this article.

## **SECTION 5 DEFINITIONS**

a) A *HOUSE TRAILER* or *MOBILE HOME* shall be defined as a factory fabricated structure without motive power of its own, expandable or not, primarily deigned to be drawn or hauled by a motor vehicle on streets or highways on its own wheels or on a flat bed or other trailer, and to be used as a residence for living purposes, whether on wheels or on a temporary or permanent foundation.

A house trailer or mobile home is one of a variety of structures sometimes classified as "manufactured" and/or "modular " structures and regulated by a variety of state and federal regulatory agencies. It is distinguished from other "manufactured" or "modular" structures by having been constructed upon a steel frame with permanently mounted wheel and axle components which remain with the housing unit once it has been installed on a suitable foundation or support system. Generally though not always "mobile home" consist of lightweight walls and wood frame components of less than two by four (2"x4") construction covered with aluminum or vinyl siding over a minimal sheathing. Characteristically, wheels and towing yokes are removable for permanent installation and may be re-attached if the structure should be removed to another location.

b) A *PERMIT* is the authority granted by the Inspector of Buildings to allow a mobile home or house trailer to be permitted on a house lot.

c) A *TEMPORARY PERMIT* is a permit issued by the Inspector of Buildings to an applicant in the process of actual construction, erection, or the making of major repairs to a dwelling on the same premises. Such a permit shall be valid for one year, but may be extended for one additional year if the Inspector of Buildings is satisfied that said construction, erection, or repair is being carried forward in good faith. If the construction ceases to be carried forward in good faith, said Inspector of Buildings shall revoke the permit.

d) A *REPLACEMENT PERMIT* is a permit issued by the Inspector of Buildings to an applicant who is desirous of replacing on the same lot of land his then existing house trailer or mobile home.

## **ARTICLE 21: ZONING**

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**SECTION 1.0 PURPOSE AND AUTHORITY**

**1.1 PURPOSE.** This Zoning By-law (the “By-law”) has been enacted to promote the general welfare of the Town of Berkley (the “Town”), to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the town, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the town, and to reduce the hazard from fire by regulating the location and use of buildings and the area of open space around them, all as authorized by, but not limited to, the provisions of the Zoning Act, G.L. c. 40A, as amended, and Section 2A of 1975 Mass. Acts 808.

**1.2 AUTHORITY.** This By-law 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.** 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 By-law. 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. Where the application of this By-law imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants, or agreements, the provisions of this By-law shall control.

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

**1.6 SEPARABILITY.** The invalidity of any section or provision of this By-law shall not invalidate any other section or provision herein.

## **SECTION 2.0 DISTRICTS**

**2.1 ESTABLISHMENT.** For the purpose of this By-law, the Town of Berkley is hereby divided into several types of districts designated as:

Residential (R)  
General Business (GB)  
Special Business (SB)

**2.2 ZONING MAP.** The Districts are hereby established as shown on a map entitled, "Town of Berkley Zoning Map," January, 2020 as may be amended from time to time. See, [https://www.townofberkleyma.com/sites/g/files/vyhliif2806/f/uploads/berkley\\_zn\\_final\\_feb\\_2021.pdf](https://www.townofberkleyma.com/sites/g/files/vyhliif2806/f/uploads/berkley_zn_final_feb_2021.pdf)

The map with all explanatory matter thereon and amendments thereto, is hereby incorporated and made a part of this By-law and is filed with the Town Clerk.

### **2.3 OVERLAY DISTRICTS.**

The following overlay districts are also hereby established:

Aquifer Protection Overlay District (APOD)  
Flood Plain Overlay District (FPOD)

### **2.4 INTERPRETATION OF ZONING MAP.**

**2.4.1 Centerline.** Where the boundary lines are shown upon the Official Zoning Map of the Town of Berkley within the street lines of public and private ways, or utility lines, the center of such ways or lines shall be the boundary lines, unless otherwise indicated.

**2.4.2 Lot Lines.** Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot or boundary lots is not indicated by means of dimension shown in figures, then the property or lot lines shall be those lines as depicted on the Official Zoning Map.

### **2.5 SPLIT LOTS.**

**2.5.1 By Town Boundary.** When a lot is situated in part in the Town and in part in an adjacent municipality, the provisions of this By-law shall be applied to the portion of such lot in the Town in the same manner as if the entire lot were situated in the Town.

**2.5.2 By Zoning District Boundary.** When a lot is transected by a zoning district boundary, the regulations of this By-law applicable to the larger part of the area of such lot may also by the grant of a special permit from the Planning Board be deemed to govern in the smaller part beyond such zoning district boundary but only to an extent not more than thirty (30) linear feet in depth beyond such zoning district boundary.

## **SECTION 3.0 USE REGULATIONS**

### **3.1 PRINCIPAL USES.**

**3.1.1 Applicability of Use Regulations.** Except as otherwise provided by law, in each district no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations. Any principal use not listed shall be construed to be prohibited.

1. There shall be not more than one principal residential building on any lot unless specifically authorized in this By-law.

**3.1.2 Permitted Uses.** In the following Table of Use Regulations, the uses permitted by right in the district shall be designated by the letter (Y). Such uses may be subject to Site Plan Review pursuant to Section 10.6.2 of this Bylaw. Uses designated (N) shall not be permitted in the district. Those uses that may be permitted by special permit in the district, in accordance with Section 10.5, shall be designated by identification of the Special Permit Granting Authority, which is either:

BA	Zoning Board of Appeals
PB	Planning Board
BOS	Board of Selectmen

**3.1.3 Uses Subject to Other Regulations.** Uses permitted by right or by special permit shall be subject, in addition to these use regulations, to all other provisions of this By-law.

### 3.2 TABLE OF USE REGULATIONS.

USE	R	GB	SB
<b>A. RESIDENTIAL USES</b>			
1. Single family dwelling	Y	N	N
2. Two or three family dwelling	N	BOS	BOS
3. Multifamily dwelling, not to exceed 4 dwelling units	BOS	BOS	BOS
4. Senior Housing	PB	PB	PB
5. Flexible development	PB	N	N
<b>B. INSTITUTIONAL AND COMMUNITY USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Use of land or structures for religious purposes	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	Y	Y	Y
3. Child care center or school aged child care program	Y	Y	Y
4. Public and private parks	Y	Y	Y
5. Camp for school-aged children (see Section 4.2.2)	PB	Y	Y
6. Municipal and governmental facilities and uses including public recreational use (see Section 4.2.1)	Y	Y	Y
7. Essential services	PB	PB	PB
<b>C. AGRICULTURAL USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area or two qualified acres	Y	Y	Y
2. Exempt Farmstand	Y	Y	Y
3. Nonexempt Farm	Y	N	N
4. Nonexempt Nursery	Y	N	N
5. Nonexempt Farmstand	Y	N	N
<b>D. COMMERCIAL USES (see D. 21, below)</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Retail store	N	Y	Y
2. Restaurant or other facility for the preparation of food for retail sale on the premises	N	Y	Y
3. Fast-food or restaurant with drive through window	N	PB	PB
4. For profit entertainment or recreation facility, indoor or outdoor	N	Y	Y
5. Bar or Tavern with incidental food service	N	PB	PB
6. Professional or business office	N	Y	Y
7. Medical office or clinic	N	Y	Y
8. Bank or financial services office	N	Y	Y
9. For profit educational use	N	PB	PB

10. Bakery	N	Y	Y
11. Bed and Breakfast	N	Y	Y
12. General services shop	N	Y	Y
13. Personal services shop	N	Y	Y
14. Veterinary office or hospital	N	Y	Y
15. Commercial kennel	N	PB	PB
16. Hotel or motel	N	PB	PB
17. Funeral home	N	Y	Y
18. For profit or nonprofit membership club	N	Y	Y
20. Art gallery	N	Y	Y
21. Any use in Section D, Commercial Uses, with more than 20,000 sf GFA	N	PB	PB
22. Adult Entertainment Establishment	N	N	BA
23. Medical marijuana treatment center (RMD)	N	BOS	BOS
24. Adult use marijuana establishment	N	BOS	BOS
25. Any allowed use with a drive through window	N	PB	PB

<b>E. MOTOR VEHICLE USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Motor vehicle light service	N	PB	PB
2. Motor vehicle repair or body shop	N	PB	PB
3. Motor vehicle or boat sales or leasing	N	PB	PB
4. Car wash	N	PB	PB
5. Electric Vehicle Charging Station with up to 6 chargers	N	Y	Y
<b>F. LIGHT INDUSTRIAL AND STORAGE USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Warehouse and distribution facility	N	PB	PB
2. Self-storage facility	N	PB	PB
3. Lumber or Feed establishment	N	Y	Y
4. Building materials and/or contractor's yard	N	BA	BA
5. Print shop or publishing establishment	N	Y	Y
6. Light manufacturing	N	N	N
7. Wireless telecommunication facility (See section 7.2)	PB	PB	PB
8. Solar Energy Systems (See section 7.3)	Y	Y	Y
<b>G. ACCESSORY USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Home occupation by right (see Section 3.4.1)	Y	Y	Y
2. Home occupation by special permit (see Section 3.4.2)	PB	PB	PB
3. Family day care home, small	Y	Y	Y
4. Family day care home, large	PB	PB	PB
5. Adult social day care	PB	PB	PB
6. One or two boarders in single family dwelling	PB	PB	PB
<b>H. PROHIBITED USES</b>	<b>R</b>	<b>GB</b>	<b>SB</b>
1. Asphalt or cement mixing plant	N	N	N
2. Petroleum or other chemical refining or processing plant	N	N	N
3. Hazardous, solid, or radioactive waste disposal or treatment facility	N	N	N
4. Earth removal and quarrying	N	N	N

### 3.3 ACCESSORY USES.

**3.3.1 General.** Accessory uses are allowed as set forth in the Table of Use Regulations, Section G. 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.”

**3.3.2 Permitted Accessory Uses in All Districts.** The following accessory uses are specifically permitted as indicated by right or by special permit:

1. Family Day Care Homes. Small family day care homes are allowed as an accessory use as of right in all districts. Large family day care homes are allowed in all districts only upon the issuance of a special permit by the Board of Appeals.

**3.3.3 Nonresidential Accessory Uses.** Any use permitted as a principal use in the same district is also permitted as an accessory use provided such use is customarily incidental to the main or principal building or use of the land. Any use authorized as a principal use by special permit in the same district may also be authorized as an accessory use by special permit provided such use is customarily incidental to the main or principal building or use of the land. Any use not allowed in the district as a principal use is also prohibited as an accessory use. Accessory uses are permitted only in accordance with lawfully existing principal uses. In all instances where site plan review and approval is required for a principal use, the addition of any new accessory use to the principal use, where such addition exceeds the thresholds established in Section 10.6, shall also require site plan review and approval.

**3.3.4 Residence District Accessory Uses.** The following accessory uses are specifically permitted as of right or by special permit as set forth in the Table of Use Regulations:

1. Boarders in Single-Family Dwelling. The renting of rooms and/or furnishing of board to not more than two persons in a single-family dwelling by the owner/occupant thereof shall be allowed as an accessory use upon the grant of a special permit.
2. In the Residence Districts, the following accessory uses are prohibited:
  - a. Commercial kennels.
  - b. Commercial auto repair or service.

### **3.4 HOME OCCUPATIONS.**

**3.4.1 Home Occupation - As of Right.** One (1) only home occupation may be allowed as of right on a property, provided that it:

1. Is conducted solely within a dwelling and solely by the person(s) occupying the dwelling as a primary residence;
2. Is clearly incidental and secondary to the use of the premises for residential purposes;
3. Does not utilize exterior storage of material or equipment (including the parking of commercial vehicles unless otherwise authorized herein);
4. Does not exhibit any exterior indication of its presence or any variation from residential appearance;
5. Does not produce any customer or client vehicle trips to the home occupation site and has no nonresident employees.

**3.4.2 Home Occupation - By Special Permit.** One (1) only home occupation may be allowed on a property by special permit issued by the Planning Board, provided that:

1. It fully complies with Sections 3.4.1.2, 3.4.1.3, and 3.4.1.4, above;
2. It is conducted within a dwelling solely by the person(s) occupying the dwelling as a primary residence and, in addition to the residents of the premises, by not more than two additional employees; where employees leave vehicles on the premises while conducting business elsewhere, they shall be counted as nonresident

employees;

3. A special permit for such use is granted by the Planning Board, subject to conditions including, but not limited to, restriction of hours of operation, maximum floor area, and number of off-street parking spaces. Such special permit shall be limited to five years, or the transfer of the property, whichever first occurs.

## SECTION 4.0 DIMENSIONAL REGULATIONS

### 4.1 TABLE OF DIMENSIONAL REQUIREMENTS.

**4.1.1 General.** No building or use shall be permitted to be located, erected, relocated or altered, except on a lot and in a manner specified in the following Table of Dimensional Requirements, Table 2. The Special Permit Granting Authority may impose greater requirements where needed for the protection of the neighborhood and to minimize adverse impact.

DISTRICT	R	GB	SB
Min. Lot Area (sq. ft.)	65,340 (but see Section 4.2.1)	40,000	40,000
Min. Lot Width and Frontage (ft.)	200	100	100
Min. Front Setback (ft.)	50	35	35
Min. Side and Rear Yard (ft.)	15	20	20
Max. Building Height (ft.)*	35	50*	50*
Max. Lot Coverage by Building (%)	NA	50	NA
Contiguous Upland (sq. ft.)	30,000	30,000	NA

\* Up to 75' by special permit from Planning Board.

### 4.2 SPECIAL LOT AREA REGULATIONS.

**4.2.1 Minimum Lot Area; R District.** The following uses require a minimum lot area of 87,120 square feet: B.5.

**4.2.2 Minimum Lot Area; Multifamily Dwellings.** Any dwelling with two units, but not more than four units, shall be located on a lot with at least 65,340 square feet per dwelling unit.

### 4.3 SPECIAL DIMENSIONAL REGULATIONS.

**4.3.1 Permitted Encroachments.** Steps, fireplaces, chimneys shall be permitted within the front, side, and rear setbacks.

**4.3.2 Stands.** Roadside stands for sale of locally grown farm products may be located within the required setback, but at least 10 feet from the street line.

**4.3.3 Setbacks.** In the GB and SB Districts, no structures, parking, or storage shall be located in the front setback area.

### 4.4 CORNER LOTS.

**4.4.1 General.** A corner lot or a lot opening on two streets shall be subject to the regulations for front yards set forth in the Table of Dimensional Requirements with respect to every street on which it fronts. In the case of corner lots, frontage shall be measured between one side lot line and the mid-point of the corner. Corner lots shall not have rear lot lines.

**4.4.2 Sight Triangle.** On a corner lot, no visual obstruction between 2 ½ and eight feet above the lowest elevation at the curb line shall be permitted within the area of a triangle formed on two sides by the intersecting ways and on the third side by a line drawn between points on each of said intersecting ways 25 feet from the corner. For the purpose of this Section, the word "visual obstruction" shall mean any shrub, tree, wall, fence, sign, temporary building, pile of material, terrace or retaining wall, but shall not include permanent buildings or structures otherwise in compliance with this zoning

#### **4.5 ACCESSORY BUILDINGS.**

**4.5.1 Dimensional Requirements and Location.** Except as otherwise provided herein, the following dimensional rules shall apply to accessory structures:

1. Less than 120 Square Feet GFA. An accessory building less than 120 square feet may be located in any side or rear yard no closer to the lot line than seven (7) feet.
2. More than 120 Square Feet GFA. An accessory building more than 120 square feet shall comply with all setback and yard requirements in the district.
3. No accessory building or structure, except a permitted sign or roadside stand, shall be located within a required front yard setback.
4. An accessory building attached to its principal building or within ten (10) feet of it shall be considered an integral part thereof and as such shall be subject to the front, side, and rear yard requirements applicable to the principal building.
5. Accessory structures and buildings shall be located on the same lot as the principal structure on the premises.

**4.5.2 Permitted Accessory Structures.** The following accessory structures are permitted in all districts:

1. 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.
2. 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.

### **SECTION 5.0 NONCONFORMING USES AND STRUCTURES**

#### **5.1 APPLICABILITY.**

Except as herein after provided, this By-law 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 By-law 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 family 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 By-law, unless the use or construction is commenced within a period of not more than 12 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, not substantially more 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 FAMILY RESIDENTIAL STRUCTURES.**

Nonconforming single and two family 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 Inspector of Buildings determines that proposed alteration, extension or change exceeds 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 family 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 By-law; 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 such reestablishment shall not result in substantial detriment to the neighborhood.

## **5.7 RECONSTRUCTION AFTER CATASTROPHE OR VOLUNTARY DEMOLITION.**

Any nonconforming structure, other than a nonconforming single or two-family dwelling governed by Section 5.5, 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. Building(s) reconstructed as of right shall be located on the same footprint as the original nonconforming structure and shall be only as great in gross floor area as the original nonconforming structure.
3. In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit from the Board of Appeals shall be required. Such special permit shall be obtained prior to 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.

## **SECTION 6.0 GENERAL REGULATIONS**

### **6.1 PARKING AND LOADING.**

**6.1.1 Applicability.** All uses other than single family residences shall provide sufficient off street parking on the same lot as the principal use, together with safe and convenient access ways, to accommodate all employees, occupants, customers, clients or patrons, and also any supply or delivery trucks, including any needed loading or unloading docks or space as determined by the Table of Parking Requirements and this Section.

#### **6.1.2 Table of Parking Requirements.**

<b>USE</b>	<b>REQUIRED SPACES</b>
Assisted Living Facility	1 per staff person and 1 space for every 4 beds
Auto Repair	1 per 400 sf of GFA PLUS 1 per employee
Bank	1 per 175 sf GFA devoted to customer service PLUS 1 per 250 sf GFA not devoted to customer use
Barber Shop or Beauty Salon or Tanning Salon or Tattoo Parlor or Nail Service	3 per operator's station

Church or similar place of assembly	1 per 5 occupants PLUS 1 per two employees
Continuing Care Retirement Community	1 space per staff person and 1 space for every 4 beds
Doctor, dentist, veterinarian, or clinic offices	1 per 200 sf of GFA PLUS one per employee
Drive-Through Restaurant	If no sit-down tables, minimum of 10 spaces PLUS 1 per employee
Farm Stands, nurseries, greenhouses	1 per 250 sf of retail floor area, or none required if less than 100 sf
Funeral Home	1 per 50 sf of public floor area PLUS 1 per two employees
Motor vehicle light <del>Gasoline</del> service station	3 per service bay PLUS 1 per employee
Hotel/motel	1 per unit PLUS 1 per two employees PLUS 1 space for each 150 sf of banquet, assembly or meeting space.
Libraries, museums, clubs, and social buildings	1 per 250 sf of GFA PLUS 1 per two employees
Non-medical offices	1 per 250 sf of GFA
Long term care facility	1 space per 4 beds
Other general, personal, consumer and retail services	1 per 250 sf of GFA PLUS 1 per employee
Other business, institutional or professional use not specified	1 per 200 sf of GFA PLUS 1 per 2 employees
Recreation Facility	1 per four occupants / 1 per four of the maximum capacity
Restaurants and theatres	1 space per three persons occupancy as allowed under the Building Code. An additional 5 spaces shall be required for a take out area without seating.
Schools, colleges, and child care centers	1 per 400 sf of educational space
Self-Storage facility	Minimum of 3, or 1 per 10,000 sf of GFA, whichever is greater

### 6.1.3 Parking Design and Requirements.

1. All required off-street parking shall be accommodated on the same premises as the activity it serves.
2. Required parking and loading areas and their access drives shall be paved with bituminous concrete.
3. There shall not be more than one entrance and one exit from such lots per three hundred feet of street frontage. If necessary to meet this standard, the Planning Board may approve a site plan showing shared egress and ingress by and between adjacent properties. No parking area shall be located or designed so as to require backing onto or off a public way.
4. Each off-street parking space shall have minimum dimensions of nine (9) by twenty (20) feet excluding the driveway to such space.
5. Drainage facilities for each parking area shall be designed and constructed to contain storm water run-off on the premises.

6. No parking lot shall be illuminated so as to cause glare for motorists, pedestrians or neighboring premises.
7. No paved area designated for parking on a lot shall be located closer than twenty (20) feet from any street. No paved area designed for parking on a lot shall be located closer than seven and a half feet from any building wall.
8. All parking lots consisting of ten (10) or more parking spaces shall provide two hundred (200) square feet of interior landscaping for every ten (10) spaces. These landscaping areas shall contain a minimum of two (2) canopy trees, a minimum of ten (10) feet in height and minimum three inch caliper, and two (2) understory trees/shrubs, a minimum of two (2) feet in height.
9. To prevent cars from parking too close to trees or damaging shrubs, a curb or wheel stop shall be provided for interior parking lot landscaped islands.
10. Aisles and spaces shall be consistent with the following:

Aisle Width	Parking Angle (in degrees)				
	0	30	45	60	90
One-Way traffic	13 ft	11 ft	13 ft	18 ft	24 ft
Two-Way traffic	20 ft	20 ft	21 ft	23 ft	24 ft

**6.1.4 Drive-Through Facilities.** All drive-through facilities shall require a special permit from the Planning Board.

1. Drive-through facilities shall provide a minimum of (8) eight stacking spaces (within the site) before the order board. The facility shall provide another (4) four stacking spaces between the order board and the transaction window. If the facility has two transaction windows the (4) four stacking spaces may be split between each of the windows. An additional stacking space shall be provided after the last transaction window(s).
2. Each stacking space shall be a minimum of twenty (20) feet in length and ten (10) feet in width along straight portions. Stacking spaces and stacking lanes shall be a minimum of twelve (12) feet in width along curved segments. Stacking lanes shall be delineated from traffic aisles, other stacking lanes and parking areas with striping, curbing, landscaping and the use of alternative paving materials or raised medians.
3. Entrances to stacking lane(s) shall be clearly marked and be a minimum of sixty (60) feet from the intersection with the public street. The distance shall be measured from the property line along the street to the beginning of the entrance.
4. Stacking lanes shall be designed to prevent circulation congestion, both on site and on adjacent public streets. The circulation shall: (a) separate drive –through traffic from site circulation, (b) not impede or impair access into or out of parking spaces, (c) not impede or impair vehicle or pedestrian traffic movement, and (d) minimize conflicts between pedestrian and vehicular traffic with physical and visual separation between the two. Stacking lanes shall not interfere with required loading and trash storage areas and loading or trash operations shall not impede or impair vehicle movement. If said separate stacking lane is curbed, an emergency by-pass or exit shall be provided. Stacking lanes shall not enter or exit directly into a public right-of-way. Stacking lanes shall be integrated with the on-site circulation pattern.
5. The intersection of stacking lanes and walk-in customer access shall be a minimum of fifty (50) feet from any access connections and/or transaction windows. Said intersections shall be provided with a crosswalk. These crosswalks shall use enriched paving and striping and include warning signage aimed at both the pedestrian and vehicle. Any outdoor service facilities (including menu boards, speakers, etc.) shall be a minimum of one hundred (100) feet from the property line of abutting residential uses. Menu boards shall be a maximum of thirty (30) square feet, with a maximum height of six (6) feet and shall be shielded from any public street and residential properties.

**6.1.5 Loading.** Adequate off-street loading that does not conflict with the required parking spaces shall be

provided. These facilities shall be sized and arranged so that no trucks need to back onto or off a public way or be parked on a public way while loading, unloading or waiting to do so.

**6.1.6 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.** This Section governs the placement of signs within the Town of Berkley. Purpose. The purpose of this Section is to provide standards for the installation of signs so as to reduce traffic safety hazards, protect property values, promote economic development, and protect the aesthetic appearance of the Town.

**6.2.2 Permit Required.** No sign(s) shall be attached, erected or otherwise installed on any property without first obtaining a sign permit from the Building Inspector.

**6.2.3 General Requirements.** A sign permit may be granted only in accordance with the following requirements:

1. Flashing, shimmering and/or rotating lights shall not be permitted.
2. All signs shall be limited to the identification of premises, their occupants or users, the placement or the business conducted therein.
3. No sign shall be placed which prevents the driver of a vehicle from having a clear and unobstructed view of approaching or merging traffic.
4. No signs shall be internally illuminated.

**6.2.4 Exemptions.** The following signs shall be exempted from these regulations:

1. Signs of less than two (2) square feet in surface area identifying occupancy of a residence, including any home occupation.
2. Historic or commemorative plaques not exceeding two (2) square feet in surface area.
3. No trespassing, no hunting and similar ownership signs not exceeding two (2) square feet in surface area.

**6.2.5 Signs in the Residential District.** The display of a sign pertaining to the use or uses of the premises with a total area of not more than nine (9) square feet. Lighting, if any, shall be by indirect white light only.

**6.2.6 Signs in the General Business and Special Business Districts.** The following are permitted:

1. Wall-mounted signs. The sign or signs shall be firmly affixed to a building. The sign or signs shall not extend beyond the wall or the building to which it is attached. Roof signs shall not project more than four (4) feet above the roofline. The sign or signs shall not project more than twelve (12) inches (in the case of a sign parallel with the wall, or four (4) feet (in the case of a sign projecting perpendicular from the wall) from the face of the wall on which it is attached. No one wall-mounted sign shall be greater than 120 square feet and no longer than 15 feet in length, which includes logos, business name and all other visual and/or written communication. Wall-mounted signs shall not total more than 180 square feet and shall cover no more than 15% of the wall area on which they are mounted.
2. Free standing signs. No part of any free standing sign other than the post or other support structure shall be located lower than eight (8) feet above the ground level (except for signs beyond eight (8) feet from the boundary line), and no sign shall be more than twenty-three (23) feet in height above the ground level and no wider than fifteen (15) feet. No face of a standing sign shall be larger than one hundred and twenty (120) square feet, nor shall any sign be located in such a way so as to impede or obstruct the view of traffic and in no event shall any part be less than eight (8) feet from any boundary line.
3. Window signs. Signs painted or placed on the inside of the glass of a window may be permitted in addition



to the above, provided that the aggregated area of such signs(s) do not exceed fifty percent (50%) of the area of the window glass.

**6.2.7 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.

### **6.3 PERFORMANCE STANDARDS FOR USES REQUIRING SPECIAL PERMIT OR SITE PLAN APPROVAL.**

**6.3.1 Procedures.** Applicants for special permits or site plan approval for nonresidential or multifamily uses shall comply with these Performance Standards. "Nonresidential or multifamily use" shall not mean a single or two family dwelling.

1. The SPGA or the Planning Board (as the case may be) may adopt rules and regulations for administration of these Performance Standards. The Planning Board has adopted such regulations, entitled "Planning Board Rules & Regulations Governing the Issuance of Special Permits and Site Plan Approval in the General Business and Special Business Districts".

2. The SPGA or Planning Board may require the establishment of an escrow account, pursuant to G.L. c. 44, s. 53G during the special permit process or site plan approval, to cover all or part of the cost of the technical review required by the project, including services provided by, but not limited to, attorneys, traffic engineers, landscape architects, civil engineers, fiscal analysts, and other professionals.

**6.3.2 Exemptions.** The following are exempt from these performance 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 uses and structures, including schools, leased, owned or operated by the Town.
3. Events. Properly permitted or authorized parades, fairs or outdoor entertainment between the hours of 7:00 A.M. and 11:00 P.M.

**6.3.3 Landscaping Standards.** The Planning Board or SPGA may adopt Regulations to screen various unsightly site features, establish buffer areas, to landscape large parking areas, to preserve open space on a development site, to require maintenance of planted areas, and to regulate fencing, berms, and retaining walls.

**6.3.4 Lighting Standards.** The Planning Board or SPGA may adopt Regulations to provide for adequate lighting of access ways, parking areas, and pedestrian walkways in order to promote public safety and security, including Regulations to reduce overspill and glare, limit the height of lighting fixtures, hours of operation, and types of lighting.

**6.3.5 Drainage Standards.** The Planning Board or SPGA may adopt Regulations to provide for adequate site stormwater management including design of detention/retention areas, ground infiltration facilities, piping, and test holes.

**6.3.6 Parking and Loading Standards.** The Planning Board or SPGA may adopt Regulations to provide for improved internal circulation, proper stacking of vehicles, access/egress design standards, and loading.

**6.3.7 Standards for Service Facilities.** The Planning Board or SPGA may adopt Regulations to provide for adequate screening of service facilities.

**6.3.8 Standards for Construction.** The Planning Board or SPGA may adopt Regulations to provide for construction standards during site development, including pavement, curbing, utility connections, bollards, land disturbance, replication, trenching for utility connections, preservation of existing vegetation, revegetation, limit of clearing, grading, phasing, and irrigation.

**6.3.9 Standards for Access Connections.** The Planning Board or SPGA may adopt Regulations to provide for access connections, including separation, width, shared driveways, and leveling areas.

**6.3.10 Standards for Drive-Through Facilities.** The Planning Board or SPGA may adopt Regulations to provide for safe drive-through facilities, including stacking lanes, window location, pedestrian safety, and outdoor service facilities.

**6.3.11 Standards for Architectural/Building Design.** The Planning Board or SPGA may adopt Regulations to provide for architectural details of proposed buildings, building location, mass, proportion and scale, rooflines, windows, and signs.

**6.3.12 Noise Standards.** The Planning Board or SPGA may adopt Regulations to provide for control of noise, including maximum sound level, hours of operation for certain activities.

**6.3.13 Traffic Management Standards.** The Planning Board or SPGA may adopt Regulations to provide for traffic management and safety standards, including minimizing hazards to public health and safety as a result of traffic, providing safe access and circulation on the site for expected vehicles, pedestrians, and emergency vehicles, providing off-site traffic mitigation, where required, to offset the impact of the development, reducing the traffic impacts of the proposed development on the area and the Town by incorporating traffic management devices; and minimizing the impact on scenic roads, historic districts, natural resources, and community character.

**6.3.14 Waiver of Standards.** The SPGA or Planning Board may, in the course of granting a special permit or site plan approval for nonresidential or multifamily development, waive any of these performance standards where such waiver is not inconsistent with public health and safety, and where such waiver does not derogate from the purposes of this Section because the proposed development will adequately serve the goals and objectives set forth in this Section.

**6.3.15 Enforcement.** The SPGA or Planning Board may ensure compliance with these performance standards at the application stage by requiring evidence of probable compliance, whether by example of similar facilities or by engineering analysis, verified by technical peer review. In addition, the SPGA or Planning Board may require a monitoring program post-permit issuance for compliance purposes for a time period as may be specified in the special permit or site plan approval.

## **SECTION 7.0 SPECIAL REGULATIONS**

### **7.1 ADULT ENTERTAINMENT USES.**

**7.1.1 Purpose.** The purpose of this Section is to regulate the locations of adult entertainment uses in order to lessen the harmful secondary effects on adjacent areas. These secondary effects, which are documented in various studies of cities and towns include an increase in crime, a decline in property values, a flight of existing businesses and gradual blight of residential neighborhoods. The purpose of this Section is to prevent crime, maintain property values, protect the town's retail trade and protect and preserve the quality of residential neighborhoods. This Section does not prohibit adult entertainment uses, but rather provides reasonable alternative avenues of expression throughout the town.

**7.1.2 Definitions.** See "Adult Entertainment Use" in Section 11.0.

**7.1.3 Special Permit Required.** All Adult Entertainment Use Establishments are allowed in the Special Business District upon the grant of a special permit by the Zoning Board of Appeals.

**7.1.4 Requirements.** All Adult Uses shall comply with the following requirements:

1. An Adult Entertainment Use shall not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.
2. The building shall be designed so that noise from any proposed entertainment is not audible (0 decibels) outside. Also all building openings, entries and windows shall be screened in such a manner as to prevent the visual access to the interior of the establishment from the exterior.
3. A five (5) foot high solid fence or a landscaped buffer of evergreen trees or shrubs five (5) foot high at the

time of planting shall be provided and maintained along the side and rear property lines.

4. There shall be no viewing booths within an Adult Entertainment Use.

**7.1.5 Sign Requirements.** Sign content shall identify the name of the establishment only and shall contain no advertisement in addition to this identification. Only one identification sign to be mounted on the building wall face shall be allowed for an adult entertainment use. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited.

1. No adult entertainment establishment may have any flashing lights visible from outside the establishment. Furthermore, no sign shall rotate, or contain reflective or fluorescent elements.

2. No pictures, publications, videotapes, movies, covers or other advertising items that fall within the definition of an Adult Entertainment Use shall be displayed in the windows of, or on the building of, any adult entertainment use establishment.

**7.1.6 Special Permit Application.** In addition to the application form of the Special Permit Granting Authority, the applicant shall submit a site plan in order that the Special Permit Granting Authority may determine that the above standards have been met. The site plan shall be prepared and submitted in accordance with Section 10.6. The site plan shall also show when appropriate the distances between the proposed Adult Entertainment Use and any residential use or zoning district, public or private school, church or other religious facility, public park or recreation area, group day care center, family day care center, nursing home and hospital, municipal building, and any other Adult Entertainment Use. All applications for a Special Permit must include the following information:

1. Names and addresses of the legal owner(s) of the Adult Entertainment Use Establishment.

2. Name and addresses of all persons having a fee, equity and/or security interest in such establishment and the on-site manager. In the event a corporation, partnership, trust or other entity is listed, the name and address of every person who has an ownership interest and/or beneficial interest in the entity must be listed in order that the Special Permit Granting Authority will know who are the persons who will actually own and control the establishment. The applicant and/or owner must disclose if they have been convicted of violating the provisions of Massachusetts General Laws Section 63 of Chapter 119 or Section 28 of Chapter 272.

3. The number of employees, or proposed number of employees, as the case may be.

4. Proposed security precautions.

**7.1.7 Decision.** In approving a Special Permit, the Special Permit Granting Authority may attach such conditions, limitations and safeguards as are deemed necessary to protect the immediate area and the Town, including limitations on hours of operation. No Special Permit shall take effect until such decision has been recorded in the Registry of Deeds. The Special Permit shall be issued to the owner of the establishment and shall not transfer with a change in ownership of the business and/or property.

**7.1.8 Prohibition.** Special Permits for Adult Entertainment Establishments shall not be granted to any person or persons convicted of violating the provisions of Massachusetts General Laws Chapter 119, Section 63, nor Massachusetts General Laws Chapter 272, Section 28, similar laws in other states.

## **7.2 WIRELESS TELECOMMUNICATIONS FACILITIES (WTF).**

**7.2.1 Purpose.** The purpose of this Section is to establish regulations and procedures for Wireless Telecommunications Facilities (WTF) so as to allow and encourage such uses in the Town with minimal harm to the public health, safety, and general welfare. Specifically, the purposes of this Section are to:

1. Protect and preserve the character and appearance of the Town, including, but not limited to, the scenic, historic, environmental, natural and man-made resources, residential areas and land uses from potential adverse impacts of wireless communication facilities;
2. Encourage the location of telecommunications facilities in nonresidential areas;

3. Minimize the overall number and height of such facilities throughout the community;
4. Encourage facilities to be located in areas where the adverse impact will be minimal on adjacent properties and residential neighborhoods;
5. Encourage facilities to be configured in ways that minimize the adverse visual impact of the facilities through careful design, siting, landscape screening, and innovative camouflaging techniques;
6. Enhance the ability of the providers of WTF to provide such services to the community quickly, effectively, and efficiently;
7. Avoid potential damage to adjacent properties from tower and antenna failure through sound engineering and careful siting of structures; and
8. Guide sound development while promoting the health, safety and general welfare of the Town consistent with all applicable local, state, and federal laws.

**7.2.2 Applicability.** The provisions of other sections of this By-law notwithstanding, the regulations and restrictions set forth herein shall apply to the placement, construction, installation, modification, monitoring and removal of Wireless Telecommunication Facilities. No WTF shall be placed, constructed, installed, or modified within the Town on or after the date of enactment of this Section, except in accordance with the provisions of this Section.

1. Facilities Permitted by Right. A concealed WTF may be installed in a structure on a lot in a nonresidential district provided all the requirements for a building permit are met.
2. Facilities by Special Permit. All other WTFs shall require the issuance of a Special Permit by the Planning Board, referred to in this Section as the Special Permit Granting Authority (SPGA).

**7.2.3 Exemptions.** The following shall be exempt from the provisions of this Section:

1. Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that: (1) the tower is not used or licensed for any commercial purpose; (2) the tower must have a cost or replacement value of less than ten thousand dollars (\$10,000); and (3) the tower must be removed if the use is discontinued for six (6) months or longer.
2. Communication facilities used for the purposes set forth in G. L. c. 40A, s. 3.
3. Facilities used for noncommercial town or state public safety purposes.
4. Licensed commercial mobile radio services primarily used in support of the licensee's own business purpose, provided that (i) such services are not used as a dispatching or communication service for third parties and (ii) any facilities used in connection therewith may not exceed the maximum height allowed under Section 4.0. Examples include, but are not necessarily limited to: commercial mobile radio services used by a taxi or limousine company to communicate with its vehicles and repair, service, delivery, towing and fuel delivery companies communicating with their respective vehicles.

**7.2.4 Location.** WTFs shall be located according to the following priorities. Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether such sites are available and, if applicable, under what conditions. The priorities are:

1. Concealed within an existing structure;
2. On industrial or commercially zoned land;
3. Camouflaged within an existing structure;

4. Camouflaged on an existing structure, such as but not limited to an existing electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design;
5. Co-located with an existing WTF;
6. On Town owned land which complies with other requirements of this Section and where visual impact can be minimized and mitigated;
7. If adequately demonstrated to the SPGA in the special permit process that each of the priorities set forth above is not feasible, erection of a new facility that complies with the other requirements of this Section and where visual impact can be minimized and mitigated.

**7.2.5 Height.** Towers and/or mountings shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten-year period) technically practical;

1. Ground-Mounted Facilities. The maximum height of a ground-mounted WTF shall not exceed one hundred (100) feet.
2. Roof-Mounted Facilities. A roof-mounted WTF shall not project more than fifteen (15) feet above the height of the building or structure on which they are mounted nor project more than fifteen (15) feet above the height limit of the zoning district within which the Facility is located, whichever is less.
3. Side-Mounted Facilities. A side-mounted WTF shall not project above the parapet of the building or top of any wall or structure on which they are mounted.
4. Side- and roof-mounted WTFs shall not be allowed on a building or structure of less than two stories.

**7.2.6 Setbacks.**

1. Ground-Mounted Facilities. Any new ground-mounted WTF shall be set back at least one time the height of the WTF plus 10 feet from each lot line of the site on which the WTF is located.
2. Non-Concealed Antenna. Any non-concealed antenna shall be set back at least one time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower whose setback is already approved, either by right, by special permit or by variance, and if the SPGA determines that the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent setback requirement shall be created by the addition of the antenna.
3. Reduction of Setback. In nonresidential districts or on Town-owned land, the SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.

**7.2.7 Screening and Landscaping.**

1. Existing on-site vegetation shall be preserved to the maximum extent practical.
2. To the maximum extent feasible, facilities shall minimize adverse visual effects on the environment. The SPGA may impose reasonable conditions to ensure this result, including landscaping, painting, and lighting standards.
3. Satellite dishes and/or antennas shall be situated on a structure in the least obtrusive location feasible, preferably with limited visibility from abutting streets.

**7.2.8 Miscellaneous Standards.**

1. To the maximum extent feasible, all network interconnections from the communications site shall be via

underground lines.

2. Traffic associated with the WTF shall not adversely affect abutting ways.
3. Night lighting of any WTF shall be prohibited unless required by the Federal Aviation Administration.
4. There shall be no signs associated with facilities, except for small instructional signs, "No Trespassing" signs, and a required sign giving a phone number where the owner can be reached on a 24-hour basis. All signs shall conform to the provisions of Section 6.2 of this By-law.
5. Roof-Mounted Personal Wireless Service Facilities shall not individually or in the aggregate have a front surface area facing surrounding streets and adjacent properties that exceed fifty (50) square feet in area.

**7.2.9 Prohibitions.** The following shall be prohibited:

1. Lattice style towers, guyed towers and other WTFs requiring three or more legs and/or guy wires for support shall not be allowed.
2. Advertising signs shall not be allowed.
3. Fences using razor wire or barbed wire or similar types shall not be allowed.
4. A WTF shall not be located on a nonconforming building or structure, unless zoning relief is granted to extend, alter or change the building or structure in accordance with G.L. c. 40A, s. 6 and Section 5.0 of this By-law.

**7.2.10 Justification of Need.** The following standards shall apply in the issuance of any special permit for a WTF and shall be prepared by a licensed professional engineer:

1. Coverage area. The applicant shall provide a map of the geographic area in which the proposed Facility will provide adequate coverage.
2. Adequacy of other Facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.
3. Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.
4. Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this Section) in which it can provide adequate coverage in conjunction with all facility sites listed above.

**7.2.11 Application; Procedures.** The applicant or co-applicant for any permit for a WTF must be a licensed carrier who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit and 10 copies of the following additional information:

1. A color photograph or rendition of the proposed equipment and mountings. A rendition or computer-simulated photograph shall also be prepared illustrating the WTF at the proposed location, viewed from at least two (2) prominent locations along the surrounding rights-of-way.
2. A description of the proposed equipment and mountings.

3. A Justification of Need, as defined in Section 7.1.10, above.
4. Confirmation that the WTF complies with all applicable federal and state standards.
5. A description of the capacity of the WTF, including the number and type of panels, antennas and/or transmitter receivers that it can accommodate and the basis for these calculations.
6. A map and list describing all of the Applicant's current and expected future sites for WTFs in the Town.
7. A locus plan at a scale of 1" = 40' showing the exact location of the proposed WTF and all property lines, streets, landscape features, residential dwellings, and buildings within three hundred (300) feet of the facility.

**7.2.12 Regulations.** The SPGA shall maintain a set of regulations that contains the necessary policies, procedures, and standards to implement the provisions of this Section.

**7.2.13 Special Permit Criteria.** A special permit shall be granted under this Section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this Section and the SPGA's regulations. In addition, the SPGA shall make the findings required by Section 10.5 of this By-law and the following additional findings:

1. That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;
2. That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;
3. That the proposed WTF minimizes any adverse impact on historic resources, scenic views, residential property values, and natural or man-made resources;
4. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;
5. That the WTF shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and
6. That the applicant has agreed to rent or lease available space on any tower it controls within the Town or contiguous towns, under the terms of a fair market lease, without discrimination to other wireless service providers.

**7.2.14 Conditions.** If a special permit is granted, in addition to such terms and conditions as may be authorized by Section 10.5 of this By-law, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.

**7.2.15 Denial.** Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Telecommunications Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

**7.2.16 Term of Permit.** In its informed discretion, the SPGA may limit the special permit to a fixed or conditional period of time as it may determine appropriate. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.

**7.2.17 Report.** All permitted and special permitted wireless communication facility carriers shall periodically file with the SPGA, every five years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.

**7.2.18 Removal Requirements.** Any WTF that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the WTF and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the Facility site shall be remediated

such that all WTFs that have ceased to operate are removed. If all ground-mounted Facilities have ceased to operate, the mount (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial guaranty acceptable to the SPGA, to cover the cost of removal of the Facility and the remediation of the landscape, should the Facility cease to operate.

### **7.3 SOLAR ENERGY SYSTEMS.**

**7.3.1 Purpose.** The purpose of this Section is to encourage and regulate the creation, construction and operation of new solar energy systems by defining requirements for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources, and to provide adequate financial assurance for the eventual decommissioning of such installations.

**7.3.2 Applicability.** This Section applies to solar energy systems proposed to be constructed after the effective date of this Section, excluding those installed by or on behalf of the Town or on Town property. This Section also pertains to physical modifications that materially alter the type, configuration, or size of such installations or related equipment. The Planning Board shall act as the site plan review authority.

**7.3.3 Standards.** Any installation of ground-mounted solar energy systems shall meet the following standards:

1. The construction and operation of all solar energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar energy installation shall be constructed in accordance with the State Building Code.
2. Solar energy systems, ground-mounted small-scale and medium-scale shall be allowed as an accessory use in rear yards and side yards, but not in front yards, provided such that they are not located nearer to any property line of the rear yard than 10 feet or the system height, whichever is greater, they comply with the minimum setback requirements for side yards in the particular district, and they do not exceed 15 feet in height in a residential district.
3. Landscaping that visually buffers the solar energy system from adjacent properties, including, but not limited to, walls and fences, shall be properly maintained.
4. Solar energy systems and access drives will not be allowed within critical habitats, wetlands and wetland buffer zones unless approved by the Conservation Commission or Massachusetts Department of Environmental Protection.

**7.3.4 Standards; Medium-Scale and Large-Scale Systems.** The following additional standards shall apply for medium-scale and large-scale solar energy systems.

1. The size of a solar energy system as an accessory use within the residential and business districts shall be limited to that needed to generate energy consumed on-site on an annual basis as documented by prior energy usage and any permitted improvements within the next year and included in the site plan review application.
2. For ground-mounted installations, reasonable efforts, as determined by the Planning Board, shall be made to minimize visual impacts by preserving natural vegetation, screening abutting properties, or other appropriate measures. The Planning Board may also require that ground-mounted installations not occlude building signage or entryways.
3. Any solar carport system for nonresidential use must have a minimum clearance for emergency vehicles.
4. Lighting of ground-mounted solar energy systems shall be consistent with local, state and federal law. Lighting of the system's components, including appurtenant structures, shall be limited to what is required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.



5. Signs affixed to or associated with ground-mounted solar energy installations shall comply with Section 6.2. A sign consistent with Section 6.2 shall be required to identify the owner and provide an up-to-date 24-hour emergency contact phone number.
6. Reasonable efforts shall be made to place all utility connections from the solar installations 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.
7. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the installation or otherwise prescribed by applicable laws, regulations and bylaws.
8. For large-scale ground-mounted solar energy systems, height, front, side and rear setbacks shall meet the dimensional requirements of the district.
9. The installation owner or operator of a ground-mounted solar energy system may be required to provide a copy of the project summary, electrical schematic, and site plan to the 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 energy installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.
10. The solar energy system owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar energy installation and any access road(s), unless accepted as a public way.
11. Access driveways for large-scale ground-mounted solar energy systems shall be constructed to a minimum of 20 feet wide and constructed for perimeter access. Aisle width access should be reviewed by the fire department for access for emergency vehicles with a turnaround. Access drives do not have to be paved.
12. The land area being disturbed for the installation of large-scale ground-mounted solar installations shall be landscaped to minimize surface water run-off and soil erosion.

**7.3.5 Removal.** Any ground-mounted solar energy system which has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall remove all structures associated with the solar energy system within one year of the cessation of said use. The owner or operator shall notify the Building Inspector by certified mail of the proposed date of discontinued operations and plans for removal.

**7.3.6 Decommissioning.** Decommissioning shall consist of:

1. Physical removal of all medium-scale and large-scale ground-mounted solar energy installations, structures, equipment, security barriers and transmission lines from the site.
2. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.
3. Stabilization or revegetation of the site as necessary to minimize erosion.

**7.3.7 Financial Security.** The Planning Board may impose a condition requiring the owner/operator to post a bond or other financial surety acceptable to the Town in an amount sufficient to cover the cost of removal and disposal of the solar energy system.

## **7.4 MEDICAL MARIJUANA TREATMENT CENTERS.**

**7.4.1 Purpose.** The purpose of this Section is to:

1. Establish specific zoning standards and regulations for medical marijuana treatment centers, and medical marijuana growing and cultivation operations; protect the public health, safety and welfare of Berkley residents;
2. Regulate the siting, design, placement, safety, monitoring, modification, and removal of a Medical Marijuana Treatment Center (RMD); and marijuana cultivation; and
3. Minimize the adverse impacts of an RMD on adjacent properties, residential neighborhoods, schools and other places where children congregate, local historic districts, and other land uses potentially incompatible with said facilities.

**7.4.2 Definitions.** See "Medical Marijuana Treatment Centers" in Section 11.0.

**7.4.3 SPGA.** For all purposes pursuant to this Section, the Board of Selectmen is hereby designated as the Special Permit Granting Authority (SPGA). All special permit applications made pursuant to this Section shall conform to the standards and criteria and procedural provisions as required by the rules and regulations of the Planning Board.

**7.4.4 Special Permit Criteria.** In addition to the specific criteria contained within Section 10.5, the SPGA shall consider the following criteria, where relevant before issuing a special permit for development within the Medical Marijuana Treatment Center:

1. Shall comply with all requirements of 105 CMR 725.000.
2. Adequacy of the site in terms of the size of the proposed use(s).
3. Suitability of the site for the proposed use(s), an RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this Section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.
4. Suitability of security for the proposed use(s).
5. Impact on traffic and safety.
6. Impact on the visual character and security the surrounding neighborhood.
7. Adequacy of parking; an RMD shall provide 1 space for each 400 gross square feet of floor area used for treatment, dispensing and processing and 1 space for each 2,000 gross square feet of floor area used for cultivation.
8. Adequacy of utilities, including sewage disposal, water supply and storm water drainage.
9. Shall provide free home delivery qualifying patients within the Town.
10. Provide proof of an agreement with the Town on payment in lieu of taxes.

**7.4.5 Cultivation Prohibited.** Cultivation, as defined in this Section, by any qualifying patient, personal care-giver, or Medical Marijuana Treatment Center in any location other than where specifically permitted shall be disallowed. This disallowance shall include cultivation, even where proposed as an accessory use, by any qualified patient, personal caregiver, or Medical Marijuana Treatment Center.

**7.4.6 Design.** A Medical Marijuana Treatment Center shall be designed and constructed in accordance with the underlying zoning district and the requirements of all applicable provisions of Section 4.0.

**7.4.7 As-Built Plan.** An as-built plan, certified by a registered professional land surveyor, shall be submitted to the SPGA and Building Inspector before the issuance of a permanent occupancy permit. The as-built plan shall attest to a development's conformity to its approved site plan by indicating landscaping, buildings, drainage flow, number of parking stalls, and limits of parking areas and drives.

**7.4.8 Modifications.** Any changes in the approved special permit shall be submitted to the Planning Board for review and approval prior to issuance of permanent occupancy permit. The special permit is granted for a period of two years and shall lapse if substantial use or construction has not been commenced by such date, except for good cause shown and provided that said construction once begun shall be actively and continuously pursued to completion within a reasonable time. Good cause and reasonable time shall be determined by a vote of the SPGA.

## **7.5 ADULT USE MARIJUANA ESTABLISHMENTS.**

**7.5.1 Purpose.** The purpose of this Section is to regulate all types of Adult Use Marijuana Establishments ("Marijuana Establishments").

**7.5.2 Definitions.** See "Adult Use Marijuana Establishment" in Section 11.0.

**7.5.3 Special Permit Granting Authority.** The Special Permit Granting Authority (SPGA) shall be the Board of Selectmen.

**7.5.4 Application Requirements.** All applicants are encouraged to contact the Planning Board to schedule a pre-application meeting. In addition to all the application requirements related to special permits the applicant shall include the following at the time of application:

1. Copies of all licenses, permits and documentation demonstrating application status, registration or licensure by the Commonwealth of Massachusetts Cannabis Control Commission.
2. A security plan showing the arrangement of pedestrian circulation and access to the public points of entry to the premises from the nearest public or private street or off-street parking area. The security plan shall detail how the property will be monitored so as to avoid, deter and prevent illegal activities from taking place upon or about the applicant's premises and shall show the location of any walkway structures, lighting, gates, fencing and landscaping.
3. A list of all managers, officers, directors, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment.
4. A list of all persons or entities contributing 10% or more of the initial capital to operate the Marijuana Establishment, including capital in the form of land or buildings.
5. Proof that the Marijuana Establishment is registered to do business in the Commonwealth of Massachusetts as a domestic business corporation or another domestic business entity in compliance with 935 CMR 500 and is in good standing with the Secretary of the Commonwealth and Department of Revenue.
6. Documentation of a bond or other resources held in an escrow account in an amount sufficient to adequately support the dismantling or winding down of the Marijuana Establishment, if required.
7. An odor control plan detailing the specific odor-emitting activities or processes to be conducted on-site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative and engineering controls that will be implemented to control such odors, including maintenance of such controls.
8. An applicant who is not the property owner shall submit evidence in the form of a deed, an executed lease or valid purchase and sale agreement documenting the applicant's contingent property interest and legal right to operate a Marijuana Establishment at the property.

### **7.5.5 Use Regulations.**

1. No special permit shall be granted for any Marijuana Establishment sited within a radius of five hundred (500) feet of a public or private, primary or secondary school, licensed daycare center, public library, public park or playground. The 500 foot distance under this Section shall be measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed Marijuana Establishment. Each applicant for a special permit under this section shall submit a plan signed by a licensed surveyor, depicting

compliance with the linear distance requirements set forth herein.

2. All aspects of a Marijuana Establishment relative to the cultivation, possession, processing, distribution, dispensing or administration of marijuana, marijuana products, or related supplies must take place at a fixed location within a fully enclosed building and shall not be visible from the exterior of the building. A Marijuana Establishment shall not be located in a trailer, storage freight container, motor vehicle or other similar movable enclosure.
3. No outside storage of marijuana, marijuana products, or related supplies is permitted.
4. The Marijuana Establishment shall provide an odor control plan that provides for proper and adequate ventilation at such facilities in such a manner so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the facilities. All resulting odors, smoke, vapor, fumes, gases and particulate matter from marijuana or its processing or cultivation shall be effectively confined to the premises or so disposed of so as to avoid any air pollution.
5. The Marijuana Establishment shall provide for adequate and proper security at the premises so as to avoid, deter and prevent illegal activities from taking place upon or about the applicant's premises.

**7.5.6 Dimensional Requirements.** A Marijuana Establishment shall comply with the dimensional controls set forth in the Section 4.0.

**7.5.7 Abandonment or Cessation of Use.** A Marijuana Establishment shall be required to remove all materials, plants, equipment and other paraphernalia within 90 days of ceasing operations or immediately following revocation of its license issued by the Cannabis Control Commission. The SPGA may require the Marijuana Establishment to post a bond or other resources held in an escrow account in an amount sufficient to adequately support the dismantling and winding down of the Marijuana Establishment.

**7.5.8 Special Permit Approval Criteria.** After notice and public hearing, and after due consideration of the evidence submitted, including the reports and recommendations of other Town departments and the criteria for special permit decisions set forth in Section 10.5, the SPGA may grant such a special permit provided that it finds in addition that:

1. The Marijuana Establishment does not derogate from the purposes and intent of this Section and the Zoning By-law.
2. The application information submitted is adequate for the SPGA to consider approving the special permit request.
3. The proposed establishment is designed to minimize any adverse impacts on abutting properties.
4. The security plan provides sufficient assurance that adequate security controls have been implemented to ensure the protection of the public health and safety during hours of operation and that any marijuana or marijuana related products are adequately secured on-site or via delivery.
5. The odor control plan proposed adequately provides for the ongoing safe operation of the establishment and minimizes any adverse impacts to abutting properties from odor-emitting activities to be conducted on-site.
6. The proposed design and operation of the Marijuana Establishment will meet the requirements of this Section.

**7.5.9 Lapse.** A special permit grant under this section shall lapse if not exercised within one year of issuance.

## **SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS**

### **8.1 ACCESSORY APARTMENTS**

**8.1.1 Purpose and Intent.** The intent of this Section is to allow accessory apartments in owner-occupied single-family dwellings.

Its purpose is to:

1. Add moderately-priced rental units to the housing stock to meet the needs of small households, both young and old;
2. Make housing units available to moderate-income households who might otherwise have difficulty finding housing in the town;
3. Provide older homeowners with a means of obtaining rental income, companionship, security and services, and thereby enabling them to stay more comfortably in homes and neighborhoods they might otherwise be forced to leave.

**8.1.2 Accessory Apartments by Special Permit.** The Planning Board may grant a Special Permit for the alteration of a single family dwelling to include an accessory apartment in any residential district, subject to the following provisions:

1. The apartment will be a complete, separate housekeeping unit that functions as a separate unit from the principal dwelling.
2. The accessory apartment shall not exceed 900 s.f. or fifty percent of the living space of the main dwelling. The apartment shall be built to the smaller square foot dimension. Garages and basements shall not be included in the calculation for the living space. The alterations shall be limited to only one structure on the lot, the principal dwelling.

**8.1.3 Contents.** Accessory apartments shall contain the following:

1. The unit shall be provided with a separate closet.
2. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches in front.
3. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.
4. Any new outside entrance to serve an accessory apartment shall be located on the side or in the rear of the building.

**8.1.4 Conditions.**

1. The apartment shall not be held in, or transferred into separate ownership from the principal dwelling under a condominium form of ownership, or otherwise.
2. At least one parking space is available for use by occupants of the apartment.
3. The record owner of the lot shall reside on the property, in either the principal dwelling or the accessory apartment.
4. The sanitary disposal system for the accessory apartment and principal structure shall comply with the applicable Berkley Board of Health and Title V regulations.
5. Utilities such as water, electric, and gas necessary for the accessory apartment shall be extensions of the existing utilities serving the principal single-family dwelling. No new utility services or meters shall be installed for the use of the accessory apartment.
6. The Special Permit shall be issued to the record owner of the lot and shall specify that the owner must

occupy one of the dwelling units.

7. The Special Permit shall be recorded at the Registry of Deeds or Land Court against the name of the owner.

8. Prior to the issuance of a building permit, the applicant must submit proof of the recording of the special permit.

9. Prior to the issuance of a permit, the owner(s) must notify the Building Inspector in writing that the owner will occupy one of the dwelling units on the premises as the owner's permanent/primary residence, except for bona fide temporary absence.

10. When a structure which has received a Permit for an accessory apartment is sold, the new owner(s), if they wish to continue to exercise the Permit, must within thirty (30) day of the sale, submit a sworn and notarized written statement to the Building Inspector stating that they will occupy the principal dwelling unit on the premises as their primary residence. This statement shall be listed as a condition on any permits that are issued under this Section.

11. No more than one accessory (1) apartment shall be allowed within a single-family dwelling.

**8.1.5 Amnesty.** Owners of existing dwellings with an un-permitted accessory apartment shall have one year of amnesty from the effective date of this Section to obtain a Special Permit from the Planning Board. By filing the Application for Special Permit for the accessory unit, all owners consent to an inspection without a warrant upon reasonable notice by the Building Inspector and the Fire Department to ensure compliance with all terms of this section and conditions imposed upon the grant of the Special Permit.

## **8.2 FLEXIBLE DEVELOPMENT.**

**8.2.1 Purpose.** The purpose of this Section 8.2 is to:

1. Allow for greater flexibility and creativity in the design of residential developments.
2. Encourage the permanent preservation of open space, agricultural and forestry land, other natural resources including water bodies and wetlands, and historical and archeological resources.
3. Maintain the Town's traditional character and land use pattern in which small villages contrast with open land.
4. Protect scenic vistas from the Town's roadways and other places.
5. Encourage screening of new residential development from the Town's roads, open spaces and scenic areas.
6. Facilitate the construction and maintenance of streets, utilities and public services in a more economical and efficient manner.
7. Protect existing and potential municipal water supplies.
8. Encourage a less sprawling and more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision.
9. Minimize the total amount of disturbance on the site.
10. Preserve open space areas for active and passive recreational use, including the provision of neighborhood parks and trails.
11. Encourage the provision of diverse housing opportunities and the integration of a variety of housing types.

**8.2.2 Definitions.** See “Flexible Development” in Section 11.0.

**8.2.3 Applicability.** In accordance with the following provisions, a Flexible Development may be created, whether a subdivision or not, from any parcel or set of contiguous parcels with two times the minimum lot area required in the district.

**8.2.4 Procedures.** A 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 eleven (11) copies 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, house lots, 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. At least 50% of the required side and rear yards required in the district shall be required in the Flexible Development.

**8.2.7 Maximum Number of Dwelling Units.** The 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 "Maximum Number"). The proponent shall have the burden of proof with regard to the design and engineering specifications for such conventional plan.

#### **8.2.8 [Reserved]**

**8.2.9 Types of Buildings.** The Flexible Development shall consist exclusively of single family dwellings.

**8.2.10 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.

**8.2.11 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.

**8.2.12 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 percent (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 bike paths.
4. Underground utilities to serve the Flexible Development may be located within the contiguous open space.

**8.2.13 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.



**8.2.14 Buffer Areas.** A buffer area of 50 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.

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

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

**8.2.17 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 7.3.1 than would a conventional subdivision development of the same locus.

**8.2.18 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.

### **8.3 SENIOR HOUSING.**

**8.3.1 Purpose.** The objectives of this Section are to achieve the following public purposes:

1. To provide for the development and use of alternative housing and nursing care for seniors.
2. To create home health care, housing and other supportive services for the senior population outside of an institutional setting.
3. To provide housing which is affordable.
4. To provide such accommodations in a manner harmonious with the surrounding land uses while protecting community character, natural resources and open space.

**8.3.2 Definitions.** See "Senior Housing Facility" in Section 11.0.

**8.3.3 Applicability.** The Planning Board may grant a special permit for a Senior Housing Facility as defined in Section 11 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 in a Residence District or 45 feet in height in a General or Special Business District. By separate special permit, the Planning Board may allow building height greater than that set forth above. This shall not preclude the reuse and renovation of existing structures which may exceed this height limit.
3. Building Coverage. The maximum building coverage, including accessory buildings, shall conform with Table 2 for new construction or expansion of existing structures.
4. Building Setbacks. Buildings shall have the setbacks required in the district by Table of Dimensional

Requirements.

5. **Setback from Residential Dwellings.** All buildings associated with the Senior Housing Facility shall be no closer than 50 feet from existing residential dwellings; however, with respect to accessory structures not greater than 300 square feet, the Planning Board, in its discretion, may reduce said setback by an amount up to but not greater than 30 feet if it determines that said structure will not adversely impact the use and enjoyment of the existing residential dwelling.
6. **Minimum Lot Frontage.** The minimum lot frontage shall conform to the requirements of the district where such use is located.
7. **Town Services.** Where available, facilities shall be serviced by public water and sewer 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.
8. **Transportation Services.** The operator of the facility shall be required to provide or arrange for transportation to town services and facilities.
9. **Common Open Space.** In the Residence Districts, there shall be an area of common open space equal to at least 10% of the lot area. The common open space shall be retained in perpetuity for conservation or passive recreation use. No more than 25% of the minimum required open space shall be situated within wetlands.
10. **Parking.** The minimum number of parking spaces shall be as set forth in Table 1.
11. **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.
12. **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.
13. **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 areas, 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. A Senior Housing Facility may also provide adult social day care to nonresident participants 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.

#### **8.4 BED AND BREAKFAST ESTABLISHMENTS AND BREAKFAST IN-HOME STAY/ROOM RENTAL**

**8.4.1 General.** A Bed and Breakfast Establishment shall be allowed upon the grant of a special permit from the Planning Board. The following requirements shall apply:

1. Establishment limited to not more than three (3) guest rooms.
2. Parking must be off street, on premises, with one (1) space per room rented and one (1) per owner.

3. No other uses except for customary home occupation shall be permitted on the property.
4. No additions or external modifications may be made to the property for lodging use.
5. A certificate of occupancy required and premises shall be subject to annual inspection.

## **SECTION 9.0 SPECIAL DISTRICTS**

### **9.1 AQUIFER PROTECTION OVERLAY DISTRICT (APOD).**

**9.1.1 Purpose.** The purpose of this Section is to prevent the contamination of and protect and preserve the availability of clean ground water, which provides existing as well as potential water supply to the Town of Berkley's residences and businesses; to conserve the natural resources of the town; and to protect the groundwater and the major recharge areas of the Town from adverse land use practices.

**9.1.2 Definitions.** See "Aquifer Protection Overlay District" in Section 11.0.

**9.1.3 Location.** The Aquifer Protection District encompasses those areas of the Town where groundwater flow rates equal (100 – 300) gallons per minute or greater, as delineated on a map at entitled "Aquifer Protection District, Town of Berkley" and is the most recent on file at the office of the Town Clerk. These boundaries reflect the USGS hydrogeologic information as of the date of the enactment hereof. The boundaries encompass the aquifer, and the aquifer's most significant recharge areas. The Aquifer Protection District imposes additional regulations, in cases of conflicting use regulations, the more restrictive zoning requirements shall apply. This map is on file in the office of the Town Clerk. At the request of the owner(s) of land and at the owner's expense, the Town may engage a professional geologist, hydrogeologist, engineer, or other qualified expert trained and experienced in hydrogeology to determine more accurately the location and extent of an aquifer or recharge area, and may charge the owner(s) for the entire cost of the investigation.

**9.1.4 Permitted Uses.** The following specific uses of land are permitted within the boundaries of the Aquifer Protection Overlay District:

1. Maximum, one dwelling unit per 65,340 square feet of land area, provided no more than 15% of each, lot including driveways and roofs of buildings and structures, is rendered impervious. Larger percentages, if required, may be constructed with permeable material.
2. Pesticides and fertilizers which are in compliance with mandated and revised federal and state regulations, greater than household quantities, and which are subject to a yearly review and update by the Board of Health.
3. Storage of liquid petroleum products of any kind, except those incidental to home or businesses intended to be consumed on-site for space heating, hot water heating, cooking purposes or outdoor maintenance shall be in tanks not exceeding (660 – 1,000) gallons for residential use and (2,000) gallons for commercial use whose design and installation is reviewed and approved by the Fire Department in accordance with safety regulations, 527 CMR 9.0. Storage must be above ground, either in a free standing container within a building or in a free standing container above ground level with protection adequate to contain a spill the size of the container's total storage capacity.
4. Conservation of soils, water, plants, and wildlife.
5. Outdoor recreation, nature study, fishing, hunting.
6. Runoff from impervious surfaces shall be recharged on-site and diverted towards areas covered by vegetation for surface infiltration to the maximum extent possible.
7. Normal residential lawn and garden maintenance.

**9.1.5 Uses Not Permitted.** The following uses are not permitted:

1. Storage of animal manures, unless such storage is covered or contained, or in accordance with the specifications of the National Resource Conservation Service (NRCS).
2. Dry cleaning processing plants.
3. Floor Drains – No floor drain may be permitted in any structure as per 310 CMR 22.21 (2)(a)8.
4. The manufacture, use, storage or disposal of hazardous substances.
5. Car washes, Laundromats, automotive service and repair facilities, sanitary landfills, dumps, junk yards, storage or disposal of solid waste. Sludge or septage may only be stored in compliance with 310 CMR 32.30 and 32.31.
6. Storage of commercial fertilizers as defined in G.L. c. 182, s. 63, unless such storage is within a structure designed to prevent the generation and escape of leachable waste or contaminated runoff.
7. The mining/removal of land within four feet of the historical high groundwater table elevation as per 310 CMR 22.21 (2)(b)6.
8. Impervious cover on any lot, including buildings, structures, driveways, parking areas, gravel areas, patios, storage areas or any other impermeable surfaces that exceed 15 percent (15%) in the Residential District of land area or 9,801 square feet.
9. Sewage treatment facilities but not individual sewage disposal systems.
10. Underground storage of petroleum or similar product.
11. Commercial photographic processing.
12. Commercial exterior storage of sodium chloride, calcium chloride, chemically treated abrasives or other chemically treated abrasives or other chemicals used for snow and ice removal.
13. Industrial uses which discharge process wastewater on-site.

**9.1.6 Uses Requiring Special Permit.** The following uses require a special permit from the Planning Board:

1. Commercial or industrial uses which are permitted in the underlying zone, provided that the development will not increase any loading of contaminants to the groundwater. All such commercial and industrial uses may be constructed and operated in such a manner as to discharge no wastewater except normal sanitary waste to subsurface disposal systems.
2. Any use not mentioned above or in the sections of these By-laws shall be by a Special Permit.
3. Replacement, rehabilitation and modification of pre-existing non-conforming uses, in accordance with the Town of Berkley's Zoning By-laws. The Special Permit Granting Authority shall not grant such approval unless it shall find that such expansion shall not increase the risk of contamination of groundwater.

**9.1.7 Special Permits and Procedure.** After public notice and public hearing and after due consideration of any reports and recommendations of other boards or agents, the Planning Board may grant a Special Permit provided only that the proposed use or work:

1. Is in harmony with the purpose and intent of this By-law and will promote the protection of this district.
2. Is appropriate to the natural topography, soils and other characteristics of the site to be developed.
3. Will not have, during construction and after, an adverse environmental impact on an aquifer or its recharge area.

4. Will not adversely affect an existing water supply.

## **9.2 FLOOD PLAIN OVERLAY DISTRICT (FPOD).**

**9.2.1 Purpose.** The purpose of the Flood Plain 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 loss of 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.

**9.2.2 Overlay District.** The FPOD is herein established as an overlay district. Any use otherwise permitted in the underlying district is permitted as a matter of right in the FPOD, provided the use meets all applicable local laws and regulations and the following additional requirements of the Massachusetts State Building Code dealing with construction in flood plains and coastal high hazard areas as applicable. The FPOD includes all special flood hazard areas within the Town of Berkley designated as Zone A, AE, VE, and X most recent Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the FIRM that are wholly or partially within the Town of Berkley are FIRM Panels (all prefixed by 25005C) 0251G, 0252G, 0253H, 0254G, 0256F, 0257F, 0258F, 0259F, 0261G, 0262G, and 0263G. The exact boundaries of the District shall be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated July 6, 2021. The FIRM, FIS booklet, and LOMR are incorporated herein by reference and are on file with the Town Clerk, Planning Board, and Director of Public Works.

### **9.2.3 Base Flood Elevation and Floodway Data.**

1. Unnumbered A Zones. Base Flood Elevation Data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A Zones.
2. Zones A and AE. In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available federal, state, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

**9.2.4 Notification of Watercourse Alteration.** In a riverine situation, the following must be notified of any alteration or relocation of a watercourse:

1. Adjacent communities
2. NFIP State Coordinator
3. Massachusetts Office of Water Resources  
251 Causeway Street, Suite 600-700  
Boston, MA 02114-2104
4. NFIP Program Specialist  
Federal Emergency Management Agency, Region I  
99 High Street, 6th Floor  
Boston, MA 0211

**9.2.5 Use Regulations.** Within any Zone where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code. All development in the FPOD, including structural and non-structural activities, whether permitted by right or by special permit, shall be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws, and with the following: (a) Sections of the Massachusetts State Building Code (780 CMR) which address flood plain and coastal high hazard areas; Wetlands Protection Regulation, Department of Environmental Protection (DEP) (currently 310 CMR 10.00); Inland Wetlands Restriction, DEP (currently 310 CMR 13.00); Coastal Wetlands Restriction, DEP (currently 310 CMR 12.00); and Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5). Any variances from the provisions and requirements of the above referenced state regulations shall be granted only in accordance with the required variance procedures of these State regulations.

1. Zone VE. Located within the Flood Plain District are areas designated as coastal high hazard areas (Zone VE). Since these areas are extremely hazardous due to high velocity waters from tidal surges and hurricane wash, all new construction shall be located landward of the reach of Spring High Tide. Spring High Tide shall be located as that elevation shown on the Army Corps of Engineers High Tide Chart (Tidal Flood Profiles New England Coastline, See ACOE, New England Division, Prepared by Hydraulics and Water Quality Section, Waltham, MA). All references to elevations should be to NGVD (National Geodetic Vertical Datum). Wave run-up as defined by the elevation of the one year flood surge (Stillwater) as noted under Section 404, shall be incorporated in to those elevations within V Zones.
2. Zone X. Within Zone X on the FIRM, adequate drainage paths are required around structures on slopes to guide flood waters around and away from proposed structures.
3. Zone VE. Man-made alteration of sand dunes within Zone VE, which would increase potential flood damage, is prohibited.

## **SECTION 10.0 ADMINISTRATION AND ENFORCEMENT**

### **10.1 PERMITS.**

**10.1.1 Inspector of Buildings.** The office of the Inspector of Buildings 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 By-law and no permit shall be granted for a new use of a building, structure or land which use would be in violation of this By-law. When a special permit, site plan approval, or variance has been ~~may be~~ granted with conditions, such conditions shall be enforced by the Inspector of Buildings.

**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 Inspector of Buildings stating that the use of land and structure, if any, complies with this By-law and other applicable codes in effect at the time of issuance.

### **10.2 ENFORCEMENT.**

**10.2.1 Inspector of Buildings.** The office of the Inspector of Buildings is responsible for the enforcement of this By-law. The Inspector of Buildings is also responsible for the enforcement of any conditions set forth in site plan approval, a special permit, or a variance.

**10.2.2 Request for Enforcement.** As set forth in G.L. c. 40A, s. 7, the Inspector of Buildings shall respond in writing to any request for enforcement within fourteen (14) days.

**10.2.3 Penalties.** Any person violating any provision of this By-law, upon conviction, shall be fined \$300.00 for each offense, and each day that such violation continues shall constitute a separate offense.

**10.2.4 Noncriminal Disposition.** In addition to the procedures for enforcement as described in the previous paragraph, the provisions of this By-law may be enforced by the Inspector of Buildings by noncriminal complaint

pursuant to the provisions of G.L. c. 40, s. 21D. The penalty for violation of any provision of this By-law 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.

### **10.3 ZONING BOARD OF APPEALS.**

**10.3.1 Establishment.** The Board of Appeals shall consist of three appointed members and two associate members.

**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 By-law. The Board's powers are as follows:

1. To hear and decide applications for special permits, when so designated.
2. To hear and decide appeals or petitions for variances from the terms of this By-law, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals shall not 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, §§ 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, §§ 20-23.

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

**10.3.4 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.

**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 By-law.
2. To hear and decide applications for site plan approval pursuant to Sections 11.5 and 11.8.

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

**10.4.4 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.**

**10.5.1 Special Permit Granting Authority.** When designated by this By-law, the Board of Appeals, the Board of Selectmen, and the Planning Board shall act as the Special Permit Granting Authority (SPGA).

**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 By-law, 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.

**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.

**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 By-law. Such conditions may include, but are not limited to the following:

1. Setback requirements greater than the minimum required by this By-law;
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 the rules and regulations 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.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this Section.

**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 24 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.

## **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.

**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-family or two-family 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; or
2. Any site development which involves cutting or removal of vegetation, shall be permitted only upon site plan approval from the Planning Board. Site plan approval shall be granted only if the Planning Board finds that such approval is consistent with the purposes set forth in this Section 10.6; or
3. B&B in the GB and SB Districts; solar energy systems, wireless communication facilities.

**10.6.3 Procedure.** The Planning Board shall serve as the approval authority for site plan review. A public hearing shall be conducted in accordance with the requirements of G.L. c. 40A, s. 11. All decisions shall be made by a majority of the Board, as constituted. The written decision of the Board shall be filed with the Town Clerk within 90 days of the close of the public hearing.

**10.6.4 Site Plan Requirements.** Applications shall be accompanied by at least eleven (11) prints of the plans of the proposal. 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 consist of five (5) separate plans prepared at a scale of one (1) inch equals twenty (20) feet or such other scale as may be approved by the Planning Board. The plans are as follows:

1. Site layout, which shall contain the boundaries of the lot(s) in the proposed development, proposed structures, drives, parking, fences, walls, walks, outdoor lighting, loading facilities, and areas for snow storage after plowing. The first sheet in this plan shall be a locus plan, at a scale of one (1) inch equals one hundred (100) feet, showing the entire project and its relation to existing areas, buildings and roads for a distance of one thousand (1,000) feet from the project boundaries or such other distance as may be approved or required by the Planning Board.
2. Topography and drainage plan, which shall contain the existing and proposed final topography at two-foot intervals and plans for handling storm water drainage.
3. Utility and landscaping plan, which shall include all facilities for refuse and sewage disposal or storage of all wastes, the location of all hydrants, fire alarm and firefighting facilities on and adjacent to the site, all proposed recreational facilities and open space areas, and all wetlands including flood plain areas.
4. Architectural plan, which shall include the ground floor plan and architectural elevations of all proposed buildings and a color rendering.
5. Landscaping plan, showing the limits of work, existing tree lines, and all proposed landscape features and improvements including screening, planting areas with size and type of stock for each shrub or tree, and including proposed erosion control measures.

The applicant shall also provide the following required written submittals:

6. The site plan shall be accompanied by a written statement indicating the estimated time required to complete the proposed project and any and all phases thereof.
7. A written summary of the contemplated projects shall be submitted with the site plan indicating, where appropriate, the number of dwelling units to be built and the acreage in residential use, the evidence of compliance with parking and off-street loading requirements, the forms of ownership contemplated for the property and summary of the provisions of any ownership or maintenance thereof, identification of all land that will become common or public land, and any other evidence necessary to indicate compliance with this By-law.
8. The site plan shall be accompanied by drainage calculations by a registered professional engineer. Storm drainage design must conform to Town of Berkley subdivision regulations.
9. The Planning Board may require narrative assessments of the on-site and off-site impacts of the proposed project, including traffic, drainage, noise, and other environmental factors. The Planning Board may require that such narrative assessments be prepared by qualified experts.
10. Certification that the proposal is fully compliant with the provisions, if applicable, of the Americans with Disabilities Act and the Massachusetts Architectural Barriers Board.
11. An itemized list of waivers, if any, being requested from the Planning Board's Rule and Regulations Governing the Issuance of Special Permits in the General Business and Special Business Districts.

**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; Minor Site Plans.** 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.

1. Minor site plan. Applications for permits to build, alter or expand any nonresidential building, structure or use in any district where such construction will exceed a total gross floor area of 500 square feet but not exceed a total gross floor area of 2000 square feet, or will not generate the need for more than 10 parking spaces, shall be deemed a minor site plan. For the purposes of computing the total gross floor area of a minor site plan, the Planning Board shall aggregate all such applications made within the five (5) previous calendar years. Minor site plans shall set forth all of the information required by this Section; provided, however, that the scale of the site plan may be 1' = 80', and the plan may depict topographical contours at intervals available on maps provided by the United States Geological Survey.

**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 By-law 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 By-law.

**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 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 two 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.

**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. Any denial shall be because the application is incomplete or the applicant's failure to prove jurisdiction under the statute. The Board shall file a written decision with the Town Clerk within ninety (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. 12112(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. The ZBA may provide notice, as set forth in G.L. c. 40A, §§ 11 and 15, to parties in interest. The deadlines imposed in G.L. c. 40A, s. 11 or s. 15 may be extended upon the request of the applicant and the approval of the ZBA. 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.

1. It does not cause any undue hardship or fiscal or administrative burden on the municipality; and
2. It does not undermine the basic purpose that the zoning bylaw seeks to achieve.

**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**

**Accessory Building or Use:** A building or use located on the same lot as the principal permitted building or use and customarily incidental to such main permitted building or use.

**Adult Entertainment Use:** For the purposes of Section 7.1, an Adult Entertainment Use shall mean any of the following: adult bookstore, adult club, adult motion picture theater, adult paraphernalia store, adult video store, adult live nudity establishment, sexually oriented business as defined below, or any other business or establishment characterized by an emphasis depicting, describing or related to sexual conduct or excitement as defined in Section 31 of Chapter 272 of the Massachusetts General Laws.

**Adult Bookstore:** An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Adult Club:** An establishment having twenty-five percent (25%) or more of its entertainment devoted to a person or persons working or performing in a state of full or partial nudity, or distinguished or characterized by an emphasis on a matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Adult Live Nudity Establishments:** An establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in G.L. c. 272, s. 31.

**Adult Motion Picture Theatre:** An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Adult Paraphernalia Store:** An establishment having as a substantial or significant portion of its stock, devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Adult Video Store:** An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Sexually Orientated Business:** A business having as a substantial or significant portion of its stock in trade any of the following: books, magazines, newspapers, or other written material which are distinguished or characterized by depicting or describing sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31 as amended videos, movies, photographs or other filmed material which are distinguished or characterized by depicting sexual conduct or sexual excitement as defined G.L. c. 272, s. 31.

**"Substantial or significant portion of stock in trade":** Shall be deemed to exist under any of the following circumstances: when the cost of such portion of the stock in trade on hand exceeds more than ten percent (10%) of the cost of all stock in trade on hand; when monthly sales, including rentals, from such portion of the stock in trade exceeds more than ten percent (10%) of the monthly sales of all stock in trade; when an area of more than ten percent (10%) of the floor area open to or observable by customers is wholly or partially used for the display or storage of such portion of the stock in trade.

**Viewing Booths:** An enclosed portion of any commercial building or structure smaller than 20' x 20' used for the purpose of the private showing, displaying, or projecting of any motion pictures, other film products, video tapes or live acts distinguished by or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. c. 272, s. 31.

**Adult Use Marijuana Establishment:** A marijuana cultivator, independent testing laboratory, marijuana product manufacturer, marijuana retailer or any other type of licensed marijuana-related business.

**Aquifer Protection Overlay District (APOD):** For the purposes of Section 9.1, the following definitions shall apply:

**Aquifer:** A geologic formation composed of rock, sand, or gravel, capable of yielding over eighty gallons per

minute of potentially usable, or recoverable, amounts of water.

**Groundwater:** Water in the surface zone beneath the water table where most or all pore spaces are filled with water.

**Hazardous Substance:** Any hazardous substance or mixture of such physical, chemical, or infectious characteristics as to pose significant actual or potential hazard to water supplies, or to human or animal health, if such substance or mixture were discharged to land or waters of this town.

**Impervious Surface:** Natural or manmade material on or above the ground that does not allow surface water to penetrate into the subsurface soil.

**Leachable Waste:** Waste materials, be they directly relatable or by-products of surface or subsurface generators including solids, sewage, sludge, and agricultural wastes that are capable of releasing waterborne contaminants to the surrounding environment.

**Mining of Land:** Removal or relocation of geologic materials, including topsoil, for the purpose of extracting soil, sand, loam, gravel, metallic cores, or bedrock.

**Pervious Surface:** Surface areas that consist of natural or manmade material on or above the ground that allows surface water to penetrate into the subsurface soil and which do not become impervious due to use or other actions.

**Recharge Area:** That area (including primary, secondary, and tertiary recharge areas) composed of permeable stratified sand and gravel, and certain wetlands that collect surface water and carry it to aquifers.

**Primary Recharge Area:** Part of the recharge area that lies directly over the designated aquifer, and adjacent areas of strata, from which groundwater flows directly into the aquifer.

**Secondary Recharge Area:** Part of the recharge area that lies adjacent to the primary area, and from which groundwater moves down gradient into the aquifer.

**Septage:** Sludge produced by domestic waste that is pumped from septic tanks.

**Solid Waste:** Discarded solid material, decomposing or not, which may contain other liquid or gaseous materials, but with insufficient liquid content to be free-flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material.

**Tertiary Recharge Area:** These are the upstream drainage areas that traverse the primary and/or secondary recharge areas.

**Bed and Breakfast:** The providing of room and breakfast in a dwelling to not more than three transient guests for remuneration. There shall be no more than two persons per room. There shall be adequate off-street parking for residents and guests.

**Building:** A structure having a roof and used or intended to shelter people, animals, or goods.

**Business or Professional Office:** A business establishment, which does not offer a product or merchandise for sale to the public but offers a professional service to the public. However, general or personal service establishments are not to be included in the definition of business offices.

**Child Care Center:** A facility as defined in G.L. c. 15D, s. 1A.

**Club:** A building or portion thereof or an area which is used to meet the social and recreational needs of a group or organization to which membership is required, with or without the sale of alcoholic beverages.

**Drive-Through Facility:** A commercial facility which provides a service directly to a motor vehicle or where the customer drives a motor vehicle onto the premise and to a window or mechanical device through or by which the

customer is serviced without exiting the vehicle. this shall not include the selling of fuel at a gasoline filling station or the accessory functions of a carwash facility such as vacuum cleaning stations.

**Driveway/Curb Cut Spacing:** The distance between connections, measured from the closet edge of pavement of the driveway or curb cut to the next closest edge of the pavement along the public/private roadway.

**Dwelling:** A single unit providing independent living facilities for one household, including permanent provisions for living, sleeping, cooking, eating and sanitation.

**Dwelling, Multifamily:** Three or more dwelling units on a single lot, irrespective of structure type, ownership or tenure.

**Dwelling, Single-Family:** A detached residential building intended and designed to be occupied exclusively by a single family.

**Dwelling, Two-Family:** A detached residential building intended and designed to be occupied exclusively by two families.

**Dwelling Unit:** A building or portion of a building intended as living quarters for a single family, having a single set of kitchen facilities (a stove plus either or both a refrigerator and sink) not shared with any other unit.

**Electric Vehicle Charging Station:** A facility equipped with a compatible cable, such as J-1772, for the recharging of the batteries of motor vehicles.

**Essential Services:** Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overland, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

**Family Day Care Home, Large:** Any private residence operating a facility as defined in G.L. c. 15D, [s.1](#).

**Family Day Care Home, Small:** Any private residence operating a facility as defined in G.L. c. 15D, [s.1](#).

**Fast Food Restaurant:** Any restaurant serving the majority of its food in disposable containers, packages, or other similar wrapping, for consumption on or off the premises.

**Funeral Establishment:** A building or part thereof used for human funeral services. Such building may contain space and facilities for (a) embalming and the performance of other services necessary for the preparation of the dead for burial; (b) the performance of autopsies and other surgical procedures; (c) the storage of caskets, funeral urns, and other related funeral supplies; (d) the storage of funeral vehicles; (e) facilities for cremation; and (f) the living quarters of an individual whose bona fide occupation is in the funeral establishment.

**General Service Establishment:** Establishments for trades and crafts which require manual dexterity, including but not limited to shops such as the following: plumbers, electricians, painters, paperhangers, upholsterers, sign painters, printers and monument works.

**Gross Floor Area:** Sum of the area of all stories of a building measured from the exterior faces of the exterior walls including any floor area below grade when used for office, business, storage or other purposes, but excluding any area used exclusively for heating, air conditioning or other mechanical equipment, and excluding floor area intended or designed for accessory off-street parking.

**Home Occupation:** An activity conducted in a dwelling unit as regulated in Sections 3.4.1 and 3.4.2.

**Hotel or Motel:** A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building with or without a public dining facility. If such hotel or motel has



independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year.

**Industry:** Extraction, developing, manufacturing, assembling, processing or treatment of raw or processed materials, parts, or assemblies using other than manual power. a light industry is one using quiet motive power and processes which do not generate more noise, odor, smoke, fumes, vibrations, glare, electrical or magnetic interference, or hazard of fire, explosion or pollution of ground water than could be expected of any of the other permitted uses in that location. a heavy industry is one generating one or more of the above neighborhood impacts.

**Light Manufacturing:** Fabrication, assembly, processing, finishing work or packaging.

**Lot:** An area of land in one ownership with definite boundaries, described by plan or deed and recorded in the North Bristol Registry Of Deeds or the Land Court.

**Lot Coverage:** The portion of a lot that is impervious (does not absorb water). this portion includes, but is not limited to, all areas covered by buildings, roofed structures, driveways, sidewalks, and any area of concrete asphalt.

**Lot Frontage:** The boundary of a lot coinciding with the street line, being an unbroken distance along a way currently maintained by the town, county, or state, or along ways shown on the definitive plans of approved subdivisions, through which actual access to the potential building site shall be required. a private way which has not been constructed as part of a subdivision approved in accordance with the subdivision control law may provide frontage only upon a determination by the planning board that it provides adequate access for fire, police, and emergency vehicles. 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 mid-point of the corner. lots with interrupted or discontinuous frontage must demonstrate that the required length along the street may be obtained from one (1) continuous frontage section, without any totaling of discontinuous frontage sections.

**Lot Line:** A boundary line separating a lot from another lot or lots or from a street or other public place.

**Lot Width:** The distance between the sidelines required to allow a circle to be placed between sidelines. The required circle shall be tangential to the frontage of a given lot and shall be entirely contained within the lot boundaries. In a business district, for 100' frontage lots, the circle diameter shall be 90'. In a residential district, for 200' frontage lots, the circle diameter shall be 181'. Beginning on June 2, 2008, no building or structure shall be constructed on a lot having less width than the required lot width. The following properties are specifically exempt from this definition: (1) lots, buildings and structures which are exempt from the provisions of this definition under the provisions of G.L. c. 40A, s. 6; and (2) any lot shown on a plan recorded with the registry of deeds or filed with the land court prior to the effective date of this By-law amendment.

**Medical Clinic:** A facility as defined in 105 CMR 145.020, including a mobile clinic.

**Medical or Dental Office:** A building designed and used for the diagnosis and treatment of human patients that does not include overnight care facilities.

**Medical Marijuana Treatment Centers:** A facility as defined in 105 CMR 725.000.

**Motor Vehicle Hourly Rental Station:** A facility at which, by contract, motor vehicles are made available for rent for a period not longer than 24 hours.

**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:** Premises for the sale of used or new motor vehicles, including supplying of fuel, oil, lubrication, washing, or repair services, but not to include body work or painting.

**Nonconforming Structure or Use:** A structure or use lawfully in existence or lawfully begun at the time this By-law or any amendment thereof becomes effective which does not conform to the requirements of this by-law or of such amendment.

**Owner:** A person or persons, legal entity, firm or corporation, or a duly designated agent, having a legal or equitable interest in a property.

**Personal Service Establishment:** Personal services provided by a barbershop or beauty shop, professional, business or governmental office, bank; repair and maintenance of clothing and household articles by a cleaning or laundry agency or automatic equipment; cobbler, tailor, valet service; radio, television and appliance repairs; upholsterer.

**Research and Development Facility:** Research establishments and laboratories, including biotechnology companies, but excluding laboratories categorized as Level 4 by the National Institutes for Health.

**Restaurant:** Establishment whereas the principal activity food and drink is prepared and served ready for consumption without further processing, whether or not for consumption on the premises, including lunchroom, cafeteria, cafe, bar, refreshment stand, drive-in, or similar establishment.

**School Aged Child Care Facility:** A facility as defined in G.L. c. 15D, s. 1A.

**Self-Storage Facility or Mini-Warehouse:** A facility where individual portions of the space are rented to consumers for the temporary storage of business or personal items.

**Senior Housing:** The following definitions shall apply in Section 8.3:

**Assisted Living Facility:** A residential development subject to certification by the Executive Office of Elder Affairs under G.L. c. 19D and 651 CMR 12.00.

**Continuing Care Facility:** A facility regulated by G.L. c. 93, s. 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 nursing home, 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, Chapter 1, Section 100.300 et seq. and G.L. c. 151B, s. 4.

**Setback:** An open yard, unbuilt upon, extending across a lot to the depth of 50 feet, or other depth specified according to this By-law, from any street line. no structure or building or part thereof, other than uncovered steps, shall be located in or project into the setback. also called the front yard.

**Solar Energy System:** A system of devices and/or structures whose primary purpose is to transform solar energy into another form of energy or to transfer heat from a collector to another medium using mechanical, electrical, or

chemical means. Includes solar photovoltaic systems, which convert solar energy to electricity, and solar-thermal collectors, which heat water.

**Solar Energy System, Ground-Mounted:** A solar energy system that is structurally mounted to the ground and not to a building.

**Small-Scale:** Having 1,750 square feet or less of solar panel area, except within any district, the solar panel area is limited to 1,000 square feet or less, including solar carport systems.

**Medium-Scale:** Having more than 1,750 square feet of solar panel area, or more than 1,000 square feet in Districts SRA and SRB and not more than 25,000 square feet, including solar carport systems.

**Large-Scale:** Having more than 25,000 square feet of solar panel area, including solar carport systems. A large-scale system can be a primary use or an accessory use.

**Special Permit:** Written authority granted after a duly advertised public hearing to locate, build, or use structures or land in accordance with the provisions of this By-law, for certain uses, including the expansion or alteration of existing nonconforming uses and buildings.

**Special Permit Granting Authority:** The board of selectmen, Planning Board, or Zoning Board of Appeals, as may be designated by this By-law for certain categories of special permits.

**Stacking Lane:** An area of stacking spaces and driving lane provided for vehicles waiting for drive-through service, that is physically separated from other traffic and pedestrian circulation on the site.

**Stacking Space:** An area within a stacking lane for vehicles waiting to order and/or finish a drive-through transaction.

**Street:** A way open and dedicated to public use, including a way in a subdivision approved under the provisions of the subdivision control law, Sections 81k through 81gg of Chapter 41 of the General Laws.

**Structure:** Any combination of materials attached to or requiring a fixed location on or in the ground. for the purposes of location on a lot, the following shall not be deemed to be structures prohibited within a setback or side yard: boundary walls and fences, utility poles, support posts not over 4 feet in height for mailboxes and name signs.

**Use:** The purpose for which a building, structure or land is intended, designed or used.

**Veterinary Establishment:** A place for the treatment of animals, including kennels and pet shops, provided that in business districts all animals are kept indoors and there are no noise or odors perceptible from adjoining establishments or buildings.

**Warehouse and Distribution Facility:** 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.

**Yard, Rear:** An open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the depth specified according to Section 4 of this By-law. no structure or building shall be located in or project into any yard, except that uncovered steps, bulkheads, eaves, bay windows and attached chimneys may project into a yard, but shall not be closer than 10 feet to a lot line.

**Yard, Side:** An open space, unbuilt upon, inside and contiguous to all lot lines other than street lines to the depth specified according to this By-law. No structure or building shall be located in or project into any side yard, except that uncovered steps, bulkheads, eaves, bay windows and attached chimneys may project into a side yard, but shall not be closer than 10 feet to a lot line.

## **ARTICLE 22: ANIMAL CONTROL BYLAW**

### **SECTION 1: LICENSE FEES**

The annual fee for every dog license and kennel license shall be set by January 1<sup>st</sup> of each year by the Board of Selectmen. No fee shall be charged for a license for a dog especially trained to lead or serve as a guide dog or service dog. No license fee or part thereof shall be refunded because of the subsequent death, loss, spaying, or removal from the Commonwealth, or other disposal of the dog, nor shall any license fee or part thereof paid by mistake be paid or recovered back after it has been paid over to the Town Treasurer.

All kennels shall be subject to annual inspections by the and Animal Control Officer prior to issuing license and as deemed necessary.

Kennel Licenses:

- a. Four dogs or less shall be issued by the Town Clerk.
- b. Five to Ten dogs for non-commercial use shall be approved the by the Animal Control Officer prior to issuing the license.
- c. Facilities housing Eleven to Fifteen dogs or more for either commercial or non-commercial use shall be approved by the Animal Control Officer before issuance.

### **SECTION 2: DISTURBING THE PEACE**

No person shall own or keep in the Town any dog which by biting, excessive barking, howling or in any other manner disturbs the quiet of the public or creates a public nuisance.

### **SECTION 3: COMPLAINT OF NUISANCE**

If any person shall make a complaint in writing to the Animal Control Officer that any dog owned or harbored within his jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, the Animal Control Officer shall investigate such complaint, which may include an examination under oath of the complainant, and submit a written report to the Selectmen of his findings and recommendations, together with the written complaint. Upon receipt of such report and examination of the complainant under oath, the Selectmen may make such order concerning the restraint; muzzling or disposal of such dog as may be deemed necessary. The Animal Control Officer, after investigation, may issue an interim order that such dog be restrained or muzzled for a period not to exceed fourteen (14) days to enable the Selectmen to issue their order following receipt of the report of the Animal Control Officer. If the Selectmen fail to act during the period of the interim order, upon expiration of the period of the interim order automatically is vacated.

### **SECTION 4: RESTRAINTS OR MUZZLING**

The Animal Control Officer may restrain or muzzle, or issue an interim order to restrain or muzzle, for a period not to exceed fourteen (14) days, any dog for any of the following reasons:

- For having bitten or threatened any person.
- If found at large or unmuzzled, as the case may be which an order for the restraint of such dog is in effect.
- If found in a school, schoolyard or public recreational area.
- For having killed or maimed or otherwise damaged any domestic animal.
- For chasing any vehicles (including bicycles) upon any public way or way open to public travel in Town.
- For any violation of Section 2.

Upon restraining or muzzling, or issuing an interim order to restrain or muzzle, the Animal Control Officer shall submit in writing to the Selectmen a report of his action and the reasons thereof. Upon receipt of such report, the Selectmen may make such order concerning the restraint; muzzling or disposal of such dog as may be deemed necessary. If the Selectmen fail to act upon the report during the period the dog is restrained or muzzled, upon expiration of the period, the interim order is automatically vacated.

### **SECTION 5: APPEAL OF RESTRAINT OR MUZZLING**

The owner or keeper of any dog that has been ordered to be restrained or muzzled or has been restrained under this article, may file a request in writing with the Animal Control Officer that the restraining be vacated, or that the dog be released; and after investigation by the Animal Control Officer such officer may vacate

such order or release the dog if the order or restraint was imposed by him. If the order was imposed by the Selectmen, the Animal Control Officer shall submit a written report of his investigation with his recommendations to the Selectmen who may vacate such order.

#### **SECTION 6: FAILURE TO COMPLY**

Any owner or keeper of a dog who shall fail to comply with any order of the Animal Control Officer or Selectmen issued pursuant to this article shall be punishable by a fine of twenty-five (\$25.00) dollars.

#### **SECTION 7: UNLICENSED DOGS**

Any dog within the limits of the Town unlicensed or not wearing a valid license tag shall be impounded by the Animal Control Officer and not released until the Pound fees, in accordance with the General Laws, Pickup Fees, Late Licensing Fee (if applicable), are paid and current license obtained from the Town Clerk. The Board of Selectmen shall annually set reasonable Pickup and Pound Fees. Any dog not claimed within seven (7) days will become the property of the Town and will be either put up for adoption, sent to an approved rescue facility or euthanized according to State guidelines.

- a. The Selectmen shall annually within 10 days after July 1<sup>st</sup> issue a warrant to the Animal Control Officer or Officers directing him or them to seek out, catch, and confine all dogs within the town which then have not been licensed, collared or harnessed and tagged as required by law.

#### **SECTION 8: ANIMAL CONTROL OFFICER**

The Selectmen shall appoint an Animal Control Officer to enforce this bylaw. In the event of the absence of the Animal Control Officer, the Police Department shall make suitable provisions for impounding dogs and strays. The Town shall provide such equipment and means as deemed necessary by the Board of Selectmen for proper enforcement.

#### **SECTION 9: LEASHING OF DOGS**

*Restraint –*

1. No person owning or harboring, keeping, having care, custody or control of a dog, poultry, cattle, sheep, swine, goat, llama, equine or any other fur-bearing animal shall suffer or allow it to run at large in any of the streets or public places in the Town of Berkley or allow it upon the premises of anyone other than the owner or keeper of such animal without permission of the owner or occupant of such premises.

2. No dog shall be permitted in any street or public place within the Town of Berkley unless it is effectively restrained as above defined by a chain or leash.

*Defecation or urination by dogs –*

1. No person owning or keeping a dog shall permit it to defecate or urinate within the boundaries of any municipally owned playground, part or open space to which the public has access, unless expressly permitted in specially designated areas.

2. No person owning or keeping a dog shall permit it to defecate or urinate upon any street or sidewalk, provided, however, that defecation will not be in violation of this subsection if removed immediately thereafter.

3. No person owning or keeping a dog shall permit it to defecate or urinate on privately owned premises other than the premises of the owner or keeper without the knowledge and consent of the owner or persons in possession of such premises.

4. In any prosecution under this section, the presence of such dog which is unleashed upon the premises other than the premises of the owner or keeper of such dog, shall be prima facie evidence that such knowledge and consent of said owner or person in possession of said premises was not had.

The penalties for violation of any portion of this section shall be in the amount provided by applicable town by-law.

#### **SECTION 10: RABIES VACCINES**

All dogs, cats and ferrets are required to have current rabies vaccines unless deemed exempt by the Board of Health upon review of a certificate attesting to said exempt status in accordance with G. L. C140, Sec 145B, from a licensed veterinarian.

- a. Any owner, keeper, having care, custody or control of an animal placed under strict confinement by the Animal Inspector shall receive written instructions according to the Commonwealth of Massachusetts rabies protocol and shall be responsible for any and all inspection fees and/or rabies testing. The Selectmen shall annually set reasonable inspection fees.

## **ARTICLE 23: PERSONNEL BYLAW**

### **SECTION 1: PURPOSE**

The purpose of this bylaw is to establish fair and equitable personnel policies and a system of personnel administration that ensures uniform application of personnel policies.

### **SECTION 2: APPLICATION**

All town departments and positions shall be subject to the provisions of this bylaw except elected positions and employees of the school department. In the event of conflict between a particular personnel rule and a collective bargaining agreement provision or an approved police or fire department regulation, the collective bargaining agreement provisions or police or fire department regulation shall prevail.

### **SECTION 3: ADMINISTRATION**

The Personnel Board shall be responsible for the administration of this bylaw and regulations promulgated pursuant to Section 5. The Personnel Board shall be comprised of the Board of Selectman.

Establish written rules and regulations consistent with the purpose and provisions of this bylaw.

- b. Ensure that the Town acts affirmatively in providing opportunities to all persons regardless of sex, age, color, creed, race or national origin for entry level and promotional positions and provides equal treatment in all other aspects of personnel administration.
- c. Maintain a centralized personnel record keeping system.
- d. The Board of Selectmen shall be responsible for all collective bargaining except as exempted by Massachusetts General Law.

### **SECTION 4: ESTABLISHMENT OF A PERSONNEL SYSTEM**

A town wide personnel system may be established by the promulgation of regulations pursuant to Section 5. The personnel system shall make use of modern concepts of personnel management.

### **SECTION 5: ADOPTION AND AMENDMENT OF REGULATIONS**

The Personnel Board shall promulgate regulations defining the personnel policies and procedures of the Town of Berkley. The personnel regulations shall be adopted or amended as follows:

- (a) Regulations may be proposed by any member of the Board of Selectmen, an elected official, department head, Personnel Board or employee.
- (b) The Personnel Board shall consider all proposed regulations submitted to them and shall determine if the proposed regulation has merit. If the Personnel Board determines that a regulation has merit, a public hearing shall be held.
- (c) Sufficient notice of the public hearing shall be provided by posting a notice of the public hearing in conspicuous locations in the principal work locations of employees indicating the substance of the proposed regulation.
- (d) The Personnel Board shall consider comments received and may adopt (with or without modifications) or reject regulations. The effective date of the regulation shall be stated.
- (e) Copies of the compiled regulations shall be provided to all department heads and available for inspection by employees.

### **SECTION 6: PROBATIONARY PERIOD**

An employee shall serve a probationary period of six months following appointment, provided, however, the police department may provide for a greater period as specified in departmental regulations. Such employee may be dismissed, suspended or demoted at any time during the probationary period at the discretion of the appointing authority and shall not be eligible for an appeal of such action.

#### **SECTION 7: ABOLITION OF A POSITION**

A position may be abolished or the number of personnel reduced for reasons of economy or for reasons of reorganization.

#### **SECTION 8: SEVERABILITY**

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

#### **SECTION 9: EFFECTIVE DATE**

This bylaw shall take effect on the date of approval of the Attorney General.

Note: MGL 40, S 32 states a by-law takes effect once it is approved by Attorney General, posted and published by the Town Clerk in accordance with Section 32.

### **ARTICLE 24: LICENSES AND PERMITS OF DELINQUENT TAXPAYERS**

#### **SECTION 1**

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

#### **SECTION 2**

The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfer, of any party whose name appears on said list furnished to the licensing authority from the Town Collector; provided, however, that written notice is given to the party and the Town Collector and the party is given a hearing not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the licensing authority receives a certificate issued by the Town Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the town as the date of issuance of said certificate.

#### **SECTION 3**

Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for suspension or revocation of said license or permit; provided, however, that the holder be given notice of and a hearing is held as required by Section 2 hereof.

#### **SECTION 4**

The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Section 1 of Chapter 268A of the Massachusetts General Laws, in the business or activity conducted in or on said property.

#### **SECTION 5**

This Article shall not apply to licenses and permits for open burning; bicycle permits; children work permits;

sales of articles for charitable purposes; licenses to allow clubs or associations to dispense food or beverages; dog licenses; fishing, hunting and trapping licenses; marriage licenses and permits for theatrical events or public exhibitions.

## **ARTICLE 25: PROTECTION OF WATER SUPPLIES FROM GASOLINE AND OTHER POLLUTION**

Underground Storage Tank Installation and Inspections in the Town of Berkley shall be under the supervision of the Chief of the Fire Department.

All inspections and installations shall be in accordance with the Federal Energy Acts of 2005 mandates as well as Massachusetts Underground Storage Regulations (527 CMR 9) and in accordance with the Rules and Regulations of the Chief of the Town of Berkley Fire Department. Penalties Whosoever violates any provisions of this By-Law shall be subject to a fine of \$100.00. Each day of noncompliance with the orders of the Chief of the Fire Department shall constitute a separate offense and shall be fined accordingly.

## **ARTICLE 26: FLOOD PLAIN DISTRICT BYLAW**

### **SECTION 1: STATEMENT OF PURPOSE**

The purposes of the Flood Plain District are 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;
6. Reduce damage to public and private property resulting from flooding waters.

### **SECTION 2: FLOOD PLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION AND FLOOD WAY DATA FLOOD PLAIN DISTRICT BOUNDARIES**

The Flood Plain District is herein established as an overlay district. The District includes all special flood hazard areas designated within the Town of Berkley designated as Zone A, AE, or VE on the Bristol County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of National Flood Insurance Program. The map panels of the Bristol County FIRM that are wholly or partially within the Town of Berkley are panel numbers 25005C0251F, 25005C0252F, 25005C0256F, 25005C0257F, 25005C0258F, and 25005C0259F dated July 7, 2009; and panel numbers 25005C0253G, 25005C0254G, 25005C0261G, 25005C0262G, and 25005C0263G dated July 16, 2014. The exact boundaries of the district may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Bristol County Flood Insurance Study (FIS) report dated July 16, 2014. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

#### **BASE FLOOD ELEVATION AND FLOOD WAY DATA**

1. FLOOD WAY DATA. In Zone A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, Local, or other flood way data shall be used to prohibit encroachments in flood ways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
2. BASE FLOOD ELEVATION DATA. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is lesser, within unnumbered A zones

### **SECTION 3: NOTIFICATION OF WATERCOURSE ALTERATION**

Notify, in a riverine situation, the following, of any alteration or relocation of a watercourse: Adjacent Communities



NFIP State Coordinator - Massachusetts Department of Conservation and Recreation, 251 Causeway St, Suite 600-700 - Boston, MA 02114-2104  
NFIP Program Specialist – Federal Emergency Management Agency- Region I – 99 High St., 6th Floor, Boston, MA 02110.

#### **SECTION 4: REFERENCE TO EXISTING REGULATIONS**

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

- Section of the Massachusetts Building Code which addresses flood plan and coastal high hazard areas (currently 780 CMR);
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00)
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

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

#### **OTHER USE REGULATIONS**

1. Within Zones AH and AO on the FIRM, require adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.
2. In Zone AE, along water courses that have a regulatory floodway within the Town of Berkley designated on the Bristol County FIRM, encroachments are prohibited in the regulatory flood way which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
3. Review all subdivision proposals to assure that; a). such proposals minimize flood damage; b) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and c) adequate drainage is provided to reduce exposure to flood hazards.
4. Existing contour intervals of site and elevations of existing structures must be included on the plan proposal.
5. There shall be established a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Town Engineer, Building Inspector, Highway Surveyor and the Board of Selectmen for comments which will be considered by the appropriate permitting board prior to issuing permits.
6. Man-made alteration of sand dunes within Zone VE which would increase potential damage are prohibited.
7. All new construction within Zone VE must be located landward of the reach of mean high tide.

#### **SECTION 5: PERMITTED USES**

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district.

- Agricultural uses such as farming, horticulture, truck farming, etc.
- Forestry and nursery uses.
- Outdoor recreational uses, including fishing, boating, play areas.
- Conservation of water, plants, wildlife.
- Wildlife management areas, foot, bicycle, and/or horse paths.
- Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- Buildings lawfully existing prior to the adoption of these provisions.
- Construction of single family dwellings and such other structures as may be permitted by Town of Berkley Zoning Bylaws.

#### **SECTION 6: DEFINITIONS**

AREA OF SPECIAL FLOOD HAZARD is the land in the flood plain within a community subject to one

percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1-30, AE, A99.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeding in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means flood plain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the Flood hazard areas.

FLOOD BOUNDARY AND FLOOD WAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100 year and 500 year floods and the 100 year flood way. (For maps done in 1987 and later, the flood way designation is included on the FIRM).

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevation, or an examination, evaluation and determination of flood related erosion hazards.

FLOOD WAY means the channel of river 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.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, or other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for flood plain management purposes, structures for which the "start of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community. For the purpose of determining insurance rates, "new construction" means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM (7/3/78).

ONE HUNDRED YEAR FLOOD see Base Flood.

REGULATORY FLOOD WAY see Flood Way.

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH. START OF

CONSTRUCTION includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation or piles, the construction of columns, or any work beyond the stage of excavation. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, or floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground. Structure for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site.

For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construct" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed.

**ZONE A** means the 100 year flood plain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local or other data.

**ZONE A1-30 AND ZONE AE** (for new revised maps) means the 100 year flood plain where the base flood elevation has been determined.

**ZONE AH and ZONE AQ** means the 100 year flood plain with flood depths of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**ZONE A99** means areas to be protected from the 100 year flood by federal flood protection system under construction. Base flood elevations have not been determined.

**ZONES B, C, and X** are areas identified in the community Flood Insurance Study as areas of moderate and minimal flood hazard. Zone X replaces Zones B and C on new and revised maps

## **ARTICLE 27: CAPITAL IMPROVEMENT PLANNING COMMITTEE**

### **SECTION 1**

The Town of Berkley shall establish and appoint a committee to be known as the Capital Improvement Committee, composed of five registered voters from the Town of Berkley. No member may hold any other elective or appointed town position during his term of office. Said committee shall be appointed by the Chairmen of the Finance Committee, Moderator, and Selectmen.

### **SECTION 2**

Each member of this committee shall service a three-year overlapping term except for the first initial appointment two members shall service a 3-year term, two shall service a two-year term, and one a one-year term. The committee shall appoint its own officers. Such officers shall consist of a Chairperson and a secretary. Each office shall be voted annually.

### **SECTION 3**

The committee shall study proposed capital projects involving major non-recurring tangible assets and projects which:

- are purchased or undertaken at intervals of not less than three years;
- have a useful life of at least three years; and
- cost over \$5,000.

All officers, boards and committees, including the Selectmen and School Committee, shall by January 30th of each year, given to the Committee on forms prepared by it, information concerning all anticipated projects requiring Town Meeting action during the ensuing ten years. The Committee shall consider the relative need, impact, time and cost of these expenditures and the effect each will have on the financial position of the Town. No appropriation shall be voted for a capital improvement required by a department, board of commission, unless the proposed capital improvement is considered in the Committee's report, or the Committee shall first have submitted a report to the Finance Committee explaining the omission. No report is required if the committee does not have a quorum to conduct business, or to take any other action relative thereto.

### **SECTION 4**

The Committee shall prepare an annual report recommending a Capital Improvement Program including recommended capital improvements for the following ten fiscal years. The report shall be submitted to the

Finance Committee for its consideration and approval. The Committee shall submit it's approved Capital Budget to the Annual Town Meeting for adoption by the town.

#### **SECTION 5**

Such Capital Improvement Program, after it's adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the Town through the appropriation of sums in the current year or in prior years, or for preliminary planning projects to be undertaken more than five years in the future.

#### **SECTION 6**

The committee's report shall be published and made available in a manner consistent with the Finance Committee's operation budget report. The committee shall deposit its original report with the Town Clerk.

### **ARTICLE 28: "RESERVED FOR FUTURE USE"**

### **ARTICLE 29: SEPARATION OF RECYCLABLE MATERIALS**

#### **DISPOSAL OF RECYCLABLE MATERIAL IN TRASH.**

The disposal of any recyclable material in any trash generated by the residents of the Town of Berkley and its municipal buildings, going to any landfill within the Town of Berkley, or to any waste disposal facility outside the Town of Berkley, if such disposal is provided by the Town, is prohibited.

#### **DETERMINATION OF WHAT CONSTITUTES RECYCLABLE MATERIALS.**

They are as follows: Antifreeze, automobile and household batteries, corrugated cardboard, fluorescent light bulbs, glass –clear and colored food and beverage containers, leaves and grass clippings, magazines, metal –any item more than 50% metal, mixed paper –excluding plastic coated, newspapers, paint – including thinners, phone books, plastic bags – any number, plastic - #1 (HDPE and #2 (PETE), textiles, used oil and used oil filters, white goods – washers, dryers, freezers, rangers, refrigerators, air conditioners.

The total amount of materials recycled must meet or exceed those standards as set forth by state mandate. The committee reserves the right to temporarily remove any item from the above list due to market restrictions or environmental regulations.

#### **VIOLATIONS AND PENALTIES.**

Failure to comply with any of the provisions of the Article shall result in a fine of \$25.00. Habitual violations (more than three in any one fiscal year) may result in the Recycling and Solid Waste Committee revocation of violator(s) disposal permit.

### **ARTICLE 30: COAL ASH PROHIBITION**

#### **SECTION 1: COAL ASH DUMPING PROHIBITED**

Ash produced from the nonresidential combustion of coal, including but not limited to coal ash, fly ash, and bottom ash, is prohibited from being disposed of, stored, stockpiled, or used as fill material for any and all purposes, within the Town of Berkley. This prohibition shall not effect the internal storage of coal ash or its by products for the manufacturing process of concrete.

#### **SECTION 2: DEFINITIONS.**

For the purposes of this Chapter of the Bylaws, the following terms and words are given the meanings stated below:

Coal ash. Waste produced from the combustion of coal, including but not limited to fly ash, bottom ash and slag, and including wastes associated with the combustion of coal when added to fly ash, bottom ash or slag.

Fill. A material used to fill a cavity, passage or hole in the ground, or to raise the level of the ground or to alter the grades of the ground.

### **SECTION 3: ENFORCEMENT.**

This bylaw shall be enforced by the board of health. Any violation of this bylaw, or of any order of the board of health pursuant to this bylaw shall be punishable to a fine of not more than three hundred dollars. Each day of noncompliance with this bylaw or of any order of the board of health pursuant to this bylaw shall constitute a separate offense.

## **ARTICLE 31: TRAFFIC CONTROL BY-LAW**

**SECTION 1:** The Board of Selectmen shall, in conjunction with the Chief of Police, declare a State of Emergency for any or all town roads or public ways in the town whenever it is deemed necessary for the safety or well being of the citizens of the Town of Berkley.

**SECTION 2:** In accordance with MGL, Chapter 85, Section 7B, no person, other than an employee in the service of the commonwealth or town or an employee in the service of an independent contractor acting for the commonwealth or town, shall pile, push, or plow snow or ice onto or across any town road or public way so as to impede the flow of traffic on such way. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

**SECTION 3:** In accordance with MGL, Chapter 40, Section 22B, the Police Chief or his designee, for the purpose of insuring the free flow of traffic or for the purpose of snow and ice control operations on any town road or public way, may, by its own employees or with such other assistance as it may require, remove or cause to be removed to the nearest convenient place any vehicle interfering with such traffic or such operation. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

**SECTION 4:** No person shall permit any vehicle under his care or control to stand across any public highway or street in such a manner as to obstruct travel over the same for an unnecessary length of time. No person shall stop with a vehicle in any public street so near to another vehicle as to obstruct public travel, and no person shall stop with any vehicle upon any crossing in any street or highway in the town. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

**SECTION 5:** No person shall occupy any part of the public street as storage room for any vehicle for a period exceeding forty-eight hours. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

**SECTION 6:** Unless designated by signage, there shall be no public parking on any area known as the Berkley Common until and unless the Board of Selectmen grants a permit. At time of issuance of said permit, the Board of Selectmen shall in conjunction with the Police Chief or his designee and the Highway Surveyor or his designee shall impose specific parking regulations. Whoever violates this section shall be punished by a fine of \$25.00 first offense; \$50.00 second offense; \$100.00 subsequent offenses as stated in Article 10 of the Town of Berkley By-laws.

**SECTION 7:** "Water Flow onto Streets". No person shall pump, pipe, channel or divert water by any means in such manner as to cause it to flow onto any street or way where it may adversely impact the flow of vehicular or pedestrian traffic or create a hazardous traffic condition.

## **ARTICLE 32: STORM WATER BYLAW**

Land development projects and other land use conversions, and their associated changes to land cover, permanently alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, which in turn increase flooding, stream channel erosion, and sediment transport and deposition, and decrease groundwater recharge;

Land development projects and other land use conversions also contribute to increased nonpoint source pollution and degradation of receiving waters;

The impacts of post-development storm water runoff quantity and quality can adversely affect public safety, public and private property, surface water drinking water supplies, groundwater resources, drinking water supplies, recreation, aquatic habitats, fish and other aquatic life, property values and other uses of lands and waters;

These adverse impacts can be controlled and minimized through the regulation of storm water runoff quantity and quality from new development and redevelopment, by the use of both structural and nonstructural Best Management Practices;

Localities in the Commonwealth of Massachusetts are required to comply with a number of both State and Federal laws, regulations and permits which require a locality to address the impacts of post-development storm water runoff quality and nonpoint source pollution.

Therefore, the Town of Berkley has established this storm water management bylaw to provide reasonable guidance for the regulation of post-development storm water runoff for the purpose of protecting local water resources from degradation. This bylaw regulates the post construction storm water controls for both new and re-development projects.

It has been determined that it is in the public interest to regulate post-development storm water runoff discharges in order to control and minimize increases in storm water runoff rates and volumes, post-construction soil erosion and sedimentation, stream channel erosion, and nonpoint source pollution associated with post-development storm water runoff.

## **1.0 PURPOSE**

A) The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development storm water runoff and nonpoint source pollution associated with new development and redevelopment. It has been determined that proper management of post-development storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, environment and general welfare of the public, protect water and aquatic resources and promote groundwater recharge to protect surface and groundwater drinking supplies. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish decision-making processes surrounding land development activities that protect the integrity of the watershed and preserve the health of water resources;

2. Require that new development, redevelopment and all land conversion activities maintain the after-development runoff characteristics as equal to or less than the pre-development runoff characteristics in order to reduce flooding, stream bank erosion, siltation, nonpoint source pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;

3. Establish minimum post-development storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality; Establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water runoff; Establish minimum design criteria for measures to minimize nonpoint source pollution from storm water runoff which would otherwise degrade water quality;

4. Establish design and application criteria for the construction and use of structural storm water control facilities that can be used to meet the minimum post-development storm water management standards;

5. Encourage the use of nonstructural storm water management, storm water better site design practices or "low-impact development practices", such as reducing impervious cover and the preservation of green space and other natural areas, to the maximum extent practicable; Coordinate site design plans, which include green space, with the Town's green space protection plan;

6. Establish provisions for the long-term responsibility for and maintenance of structural storm water control facilities and nonstructural storm water management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;

7. Establish provisions to ensure there is an adequate funding mechanism, including surety, for the proper review, inspection and long-term maintenance of storm water facilities implemented as part of this Bylaw;

8. Establish administrative procedures for the submission, review, approval or disapproval of storm water management plans, and, for the inspection of approved active projects, and long-term follow up; Establish certain administrative procedures and fees for the submission, review, approval, or disapproval of storm water plans, and the inspection of approved projects.

B) Nothing in this Bylaw is intended to replace the requirements of the Town of Berkley Zoning Bylaws, the Town of Berkley General Wetlands Protection Bylaw, or any other Bylaw that may be adopted by the Town of Berkley. Any activity subject to the provisions of the above- cited Bylaws must comply with the specifications of each.

## **2.0 DEFINITIONS**

The following definitions shall apply in the interpretation and implementation of this Bylaw. Additional definitions may be adopted by separate regulation:

**ALTER:** Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as "alteration of drainage characteristics," and conducting land disturbance activities."

**BEST MANAGEMENT PRACTICE (BMP):** Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in storm water volumes and flows reduce point source and nonpoint source pollution, and promote storm water quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of storm water runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

**BETTER SITE DESIGN:** Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural storm water management practices. Better site design includes conserving and protecting natural areas and green space, reducing impervious cover, and using natural features for storm water management.

**GENERAL STORMWATER MANAGEMENT PERMIT (GSMP):** A permit issued for an application that meets a set of pre-determined standards outlined in the Regulations to be adopted by the Planning Board under SECTION 4 of this Bylaw. By meeting these predetermined standards, the proposed project will be presumed to meet the requirements and intent of this Bylaw.

**HOTSPOT:** Land uses or activities with higher potential pollutant loadings, such as auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots with high intensity use, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas.

**MASSACHUSETTS STORMWATER MANAGEMENT POLICY:** The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act (G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 2-- 56. The Policy addresses storm water impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

**NEW DEVELOPMENT:** Any construction or land disturbance of a parcel of land that is currently in a natural vegetated state and does not contain alteration by man-made activities.

**NONPOINT SOURCE POLLUTION:** Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

**PERSON:** Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Berkley, and any other legal entity, its legal representatives, agents, or assigns.

**PRE-DEVELOPMENT:** The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Planning Board. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions.

**POST-DEVELOPMENT:** The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

**RECHARGE:** The replenishment of underground water reserves.

**REDEVELOPMENT:** Any construction, alteration, or improvement exceeding land disturbance of Five Thousand (5,000) square feet, where the existing land use is commercial, industrial, institutional, or multi-family residential.

**BOARD OF HEALTH:** The Board of Health for the Town of Berkley or its authorized agent(s) is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments, participate in the review process as defined in the 'Storm Water Regulations adopted by the Town of Berkley.

**STORMWATER CREDITS:** A form of incentive for developers to promote conservation of natural and open space areas. Projects that comply with prescribed requirements are allowed reductions in storm water management requirements when they use techniques to reduce storm water runoff at the site.

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

### **3.0 AUTHORITY**

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Berkley at Town Meeting, dated June 2, 2008.

### **4.0 ADMINISTRATION**

A) The Board of Health shall administer, implement and enforce this Bylaw. The Board of Health may delegate any powers granted to or duties imposed upon the Board of Health in writing to its employees or agents.

B) Storm water Regulations. The Board of Health may adopt, and periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this Storm Water Management Bylaw by majority vote



of the Board of Health, after conducting a public meeting to receive comments on any proposed revisions. Public notice of the meeting date will meet the requirements of the Massachusetts General Laws and any relevant town bylaws. After public notice and a public meeting, the Board of Health may promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Board of Health to promulgate such rules and regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

C) Storm Water Management Manual. The Board of Health will utilize the policy, criteria and information including specifications and standards of the latest edition of the Massachusetts Storm Water Management Policy, or approved local equivalent, for execution of the provisions of this Bylaw. This Policy includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the storm water regulations, storm water management practices that are designed, constructed, and maintained in accordance with these designs and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

D) General Permit. The Board of Health shall have the authority to develop a General Storm Water Management Permit (GSMP) for specific types of projects, such as, without limitation Construction of a Deck, Patio, Retaining Wall, Existing Driveway Expansion, Shed, Swimming Pool, Tennis or Basketball Court. Any such General Storm Water Management Permit Requirements shall be defined and included as part of any Storm Water Regulations promulgated as a result of this Bylaw.

E) Actions by the Board of Health. The Board of Health may take any of the following actions as a result of an application for a Storm Water Management Permit as more specifically defined as part of Storm Water Regulations promulgated as a result of this Bylaw: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.

F) Appeals of Action by the Board of Health. A decision of the Board of Health shall be final.

G) Storm Water Credit System. The Board of Health may adopt, through the Regulations authorized by this Storm Water Management Bylaw, a Storm Water Credit System. This credit system will allow applicants the option, if approved by the Board of Health to take credit for the use of storm water better site design practices to reduce some of the requirements specified in the criteria section of the Regulations. Failure by the Board of Health to promulgate such a credit system through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

## **5.0 APPLICABILITY**

A) This Bylaw shall be applicable to all new development and redevelopment, including, but not limited to, site plan applications, subdivision applications, grading applications, land use conversion applications, any activity that will result in an increased amount of storm water runoff or pollutants flowing from the a parcel of land, or any activity that will alter the drainage characteristics of a parcel of land, unless exempt pursuant to SECTION 5:B) of this Bylaw. All new development and redevelopment under the jurisdiction of this Bylaw as prescribed in this Bylaw shall be required to obtain a Storm Water Management Permit.

### **B) Exemptions**

Discharge or flow resulting from fire fighting activities.

The following non-storm water discharges or flows are exempt from the prohibition of non storm waters provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

1. Waterline flushing;
2. Flow from potable water sources;
3. Springs;
4. Natural flow from riparian habitats and wetlands;

5. Diverted stream flow;
6. Rising groundwater;
7. Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
8. Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), crawl space pumps, or air conditioning condensation;
9. Discharge from landscape irrigation or lawn watering;
10. Water from individual residential car washing;
11. Discharge from dechlorinated swimming pool water (less than one ppm chlorine) provided the water is allowed to stand for one week prior to draining and the pool is drained in such a way as not to cause a nuisance;
12. Discharge from street sweeping;
13. Non-toxic dye testing, provided verbal notification is given to the Board of Health prior to the time of the test;
14. Non-storm water discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations;
15. Discharge for which advanced written approval is received from the Board of Health as necessary to protect public health, safety, welfare or the environment.

## **6.0 PROCEDURES**

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated as permitted under SECTION 4 of this Bylaw.

## **7.0 ENFORCEMENT**

The Board of Health or an authorized agent of the Board of Health shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any Storm water regulations promulgated as permitted under SECTION 4 of this Bylaw

## **8.0 NOTIFICATION OF SPILLS**

Notwithstanding other requirements of local, state or federal law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the storm water, the storm drainage system, or waters of the Commonwealth and United States, said person shall take all necessary steps to ensure containment and cleanup of such release. In the event of such a release of oil or hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall immediately notify the Board of Health, as the authorized enforcement agency, in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the Board of Health within three (3) business days of the in person or telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

## **9.0 SEVERABILITY**

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

## **ARTICLE 33: PUBLIC CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL**

- A. No person, whether in or upon a vehicle, motor vehicle, conveyance, or on foot, shall burn, smoke,

ingest, or otherwise use or consume marijuana or tetrahydrocannabinol (as defined in M.G.L. c. 94C, Sec 1, as amended) while in or upon any area owned by or under the control of the Town, including, but not limited to, any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, school, school grounds, cemetery, or parking lot; or in or upon any place to which the public has a right of access as invitees or licensees.

B. Any marijuana or tetrahydrocannabinol burned, smoked, ingested or otherwise used or consumed in violation of this bylaw shall be seized, held, and disposed of in accordance with G.L. c. 94C, Sec 47A.

C. Whoever is found in violation of this bylaw shall, when requested by an official authorized to enforce this bylaw, state his true name and address to said official.

D. This bylaw may be enforced through any lawful means in law or in equity including, but not limited to, enforcement by criminal indictment or complaint pursuant to G.L. c. 40, Sec 21, or by non-criminal disposition pursuant to G.L. c. 40, Sec 21D, by the Board of Selectmen, the Town Administrator, or their duly authorized agents, or any police officer.

E. The fine for a violation of this bylaw shall be three hundred dollars (\$300.00) for each offense. A penalty imposed under this bylaw shall be in addition to any civil penalty imposed under G.L. c. 94C, Sec 32L

#### **ARTICLE 34: OPEN BURNING**

All outdoor burning in the Town of Berkley shall be in accordance with the Rules & Regulations set by the Fire Chief of the Town of Berkley.

PROHIBITED ACTS. All outdoor burning of any materials, with the exception of fires used in the preparation of food or outdoor fire pits or authorized by a permit issued by the Fire Department is hereby prohibited.

VIOLATIONS & PENALTIES. Violations of this Bylaw shall be punishable by a fine of \$25.00 for the first offense, \$50.00 for the second offense, and \$100 for each subsequent offense

#### **ARTICLE 35: REVOLVING FUNDS**

##### **SECTION 1. PURPOSE**

This by-law establishes and authorizes revolving funds for use by Town departments, boards, committees, agencies or officers in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.

##### **SECTION 2: EXPENDITURE LIMITATIONS**

A. A department or agency head, board, committee or officer may incur liabilities against and spend monies from a revolving fund established and authorized by this by-law without appropriation subject to the following limitations:

1. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
2. No liability shall be incurred in excess of the available balance of the fund.
3. The total amount spent during a fiscal year shall not exceed the amount authorized by Town meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the select board and finance committee.

##### **SECTION 3: INTEREST**

Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the general fund.

##### **SECTION 4: PROCEDURES AND REPORTS**

Except as provided in General Laws Chapter 44, § 53E½ and this by-law, the laws, charter provisions, by-laws, rules, regulations, policies or procedures that govern the receipt and custody of Town monies and the expenditure and payment of Town funds shall apply to the use of a revolving fund established and authorized by this by-law. The Town accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Town accountant

provides the department, board, committee, agency or officer on appropriations made for its use.

# SECTION 5: AUTHORIZED REVOLVING FUNDS

A. the Table establishes:

1. Each revolving fund authorized for use by a town department, board, committee, agency or officer,
2. The department or agency head, board, committee or officer authorized to spend from each fund,
3. The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the town accountant,
4. The expenses of the program or activity for which each fund may be used,
5. Any restrictions or conditions on expenditures from each fund,
6. Any reporting or other requirements that apply to each fund, and
7. The fiscal years each fund shall operate under this by-law.

<b>FUND</b>	<b>REVENUE SOURCE</b>	<b>AUTHORITY TO SPEND FUNDS</b>	<b>USE OF FUNDS</b>	<b>FISCAL YEARS</b>		
<b><i>Wiring Inspector</i></b>	Monies paid for fees	Building Inspector	Salaries/advertising Postage/general office/equipment	Fiscal and years	Year 2018	subsequent
<b><i>Gas / Plumbing Inspector</i></b>	Monies paid for fees	Building Inspector	Salaries/advertising Postage/general office/equipment	Fiscal and years	Year 2018	subsequent
<b><i>Board of Appeals</i></b>	Monies paid for fees	Board of Appeals	Salaries/advertising postage/general office/and equipment	Fiscal and years	Year 2018	subsequent
<b><i>Planning Board</i></b>	Monies paid for fees	Planning Board	Salaries/advertising/ postage/general office expense/and equipment	Fiscal and years	Year 2018	subsequent
<b><i>Soil Conservation Board</i></b>	Monies paid for fees	Board of Selectmen	Salaries/advertising/ postage/general office expense/and equipment	Fiscal and years	Year 2018	subsequent
<b><i>Board of Health</i></b>	Monies paid for fees and charges received for any inspection	Board of Health	Salaries/advertising/ postage/general office expense/and equipment /professional services including all inspections	Fiscal and years	Year 2018	subsequent
<b><i>Police Department</i></b>	Monies paid for details	Police Chief	Salaries for police details	Fiscal and years	Year 2018	subsequent
<b><i>School Department</i></b>	Somerset Berkley regional school district	Berkley School Committee	Reimbursement for expenses incurred for transporting special needs students to Somerset Berkley regional High School	Fiscal and years	Year 2018	subsequent

<b>UND</b>	<b>SPENDING LIMIT</b>
<b><i>Wiring Inspector</i></b>	<b>10,000.00</b>
<b><i>Gas/Plumbing Inspector</i></b>	<b>10,000.00</b>
<b><i>Board of Appeals</i></b>	<b>5,000.00</b>
<b><i>Planning Board</i></b>	<b>10,000.00</b>
<b><i>Soil Conservation Board</i></b>	<b>5,000.00</b>
<b><i>Board of Health</i></b>	<b>48,300.00</b>
<b><i>Police Department</i></b>	<b>60,000.00</b>
<b><i>School Department</i></b>	<b>60,000.00</b>

### **ARTICLE 36: RIGHT TO FARM**

#### **SECTION 1. Legislative Purpose and Intent**

The purpose and intent of this Bylaw is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97, of the Constitution, and all state statutes and regulations thereunder including, but not limited to, Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9; Chapter 111, Section 125A; Chapter 128, Section 1A; 330 CMR 31.00, and; 310 CMR 10.04. We the citizens of Berkley restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution, ("Home Rule Amendment").

This General Bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmland within the Town of Berkley by allowing agricultural uses and related activities to function with minimal conflict with abutters and Town agencies, when done in compliance with applicable state laws, Town By-laws and regulations. This Bylaw shall apply to all jurisdictional areas within the Town.

#### **SECTION 2. Definitions**

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of commercial agriculture, hobby farms, or accessory thereto. "Commercial" shall be defined by the minimum acreage requirement or the gross sales and program payment requirement specified in Massachusetts General Law Chapter 61.A, Section 3, as amended. "Farm" shall also include youth related agricultural activities, such as but not limited to 4-H and hobby farms, irrespective of minimum acreage or gross sales and program payment requirements.

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

- farming in all its branches and the cultivation and tillage of the soil;
- dairying;

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

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

- operation and transportation of slow-moving farm equipment over roads within the Town;
- control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;
- application of manure, fertilizers and pesticides;
- conducting agriculture-related educational and farm-based recreational activities, including agri-tourism provided that the activities are related to marketing the agricultural output or services of the farm;
- processing and packaging of the agricultural output of the farm and the operation of a farmer's market or farm stand including signage thereto;
- revitalizing drainage or irrigation ditches, picking stone, erecting, repairing or maintaining fences, and clearing, rejuvenating or maintaining pastures;
- maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
- on-farm relocation of earth and the clearing of ground for farming operations.

### SECTION 3. Right to Farm Declaration

The Right to Farm is hereby recognized to exist within the Town of Berkley. The above- described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this Bylaw are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. For any agricultural practice, in determining the reasonableness of the time, place and methodology of such practice, consideration shall be given to both traditional customs, practices and procedures as well as to new practices and innovations. Moreover, nothing in this Right To Farm By-law shall be deemed as acquiring any interest in land. The protections contained in this by-law do not replace any applicable zoning or legal restrictions associated with agricultural operations.

#### SECTION 4. Disclosure Notification

Within 30 days after this Bylaw becomes effective, the Board of Selectmen shall prominently post in the Town Hall and make available for distribution the following disclosure. Also, prior to the sale or exchange of real property, or prior to the acquisition of a leasehold interest or other possessory interest in real property located in the Town of Berkley, the landowner shall present the buyer or occupant with a disclosure notification which states the following:

"It is the policy of the Town of Berkley to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers and occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but *are not* limited to, activities that cause noise, dust and odors. Buyers and occupants are also informed that the location of property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances. Purchasing, and henceforth occupying land within Berkley means that one should expect and accept such conditions as a normal and necessary aspect of living in Berkley."

In addition to the above, copies of this disclosure notification shall be available in a public area at the Town Hall.

#### SECTION 5. Resolution of Disputes

Any person who seeks to complain about the operation of a farm may, notwithstanding pursuing any other available remedy, file a grievance with the Board of Selectmen, the Zoning Enforcement Officer, or the Board of Health, depending upon the nature of the grievance. The filing of the grievance does not suspend the time.

#### SECTION 6. Severability Clause

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

A TRUE COPY OF  
RECORD ATTEST:

Heather J. Almy, Town Clerk

REVISED: November 2024