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# Chapter 203

# AIRPORT REGULATIONS


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**[HISTORY: Adopted by the Airport Commission of the Town of Nantucket 5-9-2006. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Nantucket Memorial Airport Petty Cash Account — See Ch. 19, Art. VA.**
**Airport Approach Zone — See Ch. 53.**
**Zoning — See Ch. 139.**

**TOWN REGULATIONS REFERENCES**

**Alcoholic beverage licensing and regulation — See Ch. 207.**
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**Taxicabs, charter, limousine and tour vehicles — See Ch. 367.**
**Traffic — See Ch. 375.**

## ARTICLE I
## General Information

### § 203-1. Purpose and statutory authority.

A. These Airport Rules and Regulations (AR&R) have been formulated and adopted by the Nantucket Memorial Airport Commission for the Nantucket Memorial Airport, hereinafter referred to as "Airport." This supersedes all previous documents of its kind, and was officially adopted on May 9, 2006.

B. These Airport Rules and Regulations are prepared in compliance with MGL c. 90, § 51J.

C. These Airport Rules and Regulations are intended to provide for the safe, orderly and efficient operation of the Airport. Furthermore, these regulations are intended to

provide for the orderly development and regulation of aeronautical-related activities on the Airport by establishing uniform regulations. These regulations are consistent with those of pertinent federal and state agencies in order that those engaged in such activities may do so with the least possible restrictions, consistent with the safety and rights of others and the public's welfare.

**§ 203-2. Scope; enforcement authority.**

A. All users, tenants, customers and visitors of the Airport shall be governed by these Airport Rules and Regulations. Administration of the terms of the AR&R shall be under the authority, responsibility and control of the Airport Manager. Policymaking activities of the Airport Rules and Regulations reside with the Airport Commission. **[Amended during codification]**

B. All commercial tenants at the Airport shall maintain a copy of the AR&R in a conspicuous location for the use of employees and customers. Moreover, all tenants shall require their employees, as a condition of employment, to read and understand these AR&R and any subsequent amendments. All persons engaged in activities or special events at the Airport shall adhere to all requirements within these regulations.

C. When an emergency exists at the Airport, the Airport Manager is empowered to issue such directives and take such action as necessary to protect people, property and assets and promote the safe operation of the Airport. Such directives and actions of the Airport Manager have the power of regulation as long as the emergency exists. **[Amended during codification]**

D. Should any part of these AR&R conflict with federal, state or local government laws or ordinances, then such federal, state or local government laws takes precedence.

E. These AR&R shall in no way supersede or abrogate regulations set forth in FAA Federal Aviation Regulations, particular Part 139, Certification and Operations of Airports,[1] and Transportation Security Administration, Federal Regulation Part 1542, Airport Security.[2] If any provision of these AR&R is held invalid, the remainder of the AR&R shall be valid. Future amendments, additions, deletions or corrections to these AR&R will be incorporated into these regulations as required and as directed by the Airport Commission.

F. The Airport Manager shall have the authority to suspend flying operations when, in the Airport Manager's opinion, the condition of the landing field is such as to make Airport operations unsafe, or when instructed to do so by the FAA or TSA, or other governing agency.

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1. **Editor's Note: See 14 CFR Part 139, Certification of Airports.**

2. **Editor's Note: See 49 CFR Part 1542, Airport Security.**

**§ 203-3. Definitions.**[3]

The definitions are many and voluminous; however, it is crucial that they be identified. Some of the words defined in Appendix A may not appear in these regulations; however, to better understand the overall operation of the Airport, it is felt that incorporating them is important.

**§ 203-4. Compliance and enforcement.**

A. All persons, including, but not limited to, employees, users, customers, and visitors, are expected to comply with the provisions of these AR&R. The use of the Airport or any of its facilities in any manner, by any person, tenant, or entity, shall create an obligation on the part of the user to obey all the AR&R herein provided and adopted by the Airport Commission, and all other Town of Nantucket (Town) ordinances and administrative procedures pertaining to Airport operations.

B. The Airport Manager is hereby officially empowered to enforce these AR&R and utilize the local law enforcement agencies and/or emergency services for assistance. This would include, but not be limited to, police, fire and ambulance services. A letter of agreement for this support between the Airport Commission and the local Police Department will be prepared by the Airport Manager and included as Attachment 1 to this chapter.[4]

**§ 203-5. General requirements.**

A. Nondiscrimination. All commercial aviation businesses using the Airport shall furnish their services on a fair, equal and nondiscriminatory basis. Commercial aviation businesses will not, on the grounds of religion, race, color or national origin, sex, age, height, weight, marital status, or handicap, discriminate against any person or groups of persons in any manner prohibited by Title VII of the Civil Rights Act of 1964, or by Part 15 of the Federal Aviation Regulations.[5] Airport management shall have the right to take such action as the federal government may direct to enforce this obligation.

B. Accidents. All accidents, no matter how minor, must be reported within no more than one hour from the occurrence unless the accident involves injuries. An accident involving injuries shall be reported immediately to the Airport Manager (508-325-5300) and other agencies, in accordance with the Airport emergency plan.

C. Advertising. Signage or advertising used on the exterior of structures or on Airport leased property requires written approval from the Airport Manager.

D. Aircraft Operations Area (AOA). The AOA is considered a restricted area and is established for safety and security reasons. Except for passengers enplaning or deplaning aircraft, the general public is prohibited from the AOA unless escorted by an authorized employee of the Airport or a tenant. The general public is also prohibited from all other areas of the Airport posted as being a restricted area.

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**3. Editor's Note: See Appendix A, included as an attachment to this chapter.**

**4. Editor's Note: Attachment 1 is on file in the Town offices.**

**5. Editor's Note: See 14 CFR Part 15.**

E. Animals.

(1) Animals required for assistance to the blind, hearing impaired, disabled, or security enforcement persons are permitted on the Airport Operations Area. Domestic dogs and cats are permitted in other public areas of the Airport when restrained by leash and kept completely under control.

(2) All other animals, domestic or exotic, are prohibited from the Airport; except when such animals are containerized for air shipment.

F. Building materials. No building materials, supplies, equipment or refuse, including trash containers, shall be stored or kept in any open area on the building site. No vehicle used for hauling trash, dirt, or any other material shall be operated on the Airport, unless such vehicle is constructed so as to prevent the contents from dropping, blowing, sifting, leaking or otherwise escaping.

G. Children. Children under the age of 16 shall be accompanied by an adult at all times when on Airport property. No SIDA badges will be issued to anyone under the age of 16.

H. Commercial activity. Commercial activity of any kind, involving the tender of money or barter, requires the written authorization of the Airport Manager and payment of fees as required.

I. Commercial photography. Commercial photography of any kind requires the written authorization of the Airport Manager and payment of fees as required.

J. Damage or destruction of property. Damage to property is prohibited, and persons so involved will be fully liable to the Airport Commission.

K. Demonstrations. The Town's official policy can be found in the Charter and Code of the Town of Nantucket.

L. Disorderly conduct or obscene acts. Any conduct considered disorderly or obscene will be punished to the full extent of the law.

M. Employee background checks. Tenants will conduct detailed background checks on all employees as designated by the FAA or TSA and provide the Airport Manager with written verified information. Federal standards are a minimum and the Town adheres to higher standards requiring tenants to perform and provide criminal background checks.[6]

N. Fuels and oils.

(1) Gasoline, oil, and solvent drums or similar receptacles shall not be stored on apron and ramp areas in excess of amounts actually needed as current stock. Any material of this type that is kept in subject areas will be kept in enclosed containers and covered in a clearly marked and labeled housing of a design and type that meets the approval of the Airport Manager and all federal, state and local requirements.

**6. Editor's Note: See Ch. 108, Civil Fingerprinting, of the Code of the Town of Nantucket.**

(2) No fuels, oils, dopes, paints, solvents, or acids shall be disposed of or dumped in drains on the ramp areas, catch basins or elsewhere on the Airport.

(3) Each operator handling, using, or storing fuels, oils, solvents, chemicals and/or hazardous materials at the Airport shall provide a written report to the Airport Manager, updated annually, identifying all hazardous materials used or stored at the Airport and describing the measures taken by the operator to comply with all applicable federal, state, and local laws and other regulatory measures. No hazardous materials are permitted to be stored in aircraft hangars. All operators shall be subject to inspection for compliance during normal business hours by or on behalf of the Airport Commission.

O. Gambling. Any type of gambling on the Airport is prohibited.

P. Lost or mislaid property. Property left unattended will be considered lost and shall be turned in to the Lost and Found Center (custodian's office), where it will be logged. A maximum of three attempts will be made to contact the owner on identifiable pieces. Any item with an estimated value of less than $150 will be stored for a maximum of 90 days. Higher value items will be stored for 180 days. After such time, the items will either be disposed of, auctioned, or donated to charity. A complete Airport Lost and Found Policy can be obtained through the Airport Manager's or Airport Security Offices. **[Amended during codification]**

Q. Safety. Provisions for the safety of employees, customers, guests and visitors while on leased premises is required and the responsibility of the lessee.

R. Sanitary requirements. All commercial operators shall at all times comply with safety, health and sanitary codes of the Commission and Town, state and federal governments.

S. Signage. Signage standards are established by the Town. No sign or advertisement or notice shall be displayed on the outside or inside of any structure on the Airport unless authorized by the Airport Manager or otherwise approved as part of a lease or contractual agreement.

T. Soliciting funds. Any solicitation of funds requires the written authorization of the Airport Manager and payment of fees as required. No soliciting or passing of fliers, circulars, or other similar materials shall be permitted by any one or any portion of the Airport premises without the permission of the Airport Manager. Approved activities are restricted to those areas specified and approved by the Airport Manager.

U. Storage of property or equipment. No storage of equipment or salvage materials will be allowed on the exterior of leasehold property. Nonapproved storage items include, but are not limited to, boats, boat trailers, RVs, unlicensed cars, furniture, etc.

## ARTICLE II
## Aircraft Operations

### § 203-6. Applicability.

The following rules and regulations pertain to the airport Air Operations Area (AOA) as set forth in the Airport Layout Plan (ALP).

**§ 203-7. Airport management activities in AOA.**

The following are airport management activities in the AOA:

A. Closure of the Airport.

B. Restricted or prohibited flight activities.

C. Notices to airmen (NOTAMs) issues by Airport management personnel, in addition to those issued by the FAA.

D. Fees charged for landing or parking of aircraft.

E. Written approval for air shows and other special events.

**§ 203-8. Aircraft accidents/incidents on or adjacent to Airport.**

A. Accidents. All accidents, no matter how minor, must be reported within no more than one hour from the occurrence unless it involves injuries. An accident involving injuries shall be reported immediately to the Airport Manager (508-325-5300) and other agencies, in accordance with the Airport Emergency Plan.

B. Disabled aircraft are the responsibility of the aircraft owner. However, the Airport Manager has the power, authority and option of direct removal, or Airport management will arrange for the removal of the aircraft by the owner or an authorized entity to a designated area once the proper governing body permits this action to occur.

C. Access to aircraft accident/incident scenes is controlled by the Airport Manager or by the Town's designated person-in-command at the scene.

**§ 203-9. Taxiing, towing or removal of aircraft from AOA.**

A. Towing operations must be conducted by trained and authorized flight line personnel using equipment approved for the aircraft being towed.

B. The Airport Manager is authorized to remove or otherwise direct the relocation of aircraft parked or stored in unauthorized areas. **[Amended during codification]**

C. Aircraft will not taxi into or out of any hangars or other structures on the Airport under actual aircraft engine power. Aircraft will be towed or pushed by equipment or by hand into and out of such facilities.

D. All hovering and air taxi operations of helicopters will be done in compliance with 14 CFR Part 27, and shall not interfere with or cause blowing of debris onto parked aircraft.

**§ 203-10. Operating requirements and restrictions.**

A. A qualified pilot or mechanic must be in the cockpit and at the controls of the aircraft when an aircraft engine is operating.

B. Aircraft repair/maintenance will be performed only in designated areas by certificated, licensed and authorized AP/IA mechanics.

C. Operating aircraft engines inside a hangar is prohibited.

D. Aircraft will be parked, serviced, loaded and unloaded at parking locations or passenger terminal areas designed and designated for each type of aircraft. No loading or unloading of aircraft is permitted until all engines are shut down.

E. Derelict/Nonflyable aircraft must be parked in a designated area or removed from the Airport at the Airport Manager's discretion.

F. Any aircraft weighing more than runway, taxiway and apron load-bearing capacity is prohibited.

G. Aircraft based at the Airport (in accordance with the definition of "based aircraft" herein[7]) require a written agreement with the Airport so stating the based status, compliance with aircraft parking fees, and specifically identifying the aircraft by aircraft type and "N" number.

H. Auxiliary power unit (APU) use is limited to 15 minutes of use. **[Amended during codification]**

## ARTICLE III
## Vehicle Operation

### § 203-11. Applicability.

The following rules and regulations pertain to the operation of all motored vehicles on the Airport:

### § 203-12. Vehicle operations regulated by Airport management.

A. All Airport roadways are the property of the Airport.

B. All motor vehicles on Airport roadways and parking lots are governed by traffic ordinances.

C. The Airport Manager has the authority to deny, restrict or cancel the right of any motor vehicle driver from operating on the AOA.

D. Businesses conducting any "motor vehicle for hire" activity on the Airport must have a written agreement with the Airport. This includes rental car agencies, taxicabs, buses, limousines and lodging shuttles.

E. The Airport Manager has the right to tow or otherwise move or have moved any motor vehicle for reasons of safety, security, chronic nonpayment of parking fees, abandonment or police investigation.

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**7. Editor's Note: See Subsection A of Appendix A, included as an attachment to this chapter.**

F. The Airport Commission may impose specific limits of insurance for tenant business vehicles and other privately owned vehicles.

G. Liability insurance limits for motor vehicles operating on unrestricted public airport roadways will be consistent with State of Massachusetts motor vehicle insurance laws.

**§ 203-13. Airport vehicle operator's permits.**

A. The Airport Commission retains the right to implement an Airport Operator's Permit. Application for this permit would be made directly with the Airport administration office. Each applicant must possess a current motor vehicle operator's license. The Airport Commission requires all individuals driving on Airport property to have read an Airport driving procedures manual.

B. The Airport Commission requires all line service personnel providing aircraft towing or driving fuel trucks to fully understand and comply with safe operating procedures. In addition, they must be fully trained by the Airport before they are permitted to operate any vehicle in the AOA. All individuals must possess a current and valid driver's license.

**§ 203-14. Operating requirements and restrictions.**

A. Unless otherwise posted, the speed limit on all Airport roadways is 15 miles per hour.

B. Motor vehicle drivers will comply with all Airport directives.

C. Aircraft and pedestrians have the right-of-way over motor vehicles.

D. Motor vehicle drivers will not operate vehicles on a runway, taxiway or aircraft apron unless authorized by the Airport Manager or have clearance from the air traffic control tower.

E. Motor vehicle drivers will park in designated parking areas only.

F. Motor vehicle drivers/owners/agents shall not clean or repair a motor vehicle other than in designated vehicle maintenance and clean-up areas.

G. Privately owned motor vehicles shall not be parked, serviced or repaired inside any Airport-owned building unless authorized by the Airport Manager.

H. Motor vehicle drivers will pass to the rear of taxiing aircraft.

I. Motor vehicles will not be parked or maneuvered closer than 10 feet to any aircraft. Specialized vehicles needed to service an aircraft are exempt from this rule.

J. Access to the landing field by authorized vehicles shall be permitted so long as they do not interfere with normal operations and are not a hazard to parked or operating aircraft.

K. All commercial vehicles authorized to drive in the AOA shall have a yellow rotating beacon, two-way communication, and be clearly marked with the commercial operator's

name, or an international orange and white checkered flag of not less than three square feet.

L. Each commercial operator and Airport personnel may be required to pass an airfield driving course to obtain an Airport driving permit, once a program is prepared.

M. No person shall operate a vehicle of any kind on the Airport in a reckless or negligent manner, or in excess of the speed limits prescribed.

N. No person under the influence of alcoholic or narcotic substances shall operate any type of motored vehicle or aircraft on the Airport at any time.

O. All vehicles operating within the landing or taxiway areas shall be accompanied by a vehicle displaying an operating amber beacon, or an international orange and white checkered flag of not less than three square feet.

P. The Airport Manager may remove from any area of the Airport any vehicle which is disabled, abandoned, parked in violation, or which represents an operational problem to any area of the Airport, at the owner's expense and without liability for accidental damage which may result in the course of such action.

Q. No person shall park a vehicle in a manner that would obstruct roadways, doorways, or in aircraft parking areas.

R. All employees of organizations and agencies having tenancy in the Airport's building areas shall park private vehicles in the employee parking lot, if provided, or in areas so designated by the Airport Manager.

### § 203-15. Taxicabs.[8]

A. Each taxicab operator is required to obtain an annual nontransferable permit from the Airport Commission for operation from the Airport.

B. Passengers may select the taxicab of their choice.

C. Rates for the transportation of passengers must be posted in full view, in each taxi, and each taxi will carry and display the proper Airport permit.

D. No taxicab shall enter the ramp area.

E. The Airport Commission may suspend the permit of any taxicab violating any of the AR&R.

## ARTICLE IV
## Tenant Operations

### § 203-16. Applicability.

The following rules and regulations pertain to tenant and sublessee operations on the Airport:

8. **Editor's Note: See also Ch. 367, Taxicabs, Charter, Limousine and Tour Vehicles, of the Town Regulations.**

**§ 203-17. Tenant operations regulated by Airport management.**

All tenant operators must be party to a fully executed lease or rental agreement with the Airport. In some cases, an annual operating permit may be issued by the Airport Manager.

**§ 203-18. Operating requirements and restrictions.**

A. Tenants are prohibited from subleasing or subletting, or the assignment of a lease, of any premises located on Airport-owned real estate without prior written approval of the Airport Manager.

B. A tenant is responsible for training its employees on the contents of the AR&R document, Airport minimum standards, and applicable portions of the tenant's lease agreement with the Airport Commission. The Airport reserves the right to deny access to any person based on its own criteria.

C. Tenants must ensure that all tenant employees meet physical and mental standards necessary for the safe conduct of each employee's job task, especially as these tasks relate to safe and rational conduct in and around aircraft and all other areas of the AOA.

D. Tenants shall keep hangars, shops, offices, other buildings, structures and areas adjacent thereto free of waste material, rubbish, junk, landscaping litter and flammable material. Sanitation, trash and garbage receptacles will be placed in pedestrian traffic areas to accommodate and encourage the disposal of refuse. Rest rooms will be maintained in clean and sanitary conditions. All floors, walls and ceilings will be maintained in clean, sanitary and well-lighted conditions.

E. Structural and decorative changes to any building, structure, ramp, or other Airport property requires prior written approval of the Airport Manager and must comply with local building codes and inspections.

## ARTICLE V
## Safety Procedures

**§ 203-19. Applicability.**

The following rules and regulations pertain to Airport safety procedures.

**§ 203-20. Safety procedures regulated by Airport management.**

A. All fuel vendors, including fuel transport delivery vehicles, must be licensed, inspected and in full compliance with all applicable regulations. The Airport Commission has the authority to verify compliance.

B. Fueling of aircraft and fuel servicing of all types of over-the-road motor vehicles must be performed in locations designated by the Airport Manager.

C. Smoking is permitted only in designated areas; however, it is strictly prohibited inside the AOA, within aircraft storage hangars, and near fuel storage facilities. Smoking is

also prohibited within 50 feet of a fuel handling vehicle, and at all other locations on the Airport where specifically prohibited by signs. Smoking is prohibited in all Airport buildings and vehicles.

D. All applicable National Fire Protection Association (NFPA) standards concerning fueling activities are hereby incorporated as a part of this AR&R chapter; and all entities dispensing fuel are required to be knowledgeable of its contents.

E. Except as approved by the Airport Manager, no Class A or Class B explosives, Class A poisons or radioactive materials are permitted on the Airport.

F. The Airport Manager has the right to inspect all tenant premises and to observe tenant activities as a condition to and method of preventing unsafe practices.

G. The cleaning of engines or other parts of an airplane within an enclosure shall be with nonflammable liquids. If volatile flammable liquids are employed, cleaning operations shall be carried on in the open air in an area designated by the Airport Manager. The procedures and precautions outlined in the criteria of the National Fire Protection Association entitled "Safeguarding Aircraft Cleaning, Painting and Paint Removal and Aircraft Cabin Cleaning and Refurbishing Operations" will be adhered to in all cleaning and refurbishing operations using flammable fluids, including the storage of such fluids.

H. No company or individual will be allowed to transport flammable liquids into any aircraft area or to refuel aircraft on any portion of the Airport property owned by the Airport Commission prior to securing written authorization from the Airport Manager.

I. During refueling or defueling, fuel handling vehicles shall be placed so as to be readily removable in the event of a fire. No more than one refueler shall be positioned to refuel an aircraft.

J. Each fuel handling vehicle shall be conspicuously marked in letters of contrasting colors, with the word "flammable" on both sides and the rear of the cargo tank, and with the wording "emergency shut off" and of the appropriate operating instructions required at the emergency operating devices. Each fuel-handling device will also be conspicuously marked on both sides and the rear with the type and grade of fuel it contains, the Universal Product Code designation and "no smoking" signs.

K. Oxygen system servicing is not permitted during aircraft fueling operations or while other work is performed that could provide a source of ignition.

L. Oxygen system servicing and fuel servicing shall be performed only when the aircraft is located outside the hangar.

M. During fueling operations, electronic communications (radios, cell phones, etc.) are prohibited within 50 feet.

**§ 203-21. Operating requirements and restrictions.**

A. Fuel storage areas will be fenced, with locked gates and warning placards, prohibiting general public access.

B. Fueling an aircraft with one or more of the aircraft's engines running is prohibited. Hot fueling a helicopter may be permitted by the Airport Manager if a suitable location can be identified.

C. Aircraft and fuel servicing equipment (trucks, carts, hydrants, and nozzles) must be bonded to each other and grounded before fuel flow starts. Refuel trucks must be grounded while at loading rack.

D. Open flames are not permitted within 50 feet of any fuel service activity or fueling equipment.

E. Fuel service activity will cease when lightning discharges occur within the vicinity of the Airport.

F. Fuel spills in excess of one gallon must be reported to the Airport Manager and immediate action taken by the spilling entity to clean up the spill in accordance with all local, state, and federal regulations.

G. Electric switches and fixtures must be "explosion proof" and meet NFPA and state and local codes when installed for use in the immediate vicinity of fuel vapors.

H. Fuel servicing vehicles are prohibited from being parked or stored inside of a building.

I. During fuel servicing, two dry chemical fire extinguishers (20 BC or larger), or CO2 equivalent, must be available for immediate use. The extinguishers may be on the fueling vehicle and must be within 10 feet of the fueling activity. The entity dispensing the fuel is responsible for providing fire extinguishers.

J. All tenants are responsible for supplying and maintaining fire extinguishers on tenant premises.

K. No flammable, corrosive or toxic liquids will be disposed of into or onto storm drains, sewer drains, toilet/shop/hangar drains, aprons, parking lots, roadways, catch basins, ditches or raw land.

L. Cylinders of compressed flammable gas will not be stored inside any buildings except as provided by NFPA standards and local codes, and in compliance with OSHA regulations.

M. Storage of flammable liquids, gases, signal flares or other similar items in any building or structure on the Airport is prohibited unless approved in writing by the Airport Manager.

N. Open fires of any type are prohibited on the Airport unless approved by the Airport Manager.

O. All welding operations shall be conducted in approved welding booths or approved aircraft maintenance areas according to local code.

P. Storage of lubricating oils must be in code-approved, locked storage cabinets.

Q. Storage of a volatile compound having a flash point of less than 110° F. is prohibited on the Airport unless use of the compound is required for aviation purposes, approved

in writing by the local Fire Marshal, and in a room fireproofed or otherwise fire protected according to code.

R. All fire extinguishing equipment must be inspected and tagged in accordance with NFPA standards and local codes.

S. No person shall intentionally obstruct, delay, physically disturb or interfere with the free movement of any other person on the Airport. Law enforcement officers are exempt from this rule.

T. Hunting on Airport property is prohibited without prior written permission of the Airport Manager.

## ARTICLE VI
## Security Requirements

### § 203-22. Applicability.

The following rules and regulations pertain to Airport security requirements.

### § 203-23. Security requirements regulated by Airport management.

A. No one is allowed in the AOA/SIDA area unless properly badged or escorted by a properly badged person.

B. Restricted areas are established for safety and security reasons. Except for passenger enplaning or deplaning of aircraft, the general public is prohibited from the AOA unless escorted by an authorized Airport or approved tenant employee. The general public is also prohibited from all other areas of the Airport posted as being security and restricted areas.

C. Aircraft requiring the presence of security guards or police officers must coordinate this requirement with the Airport Manager.

D. Only crews, escorted passengers going to and from an aircraft, aircraft service and maintenance technicians, and security or safety personnel, or others as authorized by the Airport Manager, shall be permitted into the AOA.

E. Pedestrians or motor vehicle operators observed in other than public use areas without authorization by the Airport Manager will be considered trespassing and subject to arrest.

F. All requirements of the Department of Homeland Security (DHS) will be adhered to at all times. Airport rules and regulations are in addition to DHS and FAA requirements. The Airport is also governed by the Airport Security Plan (ASP).

**§ 203-24. Security of aircraft and AOA.**

A. When the condition or mission of an aircraft requires security guards or police, the owner or operator of the aircraft is responsible for obtaining and paying security service personnel that have been approved by the Airport Security Coordinator.

B. Tenants are responsible for the security of all aircraft and other private property entrusted to their care on the AOA or other locations on their leasehold premises. Under Massachusetts Aeronautical Commission (MAC) regulations, all aircraft must be double locked when unattended.

C. Tenants and tenant employees are responsible for safeguarding doors, gates and other forms of passageways between the AOA and the landside of the Airport.

D. A breach in security caused by a tenant or tenant employee that results in an FAA, DHS or Airport Commission finding of negligence will be cause to review, fine and possibly cancel or curtail tenant access to the AOA.

**§ 203-25. Weapons.**

A. No person will carry a firearm on the Airport except encased sporting weapons carried for shipment. This includes those individuals who may be permitted by a government agency to carry such weapon. This policy shall not apply to duly authorized law enforcement officials in the lawful discharge of their duties or properly authorized Airport personnel.

B. No person shall carry any weapon on the Airport that is generally accepted as one that was constructed for the purpose of serving as a weapon. This would include, but not be limited to, knives with switchblades, knives with a blade of more than three inches long, "brass knuckles," "Billy clubs," fireworks, explosives, etc.

## ARTICLE VII
## Variances

**§ 203-26. Authority to grant.**

The Airport Manager shall have the authority to grant such variances as may be in harmony with the general purpose and intent of these Airport Rules and Regulations, or where a literal application of such regulations would result in an unreasonable and unnecessary difficulty or burden, and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of these Airport Rules and Regulations.

**§ 203-27. Standards for granting.**

Variances shall be based upon the following standards:

A. Safety concerns.

B. Compatibility with the Airport Master Plan.

C. Whether any nuisance conditions would be created, such as traffic congestion, lighting, etc.

D. Any other reasonable alternative available to the variance.

E. Self-created problem.

F. Within the scope of the Charter and Code of the Town of Nantucket.

## ARTICLE VIII
## Buildings and Construction

### § 203-28. Purpose.

In order to provide for uniform and desirable development at the Airport, it is desirable to adopt Airport Rules and Regulations, as well as minimum standards for the development, construction, and maintenance of hangars and other structures. It is the intent and purpose of these regulations to provide for the development and regulation of hangars and other structures and improvements at the Airport by establishing uniform regulations to control the type of construction and to protect the character of the Airport and the surroundings as a whole.

### § 203-29. General conditions.

A. Each lessee of a building site agrees to use the site only in accordance with the restrictions herein set forth and to refrain from using the site in any way inconsistent with or prohibited by the provisions of these rules and regulations.

B. All plans for the structures and improvements shall be prepared and stamped by registered engineers and/or architects and shall require written approval of the Airport Commission before any construction can take place.

C. All plans shall include a general layout, drawn to scale, showing the amount of ground required for the operation of such building in addition to the portion occupied for the building proper. All buildings shall conform to the Building Code requirements of the Town or Airport Commission, and be approved by the Fire Department.

D. All building construction must begin within one year of lease signing.

E. All buildings must conform to the approved building design and colors as approved by the Airport Commission.

### § 203-30. Development standards.

A. No structure or improvement shall be placed on any site closer to a property line than herein provided. The following structures and improvements are specifically excluded from these yard provisions:

(1) Roof overhangs, provided such overhangs are approved in writing by Airport management as hereinafter provided;

(2) Steps and walks;

(3) Driveways and aircraft ramps;

(4) Fences, except no fence shall be placed upon a site unless specific written approval is given by the Airport Commission.

B. Where applicable, all fences must meet FAA standards.

C. No tenants, lessees or grantees will be permitted to effect structural or decorative changes or additions of any type without prior written permission and approval of the Airport Manager.

D. After commencement of construction of any structure or improvement, the owner shall diligently prosecute the work thereon, to the end that the structure or improvement shall not remain in the partially finished condition any longer than reasonably necessary for completion thereof. The time limit for said completion shall be one year unless delayed due to conditions beyond the control of the owner or otherwise approved by the Airport Commission.

**§ 203-31. Maintenance and construction requirements.**

A. Every site shall be landscaped so as to prevent erosion of soil. Tenants are responsible for proper drainage on their lot.

B. No materials, supplies, equipment or refuse, including trash containers, shall be stored or kept in any open area on the building site.

C. All buildings shall be sturdy and rugged and constructed of masonry, concrete, steel materials or wood frame and steel siding integrated with proper foundations and concrete slab construction. All design and colors shall be approved by Airport management. Building permits must be obtained.

D. All on-site electrical, telephone, water, sewer, or any other utilities shall be provided by the lessee. Paving from the taxiway to the hangar shall be at the lessee's expense. The lessee will bring utilities to the property and/or building at lessee's own expense.

E. No structure or improvement situated on the site shall exceed 30 feet in height. The lessee shall prepare and file FAA Form 7460-1, Notice of Proposed Construction or Alteration, and receive approval from the FAA and Airport management prior to starting building construction.

F. Lessees, at their own expense, shall keep said site, structures, and improvements in good repair and with a neat and attractive appearance.

G. Notice of violation.

(1) If maintenance of the site or the exterior of any structure or improvement thereon is not properly performed, Airport management shall serve written fifteen-day notice to the tenant of the site. Such notice shall contain a list of all maintenance or other violations.

(2) The tenant of the site upon which such notice is served shall have 15 days to correct the items listed on the notice or as specified in the existing lease document.

H. No earth material shall be removed from the Airport property without the written consent of the Airport management.

## ARTICLE IX
## Airport Map

### § 203-32. Layout plan.

The Airport Layout Plan has been included in this AR&R as a means to help identify the Airport property boundaries, AOA, aircraft storage hangars, fuel facilities, etc. See Exhibit A.[9]

## ARTICLE X
## Special Events

### § 203-33. Activities regulated by Airport management.

A. Special events include, but are not limited to, the following:

(1) Air shows.

(2) Balloon festivals.

(3) Air races.

(4) Warbird shows.

(5) Fly-in meets.

(6) Parachute team demonstrations or competitions.

(7) Beach activities.

B. All special events require written authorization by the Airport Manager in the initial planning stage. The authorization will be in the form of a letter of authorization from the Airport Manager to the special event coordinator in which the coordinator is recognized as involved in the planning process for a specific type of special event. The letter of authorization may be used as an introduction to other local government agencies, the FAA, potential event sponsors, and local business leaders. The letter will recognize the special event coordinator as a legitimate representative of a proposed special event, that the type of special event is suitable and compatible with the policies of the Airport Commission, and that the event coordinator is authorized to pursue the planning process. If the event is a reoccurring activity, the event organizers must still receive written authorization each activity year. NOTE: This letter of permission by the

9. **Editor's Note: Exhibit A is on file in the Town offices.**

Airport Manager is not a permit or license to proceed with the event. It is merely an authorization to pursue the feasibility and planning process for a special event. This step is necessary so that details of the planning are not allowed to proceed excessively before the Airport Commission is brought into the process.

C. All special events, whether an entrance fee applies or not, must be officially approved by the Airport Manager in the form of a special event permit or license.

D. All special events for which a fee is charged for admission must be coordinated with the Airport Manager prior to the granting of a special event permit. NOTE: During this step, the Airport Manager and special event coordinator will agree on the terms and fee structure for the event, to include the percentage of gate receipts, a percentage of gross receipts, or a fixed fee to be paid to the Airport Commission, to both offset additional overhead costs associated with the special event and to enhance Airport revenues. Any event coordinator not in good standing with the Town shall not be permitted to obtain a permit.

E. The special event coordinator will be required to obtain liability insurance for the event. The insurance policy will name the Town of Nantucket/Nantucket Memorial Airport and its employees as a "named insured" for the event.

F. The special event coordinator is required to arrange for and reimburse any and all security personnel and costs and other reasonable expenses incurred by the Airport.

G. A security deposit will be required for all events.

H. A copy of all applicable waivers will be provided to the Airport Manager prior to submission to the FAA. Approved waivers will be copied to the Airport Manager.

I. Within 30 days after the event and upon the request of the Airport Manager, the event coordinator and the Airport Manager will meet to conduct a debriefing.

J. The Airport Manager reserves the right for final approval of the event layout on Airport property, and such layout must be submitted for approval no less than 60 days prior to the event.

**§ 203-34. Operating requirements and restrictions.**

A. If the special event is expected to attract an attendance of 20 persons or more, the event coordinator must coordinate parking, road and highway impacts with local police, sheriff and/or the highway patrol and to the satisfaction of the Town.

B. The event coordinator must prepare and present to the Airport Manager an "adverse weather" plan for the event.

C. The event coordinator must make arrangements for ambulance, auto towing, garbage pick up, refuse clean-up, portable rest rooms, and structural fire and aircraft rescue and fire-fighting (ARFF) services. **[Amended during codification]**

D. The special event must be planned to accommodate the normal ingress and egress of motor vehicles for those users of the Airport or other business activities normally conducted at the Airport.

E. Airport runways and/or landside closure must be approved and coordinated in advance with the Airport Manager and other users of the Airport.

F. A special event that involves aerobatic maneuvers by aircraft must be coordinated with the Airport Manager, Massachusetts Aeronautics Commission, and the local Flight Standards District Office (FSDO) of the FAA. All waivers FAA Form 7711-2 must be approved by the Airport Manager before submission to the FAA.

G. Failure of the event coordinator to adequately perform trash and litter clean-up of the Airport and repair or compensation for damaged property as a result of the special event will be billed for extra overhead expenses and damages by the Airport Commission at cost plus 20%.

H. Special events involving aerial activities that are not of a routine nature for the Airport will require the designation and approval of an "air boss" who is experienced in directing and controlling the aerial activities planned for the event. The person designated as "air boss" must be approved by the Airport Manager. Events such as regional "fly-ins" will not require an air boss.

I. Special events involving crowds in excess of 100 people will require a written emergency plan, which must be submitted to the Airport Manager for approval before proceeding.

J. If the event coordinator desires to sell alcoholic beverages, a permit must be requested and obtained and alcoholic beverages may be sold and consumed only in areas so designated on the permit.[10] Individuals operating motorized vehicles may not consume alcoholic beverages.

## ARTICLE XI
## Specialized Aeronautical Activities

### § 203-35. Activities regulated by Airport management.

A. Specialized aeronautical activities include the following:

(1) Hot air balloons.

(2) Experimental aircraft.

(3) Home-built aircraft.

(4) Parachute drops.

(These aeronautical activities require coordination and regulation through the office of the Airport Manager.)

(5) Banner towing pick-up and release (explicitly prohibited).

B. Ultralight aircraft.

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**10. Editor's Note: See Ch. 54, Alcoholic Beverages, of the Code of the Town of Nantucket; and Ch. 207, Alcoholic Beverages Licensing and Regulation, of the Town Regulations.**

(1) Operation of ultralight aircraft into the Airport traffic area, landings, parking and takeoffs of ultralight aircraft require prior coordination and approval of the Airport Manager.

(2) The Airport Manager has the authority and responsibility to designate specific runways, taxiways, or other suitable paved or prepared surfaces for occasional ultralight activity.

C. The Airport Manager has the authority and responsibility to approve/disapprove requests for use of the Airport facilities for hot air balloon launches, experimental aircraft tests, and home-built aircraft tests to preserve safety.

D. The Airport Manager has the authority and responsibility to approve/disapprove requests for use of the Airport facilities for parachute drops when the parachute landing zone is on Airport property or impacts the safe operation of aircraft on or around the Airport.

### § 203-36. Operating requirements and restrictions.

A. Prior to operating any type of equipment listed above, the owner/operator of the specialized aeronautical equipment must obtain approval in writing from the Airport Manager.

B. The owner/operator of such specialized aeronautical equipment will be limited by the Airport Manager to launching, testing, high-speed taxi or parachute landing to/from specific sites on the Airport. Those sites might be runways, portions of runways, taxiways, clear zones or other Airport property. Specific site locations may also be limited by designated time-of-day use.

C. Proof of liability insurance in an amount acceptable to the Airport Manager is required.

## ARTICLE XII
## Nighttime and Noise Restrictions

### § 203-37. Nighttime restrictions.

There are no additional restrictions on nighttime operations at the Airport.

### § 203-38. Noise abatement.

Pilots shall observe all voluntary noise abatement policies adopted by the Airport Commission. Such policies shall be posted in the Airport administration offices in a conspicuous location and elsewhere on the Airport as the Airport Commission deems appropriate and regulations require. However, the Airport encourages courteous behavior in limiting night operations after 11:00 p.m.

ARTICLE XIII

**Enforcement**

**§ 203-39. Violations and penalties.**

Violation of these Airport Rules and Regulations will result in warnings, fines, penalties, and/or violators being prohibited from using the Airport.

A. Enforcement authority. Any police officer with arrest powers at the Airport, the Airport Manager, or any other individual so designated by the Airport Commission shall have the right and power to enforce any and all rules and regulations contained herein. Such persons may have the power to issue citations for such violations.

B. Violators prohibited use of Airport. Sometimes a violation of these rules and regulations will be so severe that, in the opinion of the person with enforcement authority, the violator(s) should be prohibited from the use of the Airport. In this instance, the act will be immediately reported to the Airport Commission, which will be the final decision authority as to the severity of the punishment. However, the person with enforcement authority has the power to immediately restrict an individual from the Airport until such time as the Airport Commission rules on the issue.

# Chapter 207

# ALCOHOLIC BEVERAGE LICENSING AND REGULATION


**§ 207-1. Authority; compliance required.**

**§ 207-2. Public consumption prohibited; social host restrictions; scope.**

**§ 207-3. Administration of licensed premises.**

**§ 207-4. Hours of sale.**

**§ 207-5. Change of manager.**

**§ 207-6. Manager responsibilities.**

**§ 207-7. Procedure for obtaining new liquor license.**

**§ 207-8. Additional considerations for approval of new license or transfer.**

**§ 207-9. Modifications to licensed premises.**

**§ 207-10. Transfer of license ownership or location.**

**§ 207-11. One-day or special licenses.**

**§ 207-12. Criteria for approval of one-day or special licenses.**

**§ 207-13. Distribution of regulations.**

**§ 207-14. Filing fees and annual licensing fees.**

**§ 207-15. Miscellaneous operating provisions.**

**§ 207-16. Violations and penalties.**


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket effective 3-1-2010. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Alcoholic beverages — See Ch. 54.**
**Public entertainment — See Ch. 105, Art. IV.**
**Civil fingerprinting — See Ch. 108.**
**Zoning — See Ch. 139.**

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**TOWN REGULATIONS REFERENCES**

**Signs — See Ch. 340.**

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## § 207-1. Authority; compliance required.

A. By virtue of the authority contained in MGL c. 138, § 23, and MGL c. 140, as amended, the Select Board of the Town of Nantucket, serving as the Town's Liquor Licensing Authority (hereinafter the "Board" or "local licensing authority") hereby promulgates these Rules and Regulations Governing Alcoholic Beverages (hereinafter the "regulations"). The regulations shall supersede all previous applicable regulations or policies issued by the Town of Nantucket (the "Town"). The Board reserves the right to amend the regulations periodically as it sees fit, upon advance notice.

B. All licenses issued for the sale in any manner of any alcoholic beverage shall be issued by the Board on the condition of full compliance with the regulations. The failure to comply with the regulations and other applicable bylaws or rules issued by the Town or

state shall constitute sufficient cause or grounds for refusing to grant said licenses, or for suspending, canceling, or revoking any license already granted by the Board.

**§ 207-2. Public consumption prohibited; social host restrictions; scope.**

A. No person shall drink any alcoholic beverages, as that term is defined in MGL c. 138, § 1, as amended ("Chapter 138"), while on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, park or playground, or private land or place without consent of the owner or person in control thereof. All alcoholic beverages used in violation of the regulations and/or Chapter 54, Alcoholic Beverages, of the Code of the Town of Nantucket may be seized.

B. No person shall sell, furnish or provide alcohol to any person under the age of 21. In addition to the rules and regulations pertaining to the licensing and sale of alcoholic beverages that follow, Nantucket residents and visitors should be aware of the principle of social host liability under Massachusetts law (MGL c. 138, § 34). A "social host" is an individual who provides alcoholic beverages to guests in his or her home, or other property (s)he owns or manages. The law defines "furnish" as "to knowingly or intentionally supply, give or provide to or allow a person under 21 years of age (except for the children and grandchildren of the person being charged) to possess alcoholic beverages on premises or property owned or controlled by the person charged." Under Massachusetts law, a social host may under certain circumstances be held liable (criminally and/or civilly) for injuries caused by a guest who, having consumed alcohol at the host's premises (even if the property owner is not present at the time), does harm to himself or herself or to a third party. If the guest is not of legal drinking age (i.e., under 21 years of age) and the host knew or reasonably should have known that he/she was furnishing alcohol to an underage youth, the host may be held responsible for injuries or damage to the underage youth, or to third parties caused by the alcohol-influenced actions. Furthermore, even if the guest was not an underage youth, a social host may be liable for injuries to third parties if the host knew or should have known that the guest was intoxicated but, nevertheless, gave him or her, or permitted him or her to take, an alcoholic drink.

C. The State Liquor Control Act, MGL c. 138, regulates "alcoholic beverages" as that term is defined by law. The law defines "alcoholic beverages" to be "any liquid intended for human consumption as a beverage and containing 1/2 of 1% or more of alcohol by volume at 60° F." Thus, if a product is composed or manufactured so that it contains 1/2% or more of alcohol by volume at 60° F., it is an "alcoholic beverage" and subject to the Liquor Control Act. If a product is composed or manufactured so that it contains less than 1/2% of alcohol by volume at 60° F., it is not an "alcoholic beverage" and is not subject to the Liquor Control Act.

**§ 207-3. Administration of licensed premises.**

A. An applicant for a liquor license must meet the requirements of Chapter 138, the regulations, and any other applicable local or state law.

B. All employees serving alcohol to the public are required to successfully complete an alcoholic beverage server training program approved by the Town. The requirement set forth in the preceding sentence shall include and apply to the manager, assistant manager, and persons responsible for viewing identification cards to determine the age of patrons for service of alcohol. All employees engaged in serving or selling alcoholic beverages and/or viewing of identification cards shall be certified within 30 days of employment at the licensed premises. To the extent an employee other than the manager or assistant manager serves alcohol or views identification cards within the first 30 days of his or her employment without having successfully completed an alcoholic beverage server training program, the manager, manager of liquor license, or manager on duty will be personally responsible for that employee, and any violation of the regulations committed by that employee will be treated as if the manager had committed the violation. Managers and assistant managers shall have successfully completed an alcoholic beverage server training program prior to assuming the duties of manager or assistant manager. All alcohol servers are strongly encouraged to attend periodic server retraining programs at least once per calendar year. Server training certification must be current/valid and the employee must renew prior to expiration of certification. Retention of the records of training and retraining is the responsibility of the manager and must be made available to the Nantucket Police Department upon request.

C. Certain practices, including, without limitation, "Happy Hours," are prohibited per MGL 138, § 12 and § 14 and 204 CMR 4.00 et seq.

D. Cover charges are not permitted except in compliance with MGL c. 140, § 183D and 204 CMR 2.16.

E. The Board has very broad discretion to determine whether or not to issue a license in the Town of Nantucket and whether such license would serve a public need in such a manner as to protect the common good.

F. The licensed premises shall be subject, at all times, to inspection by the Nantucket Town Manager or his/her designee(s).

G. The Nantucket Police Department shall have the authority to investigate potential violations of the regulations and to conduct other such enforcement as the Chief of Police deems appropriate, including the use of plainclothes police officers for the purposes of ensuring compliance with Chapter 138, the regulations, and other state and local laws as may be applicable.

H. Any prior restrictions or conditions placed upon a property housing a liquor license establishment by another Town board or commission will be construed as also having the agreement of the local licensing authority.

## § 207-4. Hours of sale.

A. In accordance with MGL c. 138, § 12, the "official opening and closing hours" are those which are designated on the licensee's liquor license issued by the Board. Last call shall be at least 15 minutes prior to the official closing hour. No alcoholic beverages may be served after the official closing hour. All tables and bars must be

cleared of all glasses, bottles and containers of alcoholic beverages and all customers must be off the licensed premises within 1/2 hour after the official closing hour. Owners and employees must be off the licensed premises no later than 60 minutes after the official closing hour, provided that owners and their employees and contractors may be on the licensed premises at any time for the purpose of cleaning, making emergency repairs, providing security for such premises, or preparing food for the next day's business. No employee or owner shall consume alcohol on the premises nor serve any alcoholic beverages at the licensed premises before the official opening hour or after the official closing hour. Patrons are not permitted to bring alcoholic beverages into the licensed premises for their own consumption. Common victualler licensees are not permitted to keep alcoholic beverages on the premises except for a reasonable small quantity that is used in preparation of certain specialty foods.

B. A violation of any of the aforementioned restrictions regarding the hours of operation shall constitute a violation of the regulations and may subject the licensee to modification, suspension, revocation or cancellation of its license in accordance with Chapter 138.

**§ 207-5. Change of manager.**

A. An application for change of manager of the licensed premises must be filed with the Board at least two weeks before the proposed effective date of the change, unless the approved manager has terminated his or her employment without prior notice to the licensee. In that case, the licensee must notify the Board of the name of the person who will discharge the duties of manager while he or she is absent pending selection and approval of a new manager by the close of the next business day following the manager's termination of employment. If the employment of the approved manager is terminated by the licensee, or if the approved manager is replaced, transferred, or for other reason due to action by the licensee is no longer acting as manager, the licensee must file an application for change of manager at least two weeks before the action is taken by the licensee and must obtain approval by the Board of the application before changing the manager. If circumstances other than those stated above require a licensee to make a change in manager without timely filing the required application, the licensee shall file the application at the earliest practicable time and must include a detailed statement of the reasons for its delay. If the Board finds that the circumstances of the delay justify the noncompliance, no sanction will be imposed. If the circumstances are not found to be sufficient, the Board may impose a day of suspension for each day of unjustified noncompliance, or such other sanction as permitted by § 207-16 of these regulations. When submitting an application for change of manager, the manager shall be certified as an alcohol server prior to submitting the application. Furthermore, approval of a change in manager may be conditioned upon proof of payment of all outstanding local, state and federal taxes and fees.

B. Upon receipt of an application for an original license, or in the case of a new manager, upon being advised of the new manager's identity, the Nantucket Police Department will conduct a background check of any proposed licensee or manager in accordance with Chapter 108, Civil Fingerprinting, of the Code of the Town of Nantucket, and such check will include a review of any existing criminal record. The licensing authority may reject any application where the licensee's or manager's criminal record

indicates theft, unlawful sale, use or distribution of controlled substances, alcohol-related offenses, association with known felons or individuals involved in organized crime, a propensity for violence, or other behavior that, in the opinion of the licensing authority, puts the public at risk. **[Amended during codification]**

C. Violation of any of the aforementioned restrictions regarding change of manager shall constitute a violation of the regulations and shall subject the licensee to possible sanctions.

**§ 207-6. Manager responsibilities.**

A. The Board regards the manager of licensed premises as the principal representative of the licensee and, as such, having full authority and control of the licensed premises and of the conduct of all business taking place therein relative to alcoholic beverages, as referred to in Chapter 138 and the regulations.

B. Without limiting the scope of the previous subsection, the Board will hold the manager of the licensed premises responsible for the following:

(1) Selection of qualified employees, including servers, clerks and persons who are engaged in dealing with the public in any capacity;

(2) Training of employees in all matters relating to the sale or service of alcoholic beverages;

(3) Assuring that employees serving alcohol to the public have successfully completed an alcoholic beverage server training program for serving alcohol responsibly, and provide for continual training of employees engaged in serving and selling alcoholic beverages;

(4) Ensuring that no criminal activity, including the illegal sale, use or distribution of controlled substances, takes place on the licensed premises or on any parking area of the licensed premises;

(5) Promptly reporting to the Nantucket Police Department all instances of attempted purchases or procurement of service of alcoholic beverages by minors, including attempts to gain access to premises upon which alcoholic beverages are served and from which minors are excluded. In such instances, the licensee is expected to take appropriate action, which shall include:

(a) Reporting to the Registry of Motor Vehicles instances involving possession or use of a false, forged or counterfeit license to operate motor vehicles or identification card issued by the Registry of Motor Vehicles;

(b) Confiscation of liquor identification cards or motor vehicle operator's licenses presented by the minor; and

(c) If a purchase was made or service was procured, the name of the licensee's employee participating therein;

(6) Enforcement of the regulations and any applicable state law with respect to the operation of the licensed premises; and

(7) Ensuring that the licensed premises, including the exterior, are kept clean, neat and sanitary at all times.

C. Except as provided herein, the manager of the licensed premises must be a full-time employee or a corporate officer of the licensee, must be engaged exclusively in the management of the licensed premises, and must be a qualified seller or server of alcoholic beverages. When the manager is not present at the licensed premises, the person in charge of the business must be a qualified seller or server of alcoholic beverages and designated by the approved manager to have charge of the business in the manager's absence. The manager will continue to be responsible for the operation of the business whether or not he/she is present at the licensed premises. When the manager is not at the premises, a method of contacting him/her promptly must be arranged so that he/she can be reached at all times by the person designated to be in charge of the premises in his/her absence. The provisions of the first sentence of this subsection shall not apply to any licensee holding a license issued under MGL c. 138, § 12, to a veterans organization or to a licensee holding a license issued to a club under said chapter.

D. Failure of the manager to comply with the regulations may result in his or her removal as manager or suspension or revocation of the liquor license as the Board finds appropriate given the specific circumstances.

## § 207-7. Procedure for obtaining new liquor license.

A. In addition to submitting all of the liquor license application documents as may be required by the Alcoholic Beverages Control Commission (ABCC), the applicant for a liquor license of any type must submit a letter to the Board summarizing its proposal and requesting a public hearing before the Board. The Town Manager and Chairman of the Board will jointly assign a date for such public hearing. As part of the application process, the applicant must provide payment for the publication of a legal notice to appear in a local newspaper for two consecutive weeks prior to the assigned public hearing, in accordance with Chapter 138. At the public hearing, the Board will consider the application for a liquor license and the input of any interested members of the public. The Board's decision on the application will be communicated to the applicant in a timely manner. The Town will provide a copy of the regulations to each licensee at the time the new liquor license is issued and at the time of license renewal. The licensee shall sign a receipt to be maintained at the Town offices evidencing the licensee's receipt of a copy of the regulations.

B. In reviewing applications, the Board has very broad discretion to determine whether to issue a license in the Town of Nantucket and whether such license would serve a public need in such a manner as to protect the common good.

## § 207-8. Additional considerations for approval of new license or transfer.

The Board will also consider any or all of the following additional information that can be reasonably offered in support of a particular license application:

A. The applicant is a qualified veteran's organization and seeks a club license.

B. The applicant proposes an establishment that offers a regular forum for music and musicians to play and obtain exposure for their work.

C. The applicant offers variety, or uniqueness, in its proposed establishment or shop, in contrast to what exists in Nantucket at the time of the application.

D. The applicant proposes an establishment that offers a substantial economic benefit to the Town of Nantucket.

E. Proposals for establishments to be located in high-density retail areas, either as new licenses or transfers, are discouraged if the proposed location duplicates what is presently located in the area.

**§ 207-9. Modifications to licensed premises.**

Once a liquor license is issued by the Board, no substantial physical changes to the licensed premises shall be made without the prior approval of the licensing authority, which requires the filing of an "Alteration of Premises Application." For the purpose of the regulations, a "substantial physical change" is defined as a change sufficient to require a building permit.

**§ 207-10. Transfer of license ownership or location.**

MGL c. 138, § 23

A. Applications for transfer of ownership or location of a liquor license shall be considered an original application and processed as such. Current holders of liquor licenses hold no property rights in said license and the Board is not required to grant such transfer requests. To the extent permissible under law, the Board reserves the right to impose sanctions pursuant to § 207-16 upon existing licensees who attempt to transfer their licenses for compensation. Approval of a transfer of majority ownership further may be conditioned upon the proof of payment of all outstanding local, state and federal taxes, including, without limitation, the following: the remission to the proper taxing authorities of sales taxes, excise taxes and withheld federal and state income taxes. Transfers of ownership to trustees in bankruptcy, court-appointed receivers or assignees for the benefit of the creditors, and those taking title or possession of the licensed premises by, through or under them will not be deemed to transfer or convey any rights to the license or the renewal or transfer of such license, unless provided by contrary law. Bona fide mortgagees in possession who are listed in the application as holding such interest shall be treated in the same manner as the original majority ownership licensee. A public hearing before the Board shall be required for any transfers of ownership or location, including, but not limited to, transfers to mortgagees.

B. In the case of a license transfer, as in the case of an issuance of a license, the decision to approve the transfer of location or ownership, or both, is at the Board's sole discretion.

**§ 207-11. One-day or special licenses.**

MGL c. 138, § 14

A. Holders of liquor licenses issued pursuant to the regulations are not eligible to hold one-day or special licenses. Any person or establishment that has submitted an application for a liquor license to the licensing authority is likewise not eligible to simultaneously hold a one-day or special license. The following types of organizations are eligible for one-day alcoholic beverage licenses under the regulations:

(1) Civic or municipal organizations;

(2) Commercial establishments;

(3) Fraternal organizations;

(4) Nonprofit organizations;

(5) Unincorporated groups or organizations not engaged in the sale of alcoholic beverages for profit;

(6) Service clubs; and

(7) Veteran's organizations.

B. Other organizations may submit applications for consideration by the Board. The fee for a one-day license shall be established by the Board from time to time pursuant to MGL c. 40, § 22F.

C. Applicants for a Nantucket temporary pouring license (a one-day license) must complete the required application form, pay an application fee established by the Board from time to time pursuant to MGL c. 40, § 22F, provide a valid insurance liability certificate and obtain all signature approvals before being considered for the granting of a one-day license. **[Amended during codification]**

**§ 207-12. Criteria for approval of one-day or special licenses.**

A. The following matters will be taken into account by the Board in approving one-day licenses:

(1) Admission age. The Board will not initially deny a one-day license for a function at which minors are present, and require compliance with the laws governing the sale or furnishing of alcoholic beverages.

(2) Frequency. One-day licenses are to be issued primarily to applicants sponsoring functions that are not held more than once annually. Except for applicants that are in the business of catering or accommodating individual functions, one-day licenses are not intended as an alternative to a seasonal or annual liquor license.

B. Acceptance of conditions. Acceptance of a one-day license by an applicant under the regulations will be deemed to be an agreement on behalf of the licensee to abide by the following conditions of the license:

(1) Certification of servers. All commercial caterers must be licensed by the Nantucket Health Department.

(2) Hours of service of alcoholic beverages. For all one-day licenses, the hours of sale and service shall be no later than 1:00 a.m. The "last call" for all such licenses shall be no later than 12:30 a.m. The function shall conclude no later than 1:00 a.m., at the same hour as the license.

(3) Number of persons on premises. The number of persons may not exceed the occupancy limits allowed by law for the premises at which the license will be exercised.

(4) Police detail. The number of officers, if any, and the hours during which a police detail will be required at the licensed premises and, if required, for orderly parking and traffic control, will be determined by the Nantucket Police Department. Generally, these hours will encompass the entire duration of the function. The Nantucket Police Department will consider the location of the premises, availability of on-site parking, the number of persons estimated to be in attendance and the time and duration of the function in making its determination.

C. Additional provisions. The following additional provisions shall apply to one-day licenses:

(1) Departmental approvals. The Board of Health and the Building Department must approve the licensed premises, including, where applicable, food service equipment. For any function to which the general public will be admitted, the Building Department must approve the licensed premises as meeting handicap accessibility requirements.

(2) Neighborhood impact. The applicant or such other person designated by name, address and local telephone number in the application will be responsible for the orderly conduct of the function for which the license is issued. Consumption of alcoholic beverages outside of the premises within which the licensed function is to be held will not be permitted. Music, noise, or other function-related activities must not create an undue imposition upon any adjacent residences, inns, guest houses and the like. (Refer to Chapter 101, Noise, of the Code of the Town of Nantucket.) Police detail officers will be instructed to respond appropriately to complaints. Such response may include an order to terminate the event or otherwise limit the offending activity.

(3) Submission of applications. Applications must be complete with all necessary endorsements when submitted to the Town Administration Office and must be submitted a minimum of 10 business days in advance of the date on which the licensed function is scheduled to take place.

D. Application requirements. When submitted, each application must be approved by the Town's Health Department, Fire Department, Building Department, and Police Department (as to whether a police detail is required). Final approval is given by the Town Manager, who is authorized to approve, on behalf of the Board, one-day licenses meeting the requirements of the regulations. Applications that are denied by the Town Manager may be appealed to the Board for approval and shall be accompanied by the Town Manager's summary of reasons for declining approval. The Board must receive

such appeals for approval no later than 12:00 noon on the Tuesday of the calendar week before the week in which the function is to scheduled to take place. A hearing must take place during a regularly scheduled meeting of the Board. The applicant shall received notice of the date and time of the hearing.

### § 207-13. Distribution of regulations.

The regulations, in their most current form, shall be mailed to all licensees with their renewal application and with each application for change of the licensed manager. The regulations shall be appended to each liquor license issued by the Board. The licensee may not pick up his/her license until the licensee has signed a receipt acknowledging that a copy of the regulations has been received. A copy of the most current regulations shall be maintained at the licensed premises at all times, and shall be available for inspection upon request. On or as soon as possible after the effective date of the regulations, the Town Administration Office shall mail a copy of said regulations to each licensee in the Town.

### § 207-14. Filing fees and annual licensing fees. [Amended during codification]

Application and licensing fees for annual and seasonal liquor licenses shall be set from time to time by the Select Board.

### § 207-15. Miscellaneous operating provisions.

A. The licensee shall ensure that the Nantucket Police Department, the Nantucket Fire Department, and authorized agents of the licensing authority have immediate access to the licensed premises at all times and under all circumstances.

B. No alcoholic beverages shall be sold to anyone under the age of 21 years. It shall be a defense to any alleged claim of sale of alcohol to a minor if the licensee can show that the minor produced a valid Massachusetts driver's license, a valid Massachusetts liquor identification card, a valid passport issued by the United States or by a government of a foreign country recognized by the United States government, or a valid U.S.-issued military ID card. Licensees may accept out-of-state licenses as proof of age but licensees shall bear the risk that such licenses are invalid.

C. A delivery of alcohol is considered a sale and must be received by an individual 21 years of age or older, with proper identification (off-premises license holders/ establishments).

D. The licensee shall ensure that all business taking place within the licensed premises, and within areas under the licensee's control, is conducted in a responsible manner so that no activity shall detract from the quality of life in the Town generally, or in the neighborhood in which the licensed premises is located specifically. This shall include, but not be limited to, ensuring that there is no disorder, unlawful use or sale of drugs, indecency, prostitution, assaults, lewdness or gambling on or about the licensed premises.

E. No alcoholic beverages shall be sold or delivered to an intoxicated person.

F. Alcoholic beverages may be consumed only from open containers (on-premises license holders/establishments).

G. No licensee may display any advertisement or sign on the outside facade of the licensed premises upon which appears any brand name of an alcoholic beverage product. Signage on the exterior of the premises is subject to advance approval by the Historic District Commission.[1]

H. No patron may remove any alcoholic beverage from the licensed premises, unless the patron is removing from the premises a resealed bottle of partially consumed wine as regulated by Chapter 138 and the regulations of the ABCC (on-premises license holders).

I. No patron may purchase more than two drinks at one time (on-premises license holders/establishments).

J. No licensee shall provide or allow entertainment unless an entertainment license has been obtained from the Select Board.[2]

K. No licensee shall make any distinction, discrimination or restriction on account of race, color, creed, sex, sexual orientation or ancestry relative to admission to the licensed premises or treatment of any person within the licensed premises.

## § 207-16. Violations and penalties.

A. Purpose. The purpose of this section is to improve the ability of the Board to prevent alcohol abuse and violation of the liquor laws of the Commonwealth and the requirements of the regulations. It is the intent of the Board that this section will help to achieve reasonable uniformity in the imposition of sanctions and to avoid confusion in the minds of the public, patrons and licensees due to a lack of understanding of the consequences of violating the liquor laws and the terms of liquor licenses. This section is intended to empower the Board to consider the circumstances of each case and provide a mechanism for which licensees can ensure their compliance with the regulations.

B. General provisions.

(1) No licensee shall permit any illegality to occur on the licensed premises. The manager shall at all times maintain order and decorum on the licensed premises and in the immediately surrounding area and shall cooperate with Town officials in ensuring safe and orderly licensed premises.

(2) All violations of the liquor laws and the terms of liquor licenses are to be reported to the Board by the Nantucket Police Department or by any licensee or manager that becomes aware of an offense involving the licensed premises within two weeks of said violation. Failure to report a violation involving the licensed premises constitutes a violation of the regulations and may subject the licensee to sanctions in accordance with the procedure set forth herein.

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1. **Editor's Note: See Ch. 340, Signs, of the Town Regulations.**

2. **Editor's Note: See Ch. 105, Art. IV, Public Entertainment, of the Code of the Town of Nantucket.**

(3) Sanctions for offenses shall be consistent with the Town's general goals of protecting public safety and the general welfare. Sanctions will also be imposed with the goal of preventing future offenses.

(4) The nature and severity of the sanctions imposed by the Board will be decided according to the nature of the offense and the presence of aggravating or mitigating circumstances as further described herein.

(5) Sanctions may consist of any one or more of the following as appropriate: revocation of license; suspension of license; criminal prosecution of offenders by the Nantucket Police Department, including customers and patrons as deemed appropriate by the Police Chief; and/or mandatory participation in alcohol abuse and offense prevention programs.

(6) The Nantucket Police Department is encouraged to recommend to the Board the terms under which an offense be resolved. Any such recommended resolution must be in writing, signed by the manager of the licensed premises or license holder charged with the offense and approved by the Police Chief. The recommendation must include a statement detailing the facts determined in the police report and found as part of the Department's investigation. The recommended resolution is not binding upon the Town unless and until approved by the Board.

(7) Depending upon the nature of the violation, if the Police Department and the manager of the licensed premises and/or license holder charged cannot agree on a recommended resolution, the Police Department will make any additional investigation it deems necessary for a complete presentation of the facts and will file a detailed written report with the Board.

(8) Notice is to be provided to a licensee of an alleged violation of the regulations. The notice will include the date of the event giving rise to the possible disciplinary action, a description of the event, and a clear identification of the provision(s) of the regulations that is/are alleged to have been violated as a result of the event. Said notice will also provide the licensee with the date upon which the Board will hold a hearing concerning the licensee's alleged violation. A notice containing the above-mentioned information shall be sent to the licensee via certified mail/return receipt requested no less than 10 days prior to the date of the hearing before the Board. Licensees are entitled to retain counsel to represent them at the hearing if they so desire.

(9) The procedures stated in the regulations shall be an indication of the range of sanctions available to the Board. The Board will refer to these guidelines in deciding whether to approve a negotiated recommended resolution.

(10) The Board may consider but is not required to accept a negotiated resolution recommended by the Nantucket Police Department. The Board is empowered to consider alternative sanctions consistent with § 207-16 of the regulations, and applicable state law.

(11) The Nantucket Police Department and the Board will maintain a public record of offenses and their dispositions that will be indexed according to the licensee/ manager, server and purchaser involved.

(12) In the event that the Board decides to deny an application for a new license, refuse to issue a license or modify, suspend, revoke or cancel a license, the Board will provide the licensee with a written statement of reasons such action was taken against the licensee, a copy of which will be simultaneously mailed to the ABCC.

C. Determination of sanctions. Sanctions will be determined according to the following procedure:

(1) Offenses for which the Board may issue sanctions include, without limitation, those offenses as listed in Subsection D of this section.

(2) The Board may make adjustments according to the existence of factors that warrant an increase in the sanction described in Subsection E of this section ("aggravating circumstances") or a decrease in the sanction as described in Subsection F of this section ("mitigating circumstances").

(3) The Board may take into consideration the number of violations involved in the particular offense.

(4) The Board may take into consideration the alleged offender's acceptance of responsibility as described in Subsection F.

(5) The Board shall also consider any relevant actions taken by the ABCC.

(6) The Board may take into consideration previous written warnings issued by the Town to the licensee. The Board may consider the date(s) of the written warning(s), the reasons therefor, and the similarity of the incident resulting in the warning with the incident at hand.

D. Common offenses.

(1) Sale outside of permitted hours (MGL c. 138, § 12);

(2) Purchase by person under age 21 (MGL c. 138, § 34A);

(3) Employment by licensee of person under age 18 for direct handling or selling of alcohol (MGL c. 138, § 34);

(4) Sale or delivery to a person under age 21 for own use or for use of another (MGL c. 138, § 34);

(5) Sale to an intoxicated person (MGL c. 138, § 69);

(6) Hindering or delaying an investigation by the ABCC or authorized agent of the Board (MGL c. 138, § 63A);

(7) Failure to post notice of penalty for driving under the influence and driving while drinking from open container of alcoholic beverage (MGL c. 138, § 34D); and

(8) Failure to comply with section 204 CMR 4.03 of the ABCC regulations, which, in pertinent part, provides as follows: No licensee or employee shall:

(a) Offer or deliver any free drinks to any person or group of persons;

(b) Deliver more than two drinks to one person at one time;

(c) Sell, offer to sell or deliver to any person or group of persons any drinks at a price less than the price regularly charged for such drinks during the same calendar week, except at private functions not open to the public;

(d) Sell, offer to sell or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

(e) Sell, offer to sell or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that day, except at private functions not open to the public;

(f) Sell, offer to sell or deliver malt beverages, wine or mixed drinks by the pitcher or in other community-type container commonly referred to as a "scorpion bowl" (Nothing in this subsection shall be construed to prohibit the sale of pitchers of beer.);

(g) Increase the volume of alcoholic beverages contained in a drink without increasing proportionately the price regularly charged for such drink during the same calendar week; and

(h) Encourage or permit, on the licensed premises, any game or contest which involves drinking or the awarding of drinks as prizes.

(9) Failure to comply with 204 CMR 9.00 of the ABCC regulations or Chapter 54, Alcoholic Beverages, Article III, of the Code of the Town of Nantucket pertaining to retail sale of malt beverages in kegs. **[Amended during codification]**

E. Aggravating circumstances.

(1) Failure to request identification card, operator's license or passport;

(2) Juvenile appearance of underage purchaser;

(3) Use of altered identification;

(4) Refusal to cooperate in investigation;

(5) Multiple sales to an underage purchaser on same occasion;

(6) Quantity of beverage sold;

(7) Staff not suitably trained;

(8) Underage server;

(9) Violations of other laws such as: prostitution, solicitation, drugs, gambling, disorderly conduct, cigarette sales to minor;

(10) Concealing violation(s);

(11) Furnishing false information to investigator;

(12) Exceeding lawful capacity of licensed premises;

(13) Intimidating or coercing witnesses or attempting to do so;

(14) Offense occurring while under suspension or penalty; **[Amended during codification]**

(15) Sale occurring while license suspended; and

(16) Occurrence of any personal injuries or fatalities related to the underlying violation.

F. Mitigating circumstances.

(1) Reasonable reliance upon identification card, an apparently valid motor vehicle operator's license, United States passport, passport issued by a country recognized by the United States government or United States issued military identification card for proof of identity or age. (MGL c. 138, § 34B);

(2) Acceptance of responsibility by the licensee as shown by:

(a) Substantial and voluntary assistance offered in investigation;

(b) Acknowledgment of responsibility;

(c) Agreement to participate in additional training; and/or

(d) Agreement to participate in a program to detect and prevent future offenses.

G. Imposition of sanctions.

(1) The Board's imposition of sanctions will be consistent with the regulations and any applicable state statutory provisions. Note that these are guidelines only. Those persons who violate said regulations or state statutes may expect one or more of the following consequences as appropriate in the sole discretion of the Board:

(a) Suspension of license for a stated number of days. Licensees are advised that the following chart only represents guidelines for use by the Board when making its final decision in response to a liquor license violation. The Board, in accordance with the aggravating or mitigating factors as presented above, shall retain the authority to deviate from these guidelines in such cases as it deems appropriate.

| Violation | Sanction |
|---|---|
| First violation | Written warning |
| Second violation | 1-day to 2-day suspension |
| Third violation | 3-day to 4-day suspension |
| Fourth violation | 5-day to 6-day suspension, regardless of amount of penalty suspended, if any |
| Fifth violation | 7-day to 15-day suspension |

| Violation | Sanction |
|---|---|
| Sixth violation | 16-day to 30-day suspension |
| Seventh violation | 31-day to 1-year suspension, or revocation; or revocation of license and prohibition on reapplying for a 1-year period |

(b) Suspension of license for a stated number of days with a portion of the suspension deferred upon condition that no further offenses occur within a specified period of time and that licensee waives its right to hearing upon such further offense.

(c) Revocation of liquor license or suspension for a specified period of time after a hearing for cause.

(d) Mandatory participation in prevention program(s) by licensee/manager and server as appropriate.

(e) Public notice of the offense and disposition.

(2) While the Board will endeavor to impose sanctions upon licensees in a manner consistent with the regulations, where exigent or special circumstances warrant, such as a violation of the regulations resulting in serious personal injury or death, the Board retains the authority in such circumstances to immediately order a full hearing, provide the licensee an opportunity to present evidence, and to revoke a license where the evidence so warrants such an action by the Board.

H. Reporting of violations and penalties imposed.

(1) The Board shall receive annual reports from the Nantucket Police Department detailing violations of the regulations for the reporting period, and the sanctions imposed by the Board for said violations. Reports shall be submitted to the Board no later than November 1 of each year. The Board will use these reports to analyze the factors that are commonly associated with violations, such as over-serving, underage serving, absence of serving training or registration, etc.

(2) As previously stated, the Board reserves that right to amend the regulations as it deems necessary. It is the responsibility of the licensee to keep abreast of any changes to the regulations that may affect its establishment.

# Chapter 211

# ANIMALS

ARTICLE I
**Cows, Ducks and Swine**

**§ 211-1. Permit required.**
**§ 211-2. Maintenance of premises**
**§ 211-3. Permit term; revocation.**
**§ 211-4. Fee.**

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

**TOWN CODE REFERENCES**

**Animals — See Ch. 55.**
**Zoning — See Ch. 139.**

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**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

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ARTICLE I
**Cows, Ducks and Swine**
**[Adopted by the Board of Health 12-1-1931]**

### § 211-1. Permit required.

No person shall keep within the limits of this Town in any building, or on any premises of which he may be the owner, lessee, tenant, or occupant, any cows, ducks, goats, hens, or swine without a permit from the Board of Health.

### § 211-2. Maintenance of premises

Buildings, yards and enclosures for cows, ducks, goats, hens, or swine must at all times be kept clean and free from filth, dirt, and stagnant water.

### § 211-3. Permit term; revocation.

All such permits expire annually on April 30, and may be revoked by the Board at any time for cause.

### § 211-4. Fee.

As established by the Board of Health, the keeping of animals annual permit fee is $5.

# Chapter 216

# BEACHES


**§ 216-1. Authority, purpose and definitions.**

**§ 216-2. Water kiteboarding, recreational.**

**§ 216-3. Beach events and commercial activities.**

**§ 216-4. Fires.**

**§ 216-5. Motor vehicle operation and use.**

**§ 216-6. Beach activities adverse to federally protected breeding habitat.**

**§ 216-7. General beach rules.**

**§ 216-8. Violations and penalties; enforcement.**

**§ 216-9. Severability.**


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 8-1-2003. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Animals — See Ch. 55.**
**Regulation of motor vehicles on beaches — See Ch. 56.**
**Protection of coastal areas and open spaces — See Ch. 66.**
**Town wharves and waterways — See Ch. 137.**

**TOWN REGULATIONS REFERENCES**

**Boats and boating — See Ch. 225.**
**Fishing and shellfishing — See Ch. 260.**
**Harbors and waterways — See Ch. 278.**

## § 216-1. Authority, purpose and definitions.

A. Adoption. These regulations are adopted by the Select Board of the Town of Nantucket, to be effective on August 1, 2003.

B. Purpose.

(1) The purpose of these regulations is to protect public safety, to manage beach activities, events and commercial activities on the beaches or ancillary areas to the beaches within the limits of the Town of Nantucket as such uses are deemed to have significant effect on wetlands values, including but not limited to flood control, erosion, storm damage prevention, fisheries, shellfish, wildlife and recreation; on beach scenic views; on excessive noise; on the natural scenic, historic and aesthetic qualities of the beach environment on Nantucket; on the public safety and welfare; and on the preservation of peace and good order.

(2) The purpose is also to regulate use and operation of motor vehicles on beaches.

(3) The purpose is also to regulate the use of all designated pond areas in the Town of Nantucket and restrict commercial use in these areas, as such use is deemed to

have significant effect on wetland values, including but not limited to public and private water supply, ground water, flood control, erosion control, storm drainage prevention, water pollution, fisheries, wildlife, scenic views and recreation; on the public safety and welfare; and on the preservation of peace and good order.

C. Applicability.

(1) These regulations shall apply to all properties adjacent to these ponds that are owned by the Town of Nantucket and to properties adjacent to these ponds where the property owner has given the Town permission to apply these regulations to his or her property.

(2) These rules and regulations apply to beaches owned by the Town of Nantucket or those beaches managed by the Town or on beaches where the property owner has given the Town the owner's permission to apply these rules and regulations.

(3) Beach events on private property that have the express written permission of the property owner are exempt from the application provisions of this section. Notwithstanding the permission of a private property owner to allow a beach event or commercial activity that would otherwise require a permit from the Town of Nantucket, all applicable federal, state and local laws, bylaws and regulations shall continue to be applicable to the beach events and commercial activities described and regulated herein.

(4) Additional restrictions or limitations may apply to any approved event or activity (i.e., beach erosion concerns, endangered species, anticipated storm events, requirement of special police details, etc.).

D. Definitions. As used in this chapter, the following terms shall have the meanings indicated:

ANCILLARY BEACH AREAS — Areas in close proximity to beaches in the Town of Nantucket, including but not limited to off-beach parking areas.

BEACH EVENT — Any group, gathering or convergence of more than 15 persons on a designated beach area or ancillary beach area where any services provided for said event are substantially commercial in nature and which event is for social, recreational or commercial purposes. Family gatherings shall not constitute a beach event under this definition.

COMMERCIAL ACTIVITY —

(1) Any activity or event for which money is paid to an individual or business entity for services rendered on a beach/pond or ancillary area to a beach/pond in the County of Nantucket. Family gatherings shall not constitute a commercial activity under this definition.

(2) For the purposes of these regulations, the erection or use of any permanent or temporary structure, kiosk, dock, mooring, stand, cart, sign for advertisement, or other real or personal property, fixtures or equipment primarily for the purpose of, or incidental or accessory thereto, manufacturing, selling, leasing or otherwise providing from that specific structure or arising from such use any property, good, product or service shall be deemed a commercial activity.

(3) Notwithstanding the foregoing, no sale or lease of real property within a designated pond area without further action that might be construed as a commercial activity hereunder, nor any business for which no invitee visits the designated pond area in question, shall be deemed a commercial activity.

DESIGNATED BEACH AREA — A geographic section of beach or ancillary area to a beach in the Town of Nantucket as determined by the Town Manager and designated as such on a map on file with the Town Clerk and in the office of the Select Board.

DESIGNATED POND AREA — A designated pond area shall include the following:

(1) All ponds and all property directly adjacent to any portion of any pond owned by the Town of Nantucket, or to which the Town of Nantucket has a littoral or other property right, if any; and

(2) All ponds and all property directly adjacent to any portion of any pond owned by the proprietors of Nantucket, or to which such proprietors have a littoral or other property right, if any; and

(3) All ponds and all land, however owned, within 66 feet of the high water mark of such pond.

KITEBOARDING — The use of a kite utilizing wind and air to lift, provide power or energy to a harnessed rider/passenger who is equipped with a board for touch down, whether such board is formally a surfboard, kite board, wake board, or other stabilizing flat object used for the recreational purposes of kiteboarding.

POND — Any stagnant body of water without an outlet having a surficial area of fewer than 10 acres, any great pond, or any like body of water with a small outlet, including but not limited to any body of water affected by tidal action, together with the surface area of such body of water and the soil and other matter under such body of water. **[Amended during codification]**

## § 216-2. Water kiteboarding, recreational.

A. All kiteboards must display an appropriately numbered burgee registered with the Marine Department. A database of registered kiteboarders with assigned registration numbers shall be maintained by the Harbormaster and updated annually.

B. No kiteboarding may occur within 400 feet of the beach in a direct onshore wind.

C. All kiteboards must remain a minimum of 200 yards from endangered species.

D. All kiteboards must remain a minimum of 400 feet from lifeguarded areas.

E. Kiteboarders must comply with all other applicable laws, including without limitation MGL c. 90b and Chapter 137, Town Wharves and Waterways, of the Code of the Town of Nantucket.

F. All kiteboards must be equipped with a safety system to prevent runaway kites.

G. The Town board or entity with jurisdiction over Town-owned property may regulate the specific Town-owned properties and areas where kiteboarding may occur, including

without limitation prohibiting kiteboarding where, in the opinion of such Town board or entity, kiteboarding may create a public safety hazard, and including without limitation restricting the days and times when kiteboarding may occur.

H. The Select Board may regulate the specific private properties and areas where kiteboarding may occur, including without limitation prohibiting kiteboarding on properties and in areas where, in the opinion of the Select Board, kiteboarding may create a public safety hazard, and including without limitation restricting the days and times when kiteboarding may occur.

**§ 216-3. Beach events and commercial activities.**

A. The use of Nantucket beaches for events or activities involving a commercial enterprise or activity, including, but not limited to, catering events or other such businesses, shall require a permit from the Town of Nantucket.

B. Unless otherwise authorized by the Town Manager, only three beach events per week and only one event per day shall be permitted on any designated beach area in the Town of Nantucket pursuant to these regulations. Permits for beach events shall be based on a "first-come, first-served basis." Permits for commercial activity where more than one commercial enterprise applies to use the same beach on the same date will be based upon a "lottery" system as determined by the Town Manager.

C. No beach events or commercial activities with an expected attendance of more than 250 people shall be allowed unless a public assembly permit application has been submitted and approved.

D. The fee for a beach event permit or commercial activity permit shall be set from time to time by the Select Board. **[Amended during codification]**

E. Beach events or commercial activities with an expected attendance of more than 75 people may require a special police detail as determined by the Town Manager.

F. Prohibited activities.

(1) The following activities are prohibited at all beach events or commercial activity at beaches subject to these rules and regulations:

(a) Electrical generators.

(b) Dance floors.

(2) There shall be no commercial activity in any designated pond area and no commercial activity that indirectly has an impact upon any designated pond area, for any period of time.

G. All applications shall be signed confirming that the applicant has read and understands all regulations pertaining to a permitted beach event or commercial activity and that such applicant will abide by such regulations, limitations and conditions placed upon such event or activity.

H. The permittee shall be required to obtain and provide proof of comprehensive liability insurance in the minimum amount of $1,000,000 naming the Town of Nantucket and any other property owner of the designated beach area where the beach event or activity is taking place as an additional insured.

I. Individuals or businesses that provide catering or other food-related services on beaches subject to these rules and regulations must be licensed by the Board of Health. A copy of the food service license from the Board of Health shall be submitted with an application for a beach event or commercial activity.

J. The permittee shall remove all trash generated by its beach event or commercial activity from the beach and dispose of it properly at the landfill. Town trash cans or dumpsters may not be used.

K. Unless otherwise authorized, beach events or commercial activities may not be scheduled between the hours of 8:30 a.m. and 5:00 p.m. June 15 through September 15. All events or activities shall end by 10:00 p.m.

L. Beach event or commercial activity applications shall be submitted to the Town Manager for final approval or denial only after signed approval from the Police Chief, Beach Manager, Fire Chief (if applicable), Health Inspector (if applicable) and Park and Recreation Director (if applicable). Permits must be available for inspection by law enforcement personnel as identified in § 216-8C.

M. A cover letter explaining the purpose of the beach event or commercial activity shall be submitted with the application.

N. Applications shall be submitted at least two weeks prior to the proposed beach event or commencement of commercial activity. Depending on circumstances or availability, this may be waived at the discretion of the Town Manager or designee.

O. The Town Manager, in consultation with the Select Board and the Beach Management Advisory Committee, shall promulgate application forms as well as a list of designated beach areas upon which beach events may be permitted.

P. Any regular annual commercial activities, other than food-related social beach events (i.e., surfboard rentals) shall require a new application, approval and permit fee for each calendar year.

**§ 216-4. Fires.**

A. There are no "open-air" fires allowed except as are subject to the restrictions, limitations and exceptions of MGL c. 48, § 13.

B. Cooking grills or fires that comply with MGL c. 48, § 13 shall be placed a minimum of 25 feet from any beach grass or vegetation and shall not be placed on or in any dune area.

C. All fires shall be completely extinguished after use and all contents and fire debris shall be thoroughly doused and removed from the beach. Burying charcoal or other fire debris on the beach is prohibited.

D. No glass, aluminum or other nonflammable material shall be placed or disposed of in any fire.

**§ 216-5. Motor vehicle operation and use.**

A. It shall be a violation of these regulations for any person to use or operate a motor vehicle, registered or otherwise, on any beach on Nantucket:

(1) In excess of 20 miles per hour;

(2) In excess of five miles per hour within 100 yards of a pedestrian;

(3) Between the hours of 9:00 a.m. and 5:00 p.m. on any lifeguarded beach or other beach duly posted with such time limits;

(4) In any area marked as a nesting site, wildlife protection area or refuge or marked as a beach or dune restoration area or so as to harass birds;

(5) On a primary coastal bank or dune or in areas of beach grass at any time, except over clearly established and regularly traveled motor vehicle ways;

(6) Without a valid beach sticker properly displayed on the vehicle;

(7) In any area properly posted as "private property" or "no trespassing."

B. The Town of Nantucket reserves the right to limit the number of vehicles on a beach per day.

C. The Town of Nantucket reserves the right to charge an additional access fee as set by the Select Board on specific days as designated and advertised in advance by the Town of Nantucket.

D. Operators of vehicles parked on the beach shall leave a right-of-way at all times. The required right-of-way area shall be determined by the enforcing authority.

**§ 216-6. Beach activities adverse to federally protected breeding habitat.**

A. In order to prevent confusion as a predator to any nesting, territorial adult or unfledged juvenile endangered bird species, no person within the territorial limits of the Town shall use, operate or otherwise allow the use or operation of any kiteboard, kite, or other airborne object other than aircraft, in, over, or upon the areas posted with signage as bird nesting areas, during the period of April 1 through August 31, in accordance with Section III, Paragraph 7 of the "Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act."

B. All persons are prohibited from allowing at all times from April 1 to August 31 any nonhuman animals or reptiles such as pets, including dogs, horses, cattle, cats and other pet life forms, to enter upon, roam, or otherwise have access to the areas posted with signage as bird nesting areas, and all such life forms must be confined in cages or tanks, leashed, haltered, tethered, or bridled and firmly under control and not free to access any such posted nesting area, in accordance with Section III, Paragraph 6 of the

"Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act." Please note the Town of Nantucket's leash law, Chapter 55, Animals, § 55-4 of the Code of the Town of Nantucket.

C. Except as may otherwise be allowed or permitted by law, no fireworks, explosive device or flare shall be ignited, lit, energized or fired anywhere in, on, over or upon any beach area designated by signage as a bird nesting area as directed by "Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act." Please note that unauthorized fireworks are illegal in the Commonwealth of Massachusetts. **[Amended during codification]**

D. Except for vehicles engaged in actual necessary emergency response for the public safety or the security of the nation, all two-, three-, or four-wheeled vehicles are prohibited from entering, operating, or being present within all posted nesting habitat in accordance with Section III, Paragraph 12 of the "Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act." Please note the Town of Nantucket's bylaw on use of all-terrain vehicles, Chapter 56, Regulation of Motor Vehicles on Beaches, § 56-6A, of the Code of the Town of Nantucket. **[Amended during codification]**

## § 216-7. General beach rules.

A. Swimming and bathing.

(1) No person shall bathe or swim in the waters under the jurisdiction of the Town of Nantucket during such time as the lifeguard on duty, Police Department, Fire Department, Marine Superintendent, Beach Manager or other designated Town official determines conditions to be hazardous to the health, safety and welfare of swimmers and bathers. Upon posting of signs or verbal notice from the above-listed authorities, all persons shall exit the water until such authorities give notice that the hazardous condition has abated.

(2) All rigid devices (e.g., surfboards, kayaks, boogie boards) and any nonrigid device which is not a swim aid are prohibited within the limits of lifeguard protection on Town-owned/-operated beaches. Inflatable rafts and tubes are examples of allowed nonrigid swim aids. This prohibition excludes properly sized, Coast Guard approved personal flotation devices.

(3) Skimboards are prohibited within the limits of lifeguard protection on Town-owned/-operated beaches.

B. Beach rules.

(1) Glass containers of any kind are prohibited from Town-owned/-operated beaches.

(2) No person shall urinate or defecate in the beach or dune area.

C. Liability. All persons using Town-owned/-operated beaches and the waters directly abutting the beach do so at their own risk.

**§ 216-8. Violations and penalties; enforcement.**

A. Any violation of these regulations shall result in a fine of $300 and revocation of the permit, if any.

B. These regulations may be enforced by noncriminal disposition in accordance with Chapter 1, Article I, § 1-2 through § 1-6, of the Code of the Town of Nantucket and MGL c. 40, § 21D.

C. Enforcing persons shall be: any police officer, Beach Manager, Land Bank property manager, Town Biologist, Marine Superintendent, Park and Recreation Director, any firefighter, or any deputy sheriff.

**§ 216-9. Severability.**

In the event any court determines any provision of these regulations to be invalid or unenforceable, then the remainder of this chapter shall not be affected except to the extent required by law.

# Chapter 220

# BIODEGRADABLE PACKAGING


**§ 220-1. Authority and intent.**

**§ 220-2. Definitions.**

**§ 220-3. Use of biodegradable packaging.**

**§ 220-4. Waivers.**

**§ 220-5. Enforcement.**

**§ 220-6. Violations and penalties.**


**[HISTORY: Adopted by the Board of Public Works of the Town of Nantucket 3-14-1990. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**

**Solid waste disposal — See Ch. 125.**

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**TOWN REGULATIONS REFERENCES**

**Food service establishments — See Ch. 265.**

**Solid waste — See Ch. 349.**

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## § 220-1. Authority and intent.

A. This regulation is adopted by the Board of Public Works pursuant to the authority granted under Chapter 125, Solid Waste Disposal, § 125-3, of the Code of the Town of Nantucket and the general authority of the Board of Public Works pursuant to Chapter 169 of the Acts of 1965, as amended by Chapter 259 of the Acts of 1987.

B. The Town of Nantucket recognizes that discarded packaging constitutes the largest single category of waste within the Town and County of Nantucket's waste stream and is, therefore, a necessary focus of any effort towards reducing the filling of the Town's landfill as well as towards reducing the economic and environmental costs of waste management.

C. The Town finds that discarded nonbiodegradable packaging and plastic contained within the waste stream of Nantucket is a fundamental cause of problems associated with solid waste disposal.

D. The Town understands that the landfill space within the Town and County of Nantucket is diminishing rapidly; that the availability of solid waste receiving areas outside the Island of Nantucket is becoming increasingly uncertain and expensive; and that for both economic and environmental reasons, measures to simplify the chemical complexity of solid waste and, thereby, to streamline solid waste management must be vigorously pursued.

E. The Town finds that the chemical composition and the ability of a substance to biodegrade are meaningful and useful criteria to focus upon when establishing public

policy that is intended to improve the management and disposal of solid waste, reduce the cumulative impact of litter, encourage composting and other forms of recycling, and otherwise anticipate environmental problems that may be caused by municipal solid waste disposal programs.

F. The Town finds and determines that the use of plastics and other nonbiodegradable packaging has become widespread throughout the island and the resulting mixed-substance waste stream is a serious impediment to solid waste management programs for the Town and County of Nantucket.

G. The Town further finds that the widespread use of plastics and nonbiodegradable packaging poses a threat to the environment on the Island of Nantucket by causing rapid filling of the landfill space and by the possible introduction of toxic by-product into the groundwater and general environment of the Island of Nantucket.

H. The economic and environmental problems associated with the mixed-substance waste stream are so severe that a program of incrementally simplifying the chemical composition of solid waste, thereby encouraging the composting of putrescible wastes and encouraging other forms of recycling of solid waste substances, is a policy goal of the Town of Nantucket.

**§ 220-2. Definitions.**

As used in this regulation, the following terms shall have the following meanings unless a contrary meaning is required by the context or is specifically prescribed:

BIODEGRADABLE — The entire product or packaging is not made of plastic or Styrofoam and is made of a material that will completely break down and return to nature, i.e., decompose into elements found in nature within a reasonably short period of time after customary disposal.

PACKAGE or PACKAGING — Any packaging, including, without limitation, bags, boxes, containers and wrapping.

REUSABLE CONTAINER — A bag or container that is specifically designed and intended for reuse and is either made of cloth or machine-washable fabric or is made of other durable material that is intended for reuse and is capable of being cleaned and disinfected.

VENDOR — Any person, corporation, partnership, business venture, public sports or entertainment facility, government agency, street vendor at public events or festivals or organizations that sell or provide merchandise, goods or materials, including, without limitation, clothing, food, beverages, household goods, or personal items of any kind directly to a customer. Examples include but are not limited to department stores, restaurants, food vending trucks, farmers markets and temporary food vendors of food and merchandise at street fairs and festivals. Food banks and other food assistance programs are not considered to be retail establishments for the purpose of this definition.

**§ 220-3. Use of biodegradable packaging.**

A. All packaging added to or supplied by a vendor within the Town of Nantucket for the purpose of transporting merchandise of any type shall be biodegradable.

B. Reusable containers and recyclable paper or cardboard containers are allowable alternatives and vendors shall encourage the use of such containers by allowing customers to bring their own containers or by providing reusable containers at no charge or for a reasonable fee. **[Amended during codification]**

C. Enforcement of these regulations shall be deferred until June 1, 2015. Existing stock of nonbiodegradable packaging shall be phased out by that date, and any stock remaining after that date shall be properly disposed of by the vendor. No nonbiodegradable packaging shall be used after June 1, 2015.

D. Each vendor within the Town of Nantucket shall display a notice proximate to the cash register and plainly visible to its patrons stating the following: "All packaging added or supplied by this vendor or commercial establishment for merchandise of any type being removed from this establishment must be biodegradable packaging. No nonbiodegradable packaging may be added to or supplied by this vendor or commercial establishment for merchandise of any type being removed from the establishment. Board of Public Works Regulation Chapter 220."

E. This regulation shall not apply to packaging or merchandise where the package is applied to the merchandise by the manufacturer, producer or shipper of the merchandise, which manufacturer, producer or shipper is not a vendor within the Town of Nantucket.

**§ 220-4. Waivers.**

A. Upon written application, the Board of Public Works, after a public hearing, may waive application of this regulation for a vendor upon a showing that strict enforcement will cause undue hardship. For purposes of this regulation, an undue hardship is a situation unique to the vendor where there are no reasonable alternatives to the use of nonbiodegradable packaging and compliance with this regulation would cause significant economic hardship to the vendor.

B. Waivers may be granted for a period of one year and may be renewed upon a showing that the conditions justifying the original waiver still apply.

C. The Board of Public Works may approve a waiver application, in whole or in part, with or without conditions, that it deems necessary to protect public health and further the interests of the regulation.

**§ 220-5. Enforcement.**

A. The Health Department or its designee shall enquire on an annual basis regarding any food establishment's compliance with this regulation as a condition for the renewal of the vendor's food service permit.

B. The Health Department, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for any establishment failing to comply with this regulation.

C. The Health Department or its designee and the Board of Public Works and its designee are authorized to take any and all actions reasonable and necessary to further the purpose of this regulation or to obtain compliance, including, but not limited to, inspecting any vendor's premises to verify compliance in accordance with applicable law.

D. The Health Department and/or Board of Public Works may enforce this regulation or enjoin violations hereof through any lawful process, and the election of one remedy shall not preclude enforcement through any other lawful means.

**§ 220-6. Violations and penalties.**

A. Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the District Court. Except as may be otherwise provided by the law and as the District Court may see fit to impose, the maximum penalty for each violation or offense shall be $300.

B. As an alternative to initiating criminal proceedings, this regulation may be enforced pursuant to the noncriminal disposition procedure as set forth in MGL c. 40, § 21D and Chapter 1, Article II, of the Code of the Town of Nantucket, in which case the Board of Public Works, the Health Department or their agents shall be the enforcing persons and the penalty shall be $300 for each offense. Fines are cumulative and each day or portion thereof shall constitute a separate offense.

# Chapter 223

# BOARD OF HEALTH ADMINISTRATION


ARTICLE I
**Variances**

**§ 223-1. Variances permitted.**
**§ 223-2. Expiration, modification or suspension.**

ARTICLE II
**Enforcement of Regulations**

**§ 223-3. Applicability.**
**§ 223-4. Enforcement.**
**§ 223-5. Administrative appeal of Health Agent's orders.**
**§ 223-6. Hearing records; accumulation of offenses.**
**§ 223-7. Appeals.**
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**§ 223-10. Severability.**
**§ 223-11. Amendments.**
**§ 223-12. Disclaimer.**

ARTICLE III
**Definitions**

**§ 223-13. Terms defined.**


**[HISTORY: Adopted by the Board of Health of the Town of Nantucket as indicated in article histories. Amendments noted where applicable.]**

**TOWN REGULATIONS REFERENCES**

**Cows, ducks and swine — See Ch. 211, Art. I.**
**Body art — See Ch. 229.**
**Fertilizer — See Ch. 252.**
**Fishing and shellfishing — See Ch. 260.**
**Food service establishments — See Ch. 265.**
**Dumping of sewage in island waterways — See Ch. 278, Art. I.**
**Housing standards — See Ch. 283.**
**Hummock Pond Watershed — See Ch. 288.**
**Madaket Harbor Watershed — See Ch. 303.**
**Nantucket Harbor Watershed — See Ch. 309.**
**Septic systems — See Ch. 327.**
**Sewage disposal and treatment — See Ch. 332.**
**Smoking and tobacco products — See Ch. 345.**
**Cluster and major residential subdivisions — See Ch. 358, Art. I.**
**Underground tanks — See Ch. 363.**
**Toxic and hazardous materials — See Ch. 371.**
**Wellhead protection district — See Ch. 382.**
**Wells — See Ch. 386.**

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## ARTICLE I
## Variances
**[Adopted 2-17-1988]**

### § 223-1. Variances permitted. [Amended during codification]

The Board of Health may vary the application of any provision of any regulations adopted by the Board of Health with respect to any particular case when, in its opinion, the enforcement thereof would do manifest injustice; provided that the decision of the Board of Health shall not conflict with the spirit of any minimum standard established by the regulations adopted by the Board of Health. Any variance granted by the Board of Health shall be in writing. A copy of any such variance shall, while it is in effect, be available to the public at all reasonable hours in the office of the Town Clerk, or in the office of the Board of Health, and

notice of the grant of variance shall be filed with the Commissioner of Public Health of the Commonwealth.

### § 223-2. Expiration, modification or suspension.

Any variance or other modification authorized to be made by this article may be subject to such qualification, revocation, suspension, or expiration as the Board of Health expresses in its grant. A variance or other modification authorized to be made by this article may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given an opportunity to be heard, in conformity with the requirements for an order and hearing in 105 CMR 400.400.

## ARTICLE II
## Enforcement of Regulations
## [Adopted 8-22-1990, effective 8-24-1990]

### § 223-3. Applicability. [Amended during codification]

The regulations in this Article II are generally applicable to all Board of Health regulations set forth in Chapter 332, Sewage Disposal and Treatment, Articles I, III and IV, Chapter 371, Toxic and Hazardous Materials, and Chapter 386, Article I, Private Wells, of the Town Regulations and any other present or future regulations that the Board of Health may designate by resolution.

### § 223-4. Enforcement.

A. The Health Agent shall investigate violations of Chapter 332, Sewage Disposal and Treatment, Articles I, III and IV, Chapter 371, Toxic and Hazardous Materials, and Chapter 386, Article I, Private Wells, of the Town Regulations and any regulations adopted by the Board of Health and may take such actions as the Agent deems necessary for the protection of the public health and the enforcement of the regulations adopted by the Board of Health. **[Amended during codification]**

B. If an investigation reveals a violation of any regulation adopted by the Board of Health, the Health Agent shall order the owner to comply with the violated provision(s). **[Amended during codification]**

C. These orders shall be in writing and served in the following manner:

(1) Personally, by any person authorized to serve civil process; or

(2) By any person authorized to serve civil process by leaving a copy of the order at the owner's/operator's last and usual place of abode; or

(3) By sending the owner/operator a copy of the order by registered or certified mail, return receipt requested, if the owner/operator is within the Commonwealth; or

(4) If the owner's/operator's last and usual place of abode is unknown or outside the Commonwealth, by posting a copy of the order in a conspicuous place on or

about the premises and by advertising it for three out of five consecutive days in one or more newspapers of general circulation on Nantucket.

### § 223-5. Administrative appeal of Health Agent's orders.

The owner/operator to whom any order has been served may request a hearing before the Board of Health by filing with the Board, within seven days after the day the order was served, a written petition requesting a hearing on the matter. Upon receipt of such petition, the Board shall set a time and place for such hearing and shall inform the owner/operator thereof in writing. The hearing shall be commenced not later than 30 days after the day on which the order was served. The Board, upon application of the owner/operator, may postpone the date of the hearing for a reasonable time beyond such thirty-day period if in the judgment of the Board the owner/operator has submitted a good and sufficient reason for such postponement. At the hearing, the owner/operator shall be given an opportunity to be heard and to show why the order should be modified or withdrawn. After the hearing, the Board shall sustain, modify, or withdraw the order and shall inform the owner in writing of its decision. If the Board sustains or modifies the order, it shall be carried out within the time period allotted in the original order or in the modification.

### § 223-6. Hearing records; accumulation of offenses.

A. Every notice, order, or other record prepared by the Board in connection with the hearing shall be entered as a matter of public record in the office of the Board of Health.

B. If a written petition for a hearing is not filed with the Board within seven days after the day an order has been served or if, after the hearing, the order has been sustained in any part, each day's failure to comply with the order as issued or modified shall constitute an additional offense.

### § 223-7. Appeals.

Any person aggrieved by a decision of the Health Agent may seek relief therefrom within 30 days by appeal to the Board, which shall, after the hearing, issue a final decision. Any person aggrieved by the final decision of the Board may seek relief therefrom within 30 days in any court of competent jurisdiction, as provided by the laws of the Commonwealth.

### § 223-8. Violations and penalties. [Amended during codification]

A. Any person who violates any provision of any regulations adopted by the Board of Health, or who fails to comply with any order by the Board for which a penalty is not provided in MGL c 111, § 31, or otherwise in any of the General Laws, shall, upon conviction, be fined $300. Each day's failure to comply with any order by the Board shall constitute a separate offense.

B. The Health Agent, as enforcing person, may, as an alternative to the initiation of criminal proceedings, seek enforcement through noncriminal proceedings pursuant to MGL c. 40, § 21D and Chapter 1, Article II of the Code of the Town of Nantucket, in

which case a penalty of $300 shall be imposed for each violation of any provision of any regulations adopted by the Board of Health. Each day that a violation occurs shall be deemed a separate violation.

### § 223-9. Variances. [Amended during codification]

The Board of Health may vary any provision of any regulations adopted by the Board of Health with respect to any particular case when, in its opinion, 1) the enforcement thereof would do manifest injustice, and 2) the applicant has proved that the same degree of protection can be achieved without strict application of the particular provision. All variances shall be considered at a hearing by the Board of Health and shall further comply with Article I, Variances, of this chapter.

### § 223-10. Severability. [Amended during codification]

Each regulation adopted by the Board of Health shall be construed as separate to the end that if any regulation or sentence, clause, or phrase thereof shall be held invalid for any reason, the remainder of that regulation and all other regulations shall continue in full force.

### § 223-11. Amendments. [Amended during codification]

The regulations adopted by the Board of Health or any portion thereof may be amended, supplemented or repealed from time to time by the Board, with notice as provided by law, on its own motion or by petition.

### § 223-12. Disclaimer. [Amended during codification]

Issuance of a well, septic system or other permit under regulations adopted by the Board of Health shall not be construed as a guarantee by the Board or its agents that the water, septic or disposal system permit will function satisfactorily nor that the water supply or disposal will be of sufficient quality or quality for its intended use.

## ARTICLE III
## Definitions
## [Adopted 1-1-2005]

### § 223-13. Terms defined.

For the purpose of the Town of Nantucket Board of Health regulations, the following terms shall have the following meanings, unless the context clearly requires otherwise. Terms expressed in the singular shall be construed to incorporate the plural, and vice versa, unless the context otherwise requires.[1]

ACRE — A unit of land measure equal to 40,000 square feet, which is considered a buildable acre in accordance with standard real estate practices.

1. **Editor's Note: The definition of "1978 Code," formerly included in this section, was repealed during codification.**

AGENCY — An agency, department, board, commission, or authority of the Commonwealth or of the federal government and any authority of any political subdivision which is specifically created as an authority under special or general law. The term shall not include housing authorities permitted pursuant to MGL c. 40A.

ANSI — American National Standards Institute.

APPROVING AUTHORITY — A local approving authority as defined in 310 CMR 15.002; or the Department with regard to systems owned or operated by an agency of the Commonwealth or of the federal government, or on a case-by-case basis as determined by the Department to be necessary to carry out the purposes of 310 CMR 15.000.

ASTM — The American Society for Testing and Materials. **[Amended during codification]**

BATHROOM — A room containing a sink, toilet facility, and a shower or tub.

BEDROOM —

A. Any habitable space in a structure suitable for living and sleeping that exists in a structure as a room separated from adjacent space by a wall extending from the ceiling to the floor with or without doorways and windows that consists of the following:

   (1) Floor space of no less than 70 square feet;

   (2) For new construction, and for existing houses and new and existing mobile homes, a ceiling height of no less than seven feet;

   (3) An electrical service and ventilation; and

   (4) At least one window.

B. Dining rooms, living rooms, kitchens, halls, bathrooms, closets, unfinished cellars, storage and utility space are not considered bedrooms in dwelling units with seven rooms or less. For the purpose of septic system design, single-family dwellings shall be presumed to have at least three bedrooms. Where the total number of rooms for a single-family dwelling exceeds seven, the number of bedrooms presumed shall be calculated by dividing the total number of rooms by two then rounding down to the next lowest whole number.

C. An undivided room area greater than 50% of the floor area of any single level, exclusive of dining rooms, kitchens, halls, bathrooms, and closets, and greater than 400 square feet in area will be equivalent to two bedrooms for design flow calculation purposes.

D. Finished basements containing at least one full bathroom will be considered as one bedroom for design flow calculations.

BIOLOGICAL MAT — A layer composed of microorganisms and organic material located below a soil absorption system which forms on the infiltrative surface of soil and which provides biological treatment of septic tank effluent.

BLACKWATER — Wastewater from toilets, urinals, and any drains equipped with garbage grinders.

BOARD OF HEALTH — The Town of Nantucket Board of Health.

BORDERING VEGETATED WETLANDS — Any land or surface area so defined by the Massachusetts Wetlands Protection Act, MGL c. 131, § 40 and 310 CMR 10.55(2).

BUILDING — A structure enclosed within exterior walls or firewalls, built, erected, or framed of any material, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals, or property.

BUILDING SEWER — A pipe which begins outside the inner face of a building wall and extends to an on-site system or municipal or private sewer.

CAMPGROUND — A facility regulated pursuant to 105 CMR 430.00 or 105 CMR 440.00 and any campground operated by the Department of Environmental Protection in a state park. **[Amended during codification]**

CELLAR/FOUNDATION WALL — That portion of the outside surface of the supporting wall enclosing a full basement which is above the cellar floor and below the ground surface.

CERTIFICATE OF COMPLIANCE or CERTIFICATE — A certificate issued by the approving authority to the owner or operator of a system in accordance with 310 CMR 15.021 indicating that an on-site system has been constructed or upgraded, and inspected, as necessary, in compliance with 310 CMR 15.00.

CERTIFIED SYSTEM — An alternative system which has been approved by the Department for specified uses or site conditions pursuant to 310 CMR 15.288. Systems which have been certified may be approved for use by the Board without further departmental review but subject to any limitations on their use imposed by the Department in 310 CMR 15.00.

CERTIFIED VERNAL POOL — A surface water body that has been certified by the Massachusetts Division of Fisheries and Wildlife as a vernal pool in accordance with the Vernal Pool Certification Guidelines pursuant to the Massachusetts Natural Heritage and Endangered Species Program administered by the Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement at the time a permit application is submitted to the approving authority.

CESSPOOL — A pit with open jointed linings or tiles in the bottom and/or sidewalls into which raw sewage is discharged, the liquid portion of the sewage being disposed of by seeping or leaching into the surrounding soils, and the solids or sludge being retained in the pit. A cesspool shall be considered a failed system by definition.

COASTAL BEACH — Unconsolidated sediment subject to wave, tidal and coastal storm action which forms the gently sloping shore of a body of salt water and includes tidal flats, as more fully defined in MGL c. 131, § 40 and 310 CMR 10.27(2).

COMMERCIAL SEWAGE WASTE — Nontoxic, nonhazardous wastewater generated in a trade, occupation, or business, including transient residential facilities as defined in Chapter 139, Zoning, § 139-2, of the Code of the Town of Nantucket, but excluding private residential uses.

COVER MATERIALS — The soils placed on top of a soil absorption system to bring the area to finish grade.

CROWN — The top of the internal cross section of a pipe or fitting.

DEEP OBSERVATION HOLE — An open pit excavated to a minimum depth of 12 feet to permit examination of the soils and to obtain data relative to the depth to groundwater.

DEPARTMENT — The Massachusetts Department of Environmental Protection.

DEPTH TO GROUNDWATER —

A. The groundwater/water table elevations shall be determined by:

(1) Direct observation of highest groundwater elevation (including seasonal perched and tidally influenced groundwater) in a test pit excavation;

(2) Direct observation of mottling (redoximorphic features) in a test pit excavation; and

(3) By calculation using the USGS Frimpter High Ground Water Adjustment Method (reference "Probable High Groundwater Levels in Massachusetts USGS Water Resources Investigation Open File Report 80 - 1205). Reference available in Health Department.

B. The actual recorded depth to groundwater shall be the highest groundwater elevation determined by Subsection A(1), (2), and (3) (based on National Geodetic Vertical Datum) as subtracted from the existing ground elevation at the test pit excavation.

DESIGN FLOW — The quantity of sanitary sewage, expressed in gallons per day (gpd) for which a system must be designed in accordance with 310 CMR 15.203.

DESIGNER — A registered sanitarian or a professional engineer registered in the Commonwealth of Massachusetts.

DISPOSAL AREA — The subsurface environment in which a soil absorption system or reserve area is located.

DISPOSAL SYSTEM — See "on-site system."

DISPOSAL SYSTEM CONSTRUCTION PERMIT or PERMIT — Written approval issued by the Board in accordance with 310 CMR 15.020 authorizing the construction, upgrade or expansion of an on-site system.

DISPOSAL SYSTEM INSTALLER — A person licensed in accordance with 310 CMR 15.019, who constructs, repairs, or replaces an on-site subsurface sewage disposal system.

DISPOSAL SYSTEM INSTALLER'S PERMIT — A permit issued in accordance with 310 CMR 15.019.

DISTRIBUTION BOX — A level, watertight structure which receives septic tank effluent and distributes it in substantially equal portions to distribution lines in a soil absorption system.

DISTRIBUTION LINE — A pipe which provides dispersion of septic tank effluent within a soil absorption system.

DOSING CHAMBER — A watertight structure placed between a septic tank and either a distribution box or a soil absorption system which is equipped with a pump designed to discharge septic tank effluent at a predetermined rate to a soil absorption system.

DRY WELL — A pit with open jointed lining or holes through which stormwater drainage from roofs, basement floors, foundations or other areas seep into the surrounding soil.

DUNE — A coastal dune, as defined in MGL c. 131, § 40 and 310 CMR 10.28(2).

DWELLING — A building which is used, intended, or designed for human habitation, including, but not limited to, houses, hotels, motels, apartments, mobile and modular homes and condominiums.

EFFECTIVE CAPACITY — The liquid volume of a tank below the liquid level line.

EFFLUENT — Sanitary sewage/septage discharged into the environment, whether or not treated.

EMERGENCY REPAIRS — The repair of a system which is necessary to prevent sewage backup into a building, surface breakout of sewage, or to alleviate an imminent danger to public health, safety or the environment in accordance with 310 CMR 15.353.

FACILITY — Any on-site sewage/septage disposal system. Reference "on-site sewage disposal system" definition.

FAILED SUBSURFACE SEWAGE DISPOSAL SYSTEM or FAILED SYSTEM — A system which fails to protect public health and safety or the environment as set forth in 310 CMR 15.303(1)(a)(1) through (6), 310 CMR 15.303(1)(c) and 310 CMR 15 303(2) and as documented on the Town of Nantucket Septic System Inspection Form. **[Amended during codification]**

FILL — The clean, uncontaminated, nonindigenous soil placed beneath, above, and/or around a soil absorption system, as specified in 310 CMR 15.201 through 15.292. **[Amended during codification]**

GRAYWATER — Any putrescible wastewater discharge from domestic activities, including but not limited to washing machines, sinks, showers, bathtubs, dishwashers, or other sources, except toilets, urinals, and any drains equipped with garbage grinders.

GREASE TRAP — A watertight structure located on a building sewer before a septic tank in which grease and oils are separated from other solid and liquid constituents of sewage and accumulated in accordance with 310 CMR 15.230.

GROUNDWATER — All subsurface water contained within a zone of saturation, including perched groundwater.

GROUNDWATER QUALITY STANDARDS — The Massachusetts Groundwater Quality Standards, 314 CMR 5.00. **[Amended during codification]**

H-20 WHEEL LOADING — Standard H-20 truck loading as specified by the American Association of State Highway Transportation Officials.

HALF BATH — A room containing a sink and toilet facilities only. **[Amended 7-23-2008; amended during codification]**

HOUSING FOR THE ELDERLY — A facility restricted to use of adults over 55 years of age (in accordance with 42 U.S.C. § 3601 et seq.; as referenced in MGL c. 151B, § 4, paragraph 7).

HUMUS/COMPOSTING TOILET — A self-contained system consisting of a composter with a separate toilet fixture from which no liquid or solid waste materials are discharged to the surface or subsurface environment and from which a humus-/compost-like end product is produced. Such systems may be approved for use only in accordance with the provisions of 310 CMR 15.280 through 15.289.

HYDRAULIC FAILURE — The backflow of effluent within an underground soil absorption system as demonstrated by fluids and/or the observance of fluid levels above the top of the outlet of the distribution box and/or septic tank. The flow or leakage of effluent to the surface of a property above the underground soil absorption system and/or the backflow of effluent into any structure shall also be considered as hydraulic failure.

IMPERVIOUS — Material having a percolation rate greater than 60 minutes per inch for reasons including, but not limited to, the presence of bedrock, schist, peat, ledge, unconsolidated material, organic matter or topsoil or subsoil.

INDUSTRIAL WASTE — Any water and/or waste generated from any process or industry, manufacture, trade, business, or activity listed in 310 CMR 15.004.

INNOVATIVE/ALTERNATIVE SYSTEMS — Systems designed to provide or enhance on-site sewage disposal which either do not contain all of the components of an on-site disposal system constructed in accordance with 310 CMR 15.001 through 15.293 or which contain components in addition to those specified in 310 CMR 15.100 through 15.293 and which are proposed to the local approving authority and/or the Department for remedial, pilot, provisional, or general use approval pursuant to 310 CMR 15.280 through 15.289, and comply with ANSI Standard 245 for nitrogen reduction.

INTERIM WELLHEAD PROTECTION AREA (IWPA) — An interim wellhead protection area, as defined in Massachusetts drinking water regulations, 310 CMR 22.02. Generally, this is the half-mile radius for sources whose approved pumping rate is 100,000 or greater. For smaller sources, the radius in feet is determined by multiplying the approved pumping rate in gallons per minute by 32, and adding 400.

INVERT — The lowest portion of the internal cross section of a pipe or fitting.

IRRIGATION WELL — Any on-site source of groundwater not certified as a potable water supply by the local Board of Health or the Department in accordance with MGL c. 111 § 122A and § 160 or 310 CMR 22.00.

LOCAL APPROVING AUTHORITY — The Board of Health or its authorized agent or an agent of the Health District constituted pursuant to MGL c. 111, § 27 acting on behalf of the Board of Health.

LOCAL UPGRADE APPROVAL — An approval granted by the local approving authority allowing the owner or operator of a nonconforming system to perform an upgrade of the nonconforming system to the maximum feasible extent, all in accordance with the provisions of 310 CMR 15.401 through 15.405.

LONG-TERM ACCEPTANCE RATE (LTAR) — The stable rate of effluent acceptance through the biological mat of the soil absorption system measured in gallons per day per square foot (gpd/sf).

MAINTENANCE — All activities required to assure the effective and continuous operation and performance of an on-site system, including, but not limited to, solids and scum removal from the septic tank, releveling the distribution box, and the upgrade of one or more of the system components, exclusive of leaching facilities, all as more fully described in 310 CMR 15.201 through 15.422.

MOBILE HOME — A single transportable structure on a chassis designed to be used, with or without a permanent foundation, as a dwelling. The support system of a mobile home is constructed so that the mobile home may be moved from time to time.

MODULAR HOME — A prefabricated building designed and constructed to be used as a dwelling and to be transported in two or more sections to a site where the sections are permanently connected and installed on a permanent foundation.

MOTTLING/REDOXIMORPHIC FEATURES — A color pattern in soil consisting of contrasting high and low chroma colors, which shall be used as an indicator of depth to groundwater.

MULTIPLE-COMPARTMENT TANK — A septic tank containing more than one settling compartment in series.

MUNSELL SYSTEM — The system of classifying soil color consisting of an alphanumeric designation for hue, value and chroma, together with a descriptive color name accepted by 310 CMR 15.00 and USDA/NRCS as a standard procedure in soil classification.

NGVD — National Geodetic Vertical Datum.

NATURALLY OCCURRING PERVIOUS MATERIAL — Soil exhibiting a percolation rate of 60 minutes or less per inch which was deposited on a site by natural causes and not by human action.

NEW CONSTRUCTION — The construction of a new building and/or addition of enclosed square footage to an existing building for which an occupancy permit is required or an increase in the actual or design flow to any nonconforming system or to any other system above the existing approved capacity. New construction shall not include replacement or repair of an existing building totally or partially destroyed or demolished if there is no increase in flow above the existing approved capacity to any system.

NITROGEN-SENSITIVE AREA —

A. Areas which have been determined by the Nantucket Board of Health to be particularly sensitive to the discharge of pollutants from on-site sewage disposal systems, including nitrogen, nitrogen as nitrate, phosphorous and pathogens. Such areas are depicted on a plan entitled "Board of Health Nitrogen Sensitive Areas," which is hereby incorporated by reference herein, and as such warrant the imposition of the loading restrictions set forth below. All existing lots shall, by right, be allowed to discharge 220 gallons per day.

B. Nantucket nitrogen-, phosphorous- and/or pathogen-sensitive areas:

(1) Interim Wellhead Protection Areas for public drinking water supply wells (N).

(2) Water Recharge Areas to the following embayments and water bodies.

(a) Nantucket Harbor and its estuaries (N).

(b) Sesachacha Pond (N).

(c) Madaket Harbor area, including Hither Creek (N).

(d) Hummock Pond and North Head of Hummock Pond (P).

(e) Long Pond and North Head of Long Pond (P).

(f) Miacomet Pond (P).

NONCONFORMING SYSTEM — Any system which is not in full compliance with the standards and requirements of 310 CMR 15.00 and for which a variance or local upgrade approval has not been obtained. Nonconforming systems include, but are not limited to, cesspools, privies, failed systems, and systems with a design flow above 10,000 gallons per day.

OBSERVED GROUNDWATER ELEVATION — That elevation below the ground surface at which water is observed weeping, flowing from the walls of, or standing in a deep observation hole.

ON-SITE SYSTEM OR DISPOSAL SYSTEM or ON-SITE SUBSURFACE SEWAGE DISPOSAL SYSTEM or SYSTEM — A system or series of systems for the treatment and disposal of sanitary sewage.

A. The standard components of a system include, but are not limited to: a building sewer; a septic tank to retain solids and scum; a distribution box; a soil absorption system containing effluent distribution lines to distribute and treat septic tank effluent prior to discharge to appropriate subsurface soils; and a reserve area.

B. The terms "on-site or disposal system or on-site subsurface sewage disposal system or system" also include tight tanks, shared systems, alternative systems and other on-site systems as defined in 310 CMR 15.00.

OPEN DRAIN — Any uncovered ditch, swale or culvert used for the conveyance of surface water runoff or groundwater. A culvert that carries a watercourse or intermittent stream is not an open drain.

OPERATE — To use or occupy a facility served by an on-site system or to own a facility where such use or occupation exists.

OPERATOR — A person who, alone or together with other persons, has charge or control of any system.

OWNER — A person who, alone or together with other persons, has legal title to any facility served by a system or control of the facility, including but not limited to any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

PERCOLATION TEST — A field test to assess the suitability of soils in a defined area for the subsurface disposal of sanitary sewage as described at 310 CMR 15.00. **[Amended during codification]**

PERSON — Any individual, partnership, firm, association, authority, trust or group, including, but not limited to, a city, town, county, the Commonwealth and its agencies, the Nantucket Land Bank, and the federal government.

PORTABLE OR TEMPORARY TOILET FACILITIES — A structure used for the disposal or temporary storage of human waste with or without water transport consisting of a self-contained shelter with a sealed cleanable and reusable effluent vault.

PRIVY — A structure used for the disposal of human wastes without water transport consisting of a shelter built over an unlined pit or vault in the ground into which waste is deposited. A privy is a nonconforming system.

REGULATORY FLOOD ZONE — Coastal areas of special flood hazard (V and A FEMA flood zones) which extend from the mean low water line to the inland limit of the one-hundred-year floodplain supporting waves greater than three feet in height (V Zone) and flood depths of one foot to three feet (A Zone). The boundary of these flood zones shall be determined by reference to the National Flood Insurance Program [currently administered by the Federal Emergency Management Agency (FEMA)] flood data and Flood Insurance Rate Maps for the Town of Nantucket.

RESERVE AREA — An area of land with demonstrated capacity for subsurface sewage disposal upon which no permanent structure shall be constructed and which is intended for replacement of the existing leaching facility should it fail.

RETIREMENT MOBILE HOME PARK — A facility upon which two or more mobile homes, restricted to use by adults over 55 years of age (in accordance with 42 U.S.C. § 3601 et seq.), are located on a continual or seasonal nonrecreational basis, regardless of whether a charge is made therefor.

SANITARY SEWAGE or SEWAGE — Graywater and blackwater from domestic, commercial and other nonindustrial sources.

SANITARY SEWER — Any system of pipes, conduits, pumping stations, force mains and all other structures and devices used for collecting and conveying wastewater to a public or private treatment works facility.

SATURATED ZONE — Any portion of the earth below the land surface where available openings (pores, fissures, joint or solution cavity) are filled with water.

SCUM — A mass of light solids, such as hair, grease, oils and soaps, floating on the surface of the wastewater in a septic tank.

SEASONAL — A time period not exceeding 180 cumulative days in any given calendar year.

SEPARATION DISTANCE — The distance between the components of an on-site system, structure, drainage facilities, and property boundary lines.

SEPTAGE — Material physically removed from any part of an on-site system, including, but not limited to, the solids, semi-solids, scum, sludge and liquid contents of a septic tank, privy, chemical toilet, cesspool, holding tank, or other sewage waste receptacle. It does not include any material which is hazardous waste.

SEPTAGE HAULER — A person licensed by an approving authority to remove septage from on-site sewage disposal systems and transport it to an approved disposal location in accordance with 310 CMR 15.500 et seq. **[Amended during codification]**

SEPTAGE HAULER PERMIT — A permit issued pursuant to the authority of MGL c. 111, § 31 and 310 CMR 15.500 et seq., entitling a person to transport septage within the Commonwealth. **[Amended during codification]**

SEPTIC SYSTEM ADDITIVE — Any solid or liquid material or biological agent intended or used primarily for cleaning, treating, degreasing, unclogging, disinfecting, deodorizing, or otherwise affecting the performance of any component of an on-site system.

SEPTIC TANK — A watertight receptacle to receive sewage from a building sewer which is designed and constructed to permit sufficient retention of wastewater to allow for the separation of scum and sludge and the partial digestion of organic matter before discharge of the liquid portion to a soil absorption system.

SEPTIC TANK EFFLUENT — The liquid portion of settled sewage which is discharged from the outlet of a septic tank to distribution lines in a soil absorption system.

SEWAGE — Material including but not limited to solids, semi-solids, scum, sludge, and liquid waste from sanitary facilities. The term "sewage" does not include any material which is considered hazardous waste.

SOIL ABSORPTION SYSTEM — A system of trenches, galleries, chambers, pits, field(s) or bed(s), together with effluent distribution lines and aggregate which is installed in appropriate soils to receive effluent from a septic tank and transmit it to a soil interface for treatment in a biological mat and disposal to the underlying soils.

SOIL EVALUATOR — A person certified by the Department pursuant to 310 CMR 15.101 as capable of determining the suitability of a specific site for the use of an on-site subsurface sewage disposal system in compliance with 310 CMR 15.000.

SOIL TEXTURE — The relative proportions of sand, silt and clay in a given soil matrix as defined by the USDA-NRCS. **[Amended during codification]**

STUDIO — A building or a room or rooms that include or have direct physical access to a bathroom and/or half bath facilities. Each such room complying with the requirements for a studio shall be calculated as a bedroom.

SUBSURFACE DRAIN — Any underground conduit used for the underground conveyance of surface water or groundwater, including, but not limited to, stormwater culverts, curtain drains and French drains.

SURFACE WATER — All waters other than groundwaters within the jurisdiction of the Commonwealth, including without limitation, rivers, streams, lakes, ponds, springs, reservoirs, impoundments, (except man-made lined ponds) estuaries, wetlands, coastal waters and certified vernal pools.

SURFACE WATER SUPPLY — Any lake, pond, reservoir, or impoundment designated as a public water supply in the Massachusetts Surface Water Quality Standards, 314 CMR 4.00.

SYSTEM — See "on-site system."

SYSTEM INSPECTOR — A person certified by the Massachusetts Department of Environmental Protection pursuant to 310 CMR 15.340 as capable of appropriately assessing the condition of an on-site system in accordance with 310 CMR 15.000 and under Chapter 309, Nantucket Harbor Watershed, Article I, and Chapter 332, Article III, On-Site Sewage Disposal Systems, of the Code of the Town of Nantucket.

TECHNICAL FAILURE —

A. Separation distances less than six feet between the bottom of the leach facility and groundwater in documented nitrogen-sensitive areas.

B. Separation distances less than five feet between the bottom of the leach facility and groundwater in areas outside documented nitrogen-sensitive areas.

TEMPORARY — See "seasonal."

TIGHT TANK — A watertight vessel having an inlet to receive raw sewage but no outlet and which is designed and used to collect and store sewage until it is removed for disposal.

TITLE 5 OF THE STATE ENVIRONMENTAL CODE — 310 CMR 15.000, as amended. **[Amended during codification]**

TOILET FACILITY — Disposal apparatus used for the removal of human waste products, including the room or rooms utilized to house such apparatus.

TRANSIENT RESIDENTIAL FACILITY — Hotels, motels, inns, rooming, lodging, guest houses, dormitories, and time-sharing or time-interval ownership dwelling units or dwelling, dwelling units or dwellings.

TREATMENT WORKS — Any and all devices, processes, and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, including septage receiving facilities but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage or disposal. Treatment works must be permitted by the Massachusetts Department of Environmental Protection pursuant to the authority of MGL c. 21, §§ 27 through 51 and regulations thereunder. **[Amended during codification]**

UPGRADE — The modification of one or more components of an on-site system or the design and construction of a new on-site system which is intended to bring a nonconforming or failed system into conformance with 310 CMR 15.000 to the maximum feasible extent. An emergency repair is not an upgrade.

USDA/NRCS — The United States Department of Agriculture, Natural Resources Conservation Service. **[Amended during codification]**

USGS — The United States Geological Survey, within the United States Department of the Interior.

WATER SUPPLY WELL — Any public or private source of groundwater used for human consumption, including, but not limited to, a source approved for such use by the Nantucket Board of Health or the Department in accordance with MGL c. 111, § 122A or 310 CMR 22.00.

WATERS OF THE COMMONWEALTH or WATERS or WATER BODIES — All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments (except man-made lined ponds), wetlands, estuaries, coastal waters, groundwaters, and vernal pools.

WATERSHED/WATER RECHARGE AREA — Any geographic area on which or under which surface water and/or groundwater flows into a stream, a body of impounded surface water (except man-made ponds), a coastal embayment or a water supply well as defined on the Horsley, Whitten and Heggemin groundwater contour maps, the United States Geologic Survey maps, "Water Resources of Nantucket Island, Massachusetts Atlas HA - 615," or a more detailed map duly adopted by the Board at a public hearing.

WETLAND RESOURCE AREA — All freshwater and coastal wetlands as defined in the Town of Nantucket Wetlands Protection Bylaw (Chapter 136 of the Code of the Town of Nantucket) and accompany regulations,[2] and as defined in the Massachusetts Wetland Protection Act (MGL c. 131, § 40) and 310 CMR 10.00 and as follows. Coastal wetlands are any bank, beach, dune, barrier beach, ocean, bay, estuary, tidally dominated river, stream, or creek, marsh, swamp, salt meadow, flat or lowland subject to tidal action or coastal storm flowage from the ocean, bay or an estuary. Freshwater wetlands are any inland bank; bordering vegetated wetland (marsh, wet meadow, bog, swamp), creek, river, stream, pond, or lake, beach, isolated land subject to flooding, isolated vegetated wetland, bordering land subject to flooding and/or certified vernal pool. Verification of the delineation of wetland resource areas falls within the jurisdiction of the Nantucket Conservation Commission.

ZONE I — The protective radius required around a public drinking water drinking supply well or drinking water supply well field, as defined in Massachusetts drinking water regulations, 310 CMR 22.00. **[Amended during codification]**

ZONE II — That area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can realistically be anticipated, as defined in Massachusetts drinking water regulations, 310 CMR 22.00.

**2. Editor's Note: See Ch. 390, Wetlands Protection, of the Town Regulations.**

# Chapter 225

# BOATS AND BOATING

ARTICLE I
**Personal Watercraft Rental Licenses**


**§ 225-1. Authority.**

**§ 225-2. License required.**

**§ 225-3. Use on Town land prohibited.**

**§ 225-4. Competitive bidding for license.**

**§ 225-5. License fee.**

**§ 225-6. License conditions.**

**§ 225-7. Enforcement.**

**§ 225-8. Severability.**


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

**TOWN CODE REFERENCES**

**Town wharves and waterways — See Ch. 137.**

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**TOWN REGULATIONS REFERENCES**

**Harbors and waterways — See Ch. 278.**

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ARTICLE I
**Personal Watercraft Rental Licenses**
**[Adopted by the Board of Selectmen (now Select Board) 7-27-1994]**

### § 225-1. Authority. [Amended during codification]

These rules and regulations are in addition to the requirements of MGL c. 90B, § 9A, and 323 CMR 4.00, and are issued by the Select Board pursuant to the authority granted by Chapter 137, Town Wharves and Waterways, § 137-18, of the Code of the Town of Nantucket.

### § 225-2. License required. [Amended during codification]

In accordance with Chapter 137, Town Wharves and Waterways, § 137-18, of the Code of the Town of Nantucket, no person shall engage in the business of renting to the public, for public operation, any personal watercraft, jet ski, surf jet or wet bike or any motorboat that uses an inboard motor powering a water jet pump or a propeller as its primary source of motive power and that is designed to be operated by a person sitting, standing or kneeling on the vessel rather than the conventional manner of sitting or standing inside a vessel within Nantucket waterways without first having obtained a license to do so from the Town of Nantucket Select Board in compliance with § 137-18 of the Code of the Town of Nantucket, in compliance with MGL c. 90B, § 9A and § 9B and 323 CMR 4.00, in compliance with all

federal, state or local laws pertaining to their use, and in compliance with these rules and regulations.

### § 225-3. Use on Town land prohibited.

On land owned by the Town of Nantucket, the use, rental of and operation of personal watercraft shall be prohibited.

### § 225-4. Competitive bidding for license.

Annually, the Select Board, acting by and through the Marine Department, shall issue public notification of the availability of one such license and shall accept sealed competitive bids for such license. The license may be awarded annually to the most responsible bidder providing the best service to the public.

### § 225-5. License fee. [Amended during codification]

The annual license fee shall be set from time to time by the Select Board.

### § 225-6. License conditions.

A. In order to provide adequate insurance for the protection of employees and the public, the licensee shall at all times during the license period maintain in effect a workers' compensation insurance policy for employees in an amount sufficient to meet the obligations as set forth in the General Laws and a liability insurance policy in the amount of $1,000,000 per person, and shall show proof of such insurance prior to the issuance of the personal watercraft rental license.

B. An appropriately staffed and equipped chase boat shall be stationed at or near the designated use area. The chase boat shall be equipped with the following:

   (1) A 25-watt VHF/marine radio capable of communicating with the Marine Department and the U.S. Coast Guard; **[Amended during codification]**

   (2) First aid kit;

   (3) Absorbent pads used in oil spill recovery; and

   (4) A minimum of four 20-pound A.B.C. fire extinguishers.

C. The licensee shall provide at the time of rental to each user of rented equipment a complete explanation of safe operation of the watercraft and shall further provide personal safety equipment required by 323 CMR 4.00 and shall provide a copy of 323 CMR 4.00.

D. The location of the licensee's business premises shall be consistent with other water and harbor uses and with the Town's Harbor Plan.

E. No loading, unloading and storage of petroleum products intended for use in personal watercraft, jet skis, surf jets or wet bikes shall be undertaken by the licensee except in

accordance with the Massachusetts Comprehensive Fire Safety Code (527 CMR 1.00) and with guidelines issued by the Chief of the Fire Department of the Town. **[Amended during codification]**

F. The following areas are designated for use of the licensee's rented personal watercraft:

(1) Watercraft recreational operation will be confined to an area of at least 1/2 mile north of the beach of Coatue, in the area of the fourth bend. Renters and guests shall be transported to the designated area by a launch licensed for such use by the U.S. Coast Guard, and shall be supervised at all times by the licensee at the designated area.

(2) The area designated will be a 1/2-mile-by-1/2-mile square area. The coordinates shall be established by the Marine Department and shall be marked appropriately by the licensee with suitable buoys. These buoys are to be installed and maintained by the licensee and shall be registered by the licensee as privately maintained aids to navigation with the U.S. Coast Guard for seasonal use. No mooring equipment shall be installed until inspected and approved by the Marine Department. **[Amended during codification]**

(3) No more than six such personal watercraft shall operate simultaneously within the designated area.

(4) Any transportation of watercraft to and from the designated area, including watercraft travel to and from the licensee's regular place of business and to licensed fuel distributor outlets for refueling, shall be accomplished as follows: the licensee shall be responsible for towing or transporting all such personal watercraft, during which towing or transportation no watercraft passengers will be transported.

### § 225-7. Enforcement. [Amended during codification]

In addition to any other remedy allowed by law for violations, any violation of any of the provisions of these rules or regulations or of § 137-18 of Chapter 137, Town Wharves and Waterways, of the Code of the Town of Nantucket shall be grounds for the Select Board, after a hearing, to suspend or revoke such license. If a violation occurs continuously over more than one calendar day, each day of violation shall constitute a separate violation. Any person may report observed violations or unsafe operating practices to the Marine Department, which shall investigate such reports and determine whether to issue warnings or to institute proceedings before the Select Board for suspension or revocation of the license.

### § 225-8. Severability.

In the event of any conflict between these rules and regulations and any rule or regulation issued by any agency of the Commonwealth, the Commonwealth regulation shall prevail. If any of these rules and regulations are declared unlawful for any reason or in conflict with any Commonwealth regulation, the remaining rules and regulations shall continue in full force and effect.

# Chapter 229

# BODY ART ESTABLISHMENTS AND PRACTITIONERS


**§ 229-1. Findings and intent.**

**§ 229-2. Authority.**

**§ 229-3. Definitions.**

**§ 229-4. Exemptions.**

**§ 229-5. Prohibited procedures.**

**§ 229-6. Operation of body art establishments.**

**§ 229-7. Standards of practice.**

**§ 229-8. Exposure incident reports.**

**§ 229-9. Injury reports.**

**§ 229-10. Complaints.**

**§ 229-11. Application for body art establishment permit.**

**§ 229-12. Application for body art practitioner permit.**

**§ 229-13. Denial, revocation, or refusal to renew permit.**

**§ 229-14. Suspension of permit.**

**§ 229-15. Hearing procedures.**

**§ 229-16. Severability.**

**§ 229-17. Violations and penalties.**

**§ 229-18. Noncriminal disposition.**


**[HISTORY: Adopted by the Board of Health of the Town of Nantucket. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**

**Zoning — See Ch. 139.**

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**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

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## § 229-1. Findings and intent.

Body art is becoming prevalent and popular throughout the Commonwealth; and knowledge and practice of universal precautions, sanitation, personal hygiene, sterilization and aftercare requirements on the part of the practitioner should be demonstrated to prevent the transmission of disease or injury to the client and/or practitioner. Therefore, the Board of Health of the Town of Nantucket enacts these rules and regulations for the practice of body art in the Town of Nantucket as part of its mission to protect the public health, safety and welfare of the public.

## § 229-2. Authority.

These regulations are promulgated under the authority granted to the Board of Health under MGL c. 111, § 31.

**§ 229-3. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

AFTERCARE — Written instructions given to the client, specific to the body art procedure(s) rendered, about caring for the body art and surrounding area, including information about when to seek medical treatment, if necessary.

APPLICANT — Any person who applies to the Board of Health for either a body art establishment permit or practitioner permit.

AUTOCLAVE — An apparatus for sterilization utilizing steam pressure at a specific temperature over a period of time.

AUTOCLAVING — A process which results in the destruction of all forms of microbial life, including highly resistant spores, by the use of an autoclave for a minimum of 30 minutes at 20 pounds of pressure (PSI) at a temperature of 270° F.

BLOODBORNE PATHOGENS STANDARD — OSHA guidelines contained in 29 CFR 1910.1030, entitled "Occupational Exposure to Bloodborne Pathogens."

BOARD OF HEALTH or BOARD — The Board of Health of the Town of Nantucket. **[Amended during codification]**

BODY ART — The practice of physical body adornment by permitted establishments and practitioners using, but not limited to, the following techniques: body piercing, tattooing, cosmetic tattooing, branding, and scarification. This definition does not include practices that are considered medical procedures by the Board of Registration in Medicine, such as implants under the skin, which procedures are prohibited.

BODY ART ESTABLISHMENT or ESTABLISHMENT — A location, place, or business that has been granted a permit by the Board, whether public or private, where the practices of body art are performed, whether or not for profit.

BODY ART PRACTITIONER or PRACTITIONER — A specifically identified individual who has been granted a permit by the Board to perform body art in an establishment that has been granted a permit by the Board.

BODY PIERCING — Puncturing or penetrating the skin of a client with presterilized single-use needles and the insertion of presterilized jewelry or other adornment into the opening. This definition excludes piercing of the earlobe with a presterilized single-use stud-and-clasp system manufactured exclusively for ear piercing.

BRAIDING — The cutting of strips of skin of a person, which strips are then to be intertwined with one another and placed onto such person so as to cause or allow the incised and interwoven strips of skin to heal in such intertwined condition.

BRANDING — Inducing a pattern of scar tissue by use of a heated material (usually metal) to the skin, making a serious burn, which eventually becomes a scar.

CLEANING AREA — The area in a body art establishment used in the sterilization, sanitation or other cleaning of instruments or other equipment used for the practice of body art.

CLIENT — A member of the public who requests a body art procedure at a body art establishment.

CONTAMINATED WASTE — Waste as defined in 105 CMR 480.000, Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII and/or 29 CFR 1910.1030. This includes any liquid or semi-liquid blood or other potentially infectious material; contaminated items that would release blood or other potentially infectious material in a liquid or semi-liquid state if compressed; items on which there is dried blood or other potentially infectious material and which are capable of releasing these materials during handling; sharps and any wastes containing blood or other potentially infectious materials.

COSMETIC TATTOOING — Also known as "permanent cosmetics," "micropigment implantation" or "dermal pigmentation"; the implantation of permanent pigment around the eyes, lips and cheeks of the face and hair imitation.

DISINFECTANT — A product registered as a disinfectant by the U.S. Environmental Protection Agency (EPA).

DISINFECTION — The destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

EAR PIERCING — The puncturing of the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system following the manufacturer's instructions.

EQUIPMENT — All machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks, and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

EXPOSURE — An event whereby there is an eye, mouth or other mucus membrane, nonintact skin or parenteral contact with the blood or bodily fluids of another person or contact of an eye, mouth or other mucous membrane, nonintact skin or parenteral contact with other potentially infectious matter. **[Amended during codification]**

HAND SINK — A lavatory equipped with hot and cold running water under pressure, used solely for washing hands, arms, or other portions of the body.

HOT WATER — Water that attains and maintains a temperature of 110° F. to 130° F.

INSTRUMENTS USED FOR BODY ART — Hand pieces, needles, needle bars, and other instruments that may come in contact with a client's body or may be exposed to bodily fluids during any body art procedure.

INVASIVE — Entry into the client's body either by incision or insertion of any instruments into or through the skin or mucosa, or by any other means intended to puncture, break, or otherwise compromise the skin or mucosa.

JEWELRY — Any ornament inserted into a newly pierced area, which must be made of surgical implant-grade stainless steel; solid 14k or 18k white or yellow gold, niobium, titanium, or platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

LIGHT COLORED — A light reflectance value of 70% or greater.

MINOR — Any person under the age of 18 years.

MOBILE BODY ART ESTABLISHMENT — Any trailer, truck, car, van, camper or other motorized or nonmotorized vehicle, a shed, tent, movable structure, bar, home or other facility wherein, or concert, fair, party or other event whereat one desires to or actually does conduct body art procedures, excepting only a licensed body art establishment.

OPERATOR — Any person who individually, or jointly or severally with others, owns, or controls an establishment, but is not a body art practitioner.

PERMIT — Board approval in writing to either 1) operate a body art establishment or 2) operate as a body art practitioner within a body art establishment. Board approval shall be granted solely for the practice of body art pursuant to these regulations. Said permit is exclusive of the establishment's compliance with other licensing or permitting requirements that may exist within the Town. **[Amended during codification]**

PERSON — An individual, any form of business or social organization or any other nongovernmental legal entity, including but not limited to corporations, partnerships, limited-liability companies, associations, trusts or unincorporated organizations.

PHYSICIAN — An individual licensed as a qualified physician by the Board of Registration in Medicine pursuant to MGL c. 112, § 2.

PROCEDURE SURFACE — Any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure, or any associated work area which may require sanitizing.

SANITARY — Clean and free of agents of infection or disease.

SANITIZE — The application of a U.S. EPA registered sanitizer on a cleaned surface in accordance with the label instructions.

SCARIFICATION — Altering skin texture by cutting the skin and controlling the body's healing process in order to produce wounds, which result in permanently raised wheals or bumps known as "keloids."

SHARPS — Any object, sterile or contaminated, that may intentionally or accidentally cut or penetrate the skin or mucosa, including, but not limited to, needle devices, lancets, scalpel blades, razor blades, and broken glass.

SHARPS CONTAINER — A puncture-resistant, leakproof container that can be closed for handling, storage, transportation, and disposal and that is labeled with the International Biohazard Symbol.

SINGLE-USE ITEMS — Products or items that are intended for one-time, one-person use and are disposed of after use on each client, including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups, and protective gloves.

STERILIZE — The use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores.

TATTOO — The indelible mark, figure or decorative design introduced by insertion of dyes or pigments into or under the subcutaneous portion of the skin.

TATTOOING — Any method of placing ink or other pigment into or under the skin or mucosa by the aid of needles or any other instrument used to puncture the skin, resulting in permanent coloration of the skin or mucosa.

TEMPORARY BODY ART ESTABLISHMENT — The same as "mobile body art establishment."

THREE DIMENSIONAL "3D" BODY ART OR BEADING OR IMPLANTATION — The form of body art consisting of or requiring the placement, injection or insertion of an object, device or other thing made of matters such as steel, titanium, rubber, latex, plastic, glass or other inert materials, beneath the surface of the skin of a person. This term does not include body piercing.

ULTRASONIC CLEANING UNIT — A unit approved by the Board, physically large enough to fully submerge instruments in liquid, which removes all foreign matter from the instruments by means of high-frequency oscillations transmitted through the contained liquid.

UNIVERSAL PRECAUTIONS — A set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC) as "Guidelines for Prevention of Transmission of Human Immunodeficiency Virus (HIV) and Hepatitis B Virus (HBV) to Health-Care and Public-Safety Workers" in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol.38 No. S-6, and as "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-Prone Invasive Procedures" in MMWR, July 12, 1991, Vol.40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens. Precautions include hand washing; gloving; personal protective equipment; injury prevention; and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

### § 229-4. Exemptions.

A. Physicians licensed in accordance with MGL c. 112, § 2 who perform body art procedures as part of patient treatment are exempt from these regulations.

B. Individuals who pierce only the lobe of the ear with a presterilized single-use stud-and-clasp ear-piercing system are exempt from these regulations.

### § 229-5. Prohibited procedures.

A. No tattooing, piercing of genitalia, branding or scarification shall be performed on a person under the age of 18.

B. Body piercing, other than piercing the genitalia, may be performed on a person under the age of 18, provided that the person is accompanied by a properly identified parent, legal custodial parent or legal guardian who has signed a form consenting to such procedure.

C. No body art shall be performed upon an animal.

D. The following body piercings are hereby prohibited: piercing of the uvula; piercing of the tracheal area; piercing of the neck; piercing of the ankle; piercing between the ribs or vertebrae; piercing of the web area of the hand or foot; piercing of the lingual frenum (tongue web); piercing of the clitoris; any form of chest or deep muscle piercings, excluding the nipple; piercing of the anus; piercing of an eyelid, whether top or bottom; piercing of the gums; piercing or skewering of a testicle; so called "deep" piercing of the penis, meaning piercing through the shaft of the penis, or "transpenis" piercing in any area from the corona glandis to the pubic bone; so called "deep" piercing of the scrotum, meaning piercing through the scrotum, or "transcrotal" piercing; so called "deep" piercing of the vagina, to include, but not limited to, so-called "triangles."

E. The following practices hereby prohibited unless performed by a medical doctor licensed by the Commonwealth of Massachusetts: tongue splitting; braiding; three-dimensional/beading/implementation; tooth filing/fracturing/removal; cartilage modification; amputation; genital modification; introduction of saline or other liquids.

**§ 229-6. Operation of body art establishments.**

Unless otherwise ordered or approved by the Board, each body art establishment shall be constructed, operated and maintained to meet the following minimum requirements:

A. Physical plant.

(1) Walls, floors, ceilings, and procedure surfaces shall be smooth, durable, free of open holes or cracks, light-colored, washable, and in good repair. Walls, floors, and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches, shall be of such construction as to be easily cleaned and sanitized after each client.

(2) Solid partitions or walls extending from floor to ceiling shall separate the establishment's space from any other room used for human habitation, any food establishment or room where food is prepared, any hair salon, any retail sales, or any other such activity that may cause potential contamination of work surfaces.

(3) The establishment shall take all measures necessary to ensure against the presence or breeding of insects, vermin, and rodents within the establishment.

(4) Each operator area shall have a minimum of 45 square feet of floor space for each practitioner. Each establishment shall have an area that may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by dividers or a partition at a minimum.

(5) The establishment shall be well ventilated and provided with an artificial light source equivalent to at least 20 footcandles three feet off the floor, except that at least 100 footcandles shall be provided at the level where the body art procedure is being performed, where instruments and sharps are assembled and all cleaning areas.

(6) All electrical outlets in operator areas and cleaning areas shall be equipped with approved ground fault (GFCI) protected receptacles.

(7) A separate, readily accessible hand sink with hot and cold running water under pressure, preferably equipped with wrist- or foot-operated controls and supplied with liquid soap, and disposable paper towels stored in fixed dispensers shall be readily accessible within the establishment. Each operator area shall have a hand sink.

(8) There shall be a sharps container in each operator area and each cleaning area.

(9) There shall be a minimum of one toilet room containing a toilet and sink. The toilet room shall be provided with toilet paper, liquid hand soap and paper towels stored in a fixed dispenser. A body art establishment permanently located within a retail shopping center, or similar setting housing multiple operations within one enclosed structure having shared entrance and exit points, shall not be required to provide a separate toilet room within such body art establishment if Board-approved toilet facilities are located in the retail shopping center within 300 feet of the body art establishment so as to be readily accessible to any client or practitioner.

(10) The public water supply entering a body art establishment shall be protected by a testable, reduced pressure backflow preventer installed in accordance with the State Plumbing Code (248 CMR 10.00), as amended from time to time. **[Amended during codification]**

(11) At least one covered, foot-operated waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily. Solid waste shall be stored in covered, leakproof, rodent-resistant containers and shall be removed from the premises at least weekly.

(12) At least one janitorial sink shall be provided in each body art establishment for use in cleaning the establishment and proper disposal of noncontaminated liquid wastes in accordance with all applicable federal, state and local laws. Said sink shall be of adequate size equipped with hot and cold running water under pressure and permit the cleaning of the establishment and any equipment used for cleaning.

(13) All instruments and supplies shall be stored in clean, dry, and covered containers. Containers shall be kept in a secure area specifically dedicated to the storage of all instruments and supplies.

(14) The establishment shall have a cleaning area. Every cleaning area shall have an area for the placement of an autoclave or other sterilization unit located or positioned a minimum of 36 inches from the required ultrasonic cleaning unit.

(15) The establishment shall have a customer waiting area, exclusive and separate from any workstation, instrument storage area, cleaning area or any other area in the body art establishment used for body art activity.

(16) No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities (e.g., Seeing Eye dogs). Fish aquariums shall be allowed in waiting rooms and nonprocedural areas.

(17) Smoking, eating, or drinking is prohibited in the area where body art is performed, with the exception of fluids being offered to a client during or after a body art procedure.

B. Requirements for single-use items, including inks, dyes and pigments.

(1) Single-use items shall not be used on more than one client for any reason. After use, all single-use sharps shall be immediately disposed of in approved sharps containers pursuant to 105 CMR 480.000.

(2) All products applied to the skin, such as but not limited to body art stencils, applicators, gauze and razors, shall be single-use and disposable.

(3) Hollow-bore needles or needles with cannula shall not be reused.

(4) All inks, dyes, pigments, solid-core needles, and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions.

(5) Inks, dyes or pigments may be mixed and may only be diluted with water from an approved potable source. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper cups or plastic cups. Upon completion of the tattoo, these single-use cups or caps and their contents shall be discarded.

C. Sanitation and sterilization measures and procedures.

(1) All nondisposable instruments used for body art, including all reusable solid-core needles, pins and stylets, shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water (to remove blood and tissue residue), and shall be placed in an ultrasonic unit sold for cleaning purposes under approval of the U.S. Food and Drug Administration and operated in accordance with manufacturer's instructions.

(2) After being cleaned, all nondisposable instruments used for body art shall be packed individually in sterilizer packs and subsequently sterilized in a steam autoclave sold for medical sterilization purposes under approval of the U.S. Food and Drug Administration. All sterilizer packs shall contain either a sterilizer indicator or internal temperature indicator. Sterilizer packs must be dated with an expiration date not to exceed six months.

(3) The autoclave shall be used, cleaned, and maintained according to manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the autoclave must be available for inspection by the Board. Autoclaves shall be located away from workstations or areas frequented by the public.

(4) Each holder of a permit to operate a body art establishment shall demonstrate that the autoclave used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. The permit shall not be issued or renewed until documentation of the autoclave's ability to destroy spores is received by the Board. These test records shall be

retained by the operator for a period of three years and made available to the Board upon request.

(5) All instruments used for body art procedures shall remain stored in sterile packages until just prior to the performance of a body art procedure. After sterilization, the instruments used in body art procedures shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

(6) Sterile instruments may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing.

(7) If the body art establishment uses only single-use, disposable instruments and products, and uses sterile supplies, an autoclave shall not be required.

(8) When assembling instruments used for body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

(9) Reusable cloth items shall be mechanically washed with detergent and mechanically dried after each use. The cloth items shall be stored in a dry, clean environment until used.

D. Posting requirements. The following shall be prominently displayed:

(1) A disclosure statement, a model of which shall be available from the Board. A disclosure statement shall also be given to each client, advising him/her of the risks and possible consequences of body art procedures.

(2) The name, address and phone number of the Nantucket Board of Health and the procedure for filing a complaint.

(3) An emergency plan, including:

(a) A plan for the purpose of contacting police, fire or emergency medical services in the event of an emergency;

(b) A telephone in good working order, which shall be easily available and accessible to all employees and clients during all hours of operation; and

(c) A sign at or adjacent to the telephone indicating the correct emergency telephone numbers.

(4) An occupancy and use permit as issued by the local building official.

(5) A current establishment permit.

(6) Each practitioner's permit.

E. Establishment recordkeeping. The establishment shall maintain the following records in a secure place for a minimum of three years, and such records shall be made available to the Board upon request:

(1) Establishment information, which shall include:

(a) Establishment name;

(b) Hours of operation;

(c) Owner's name and address;

(d) A complete description of all body art procedures performed;

(e) An inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or packing slips shall satisfy this requirement;

(f) A Material Safety Data Sheet, when available, for each ink and dye used by the establishment;

(g) Copies of waste hauler manifests;

(h) Copies of commercial biological monitoring tests;

(i) Exposure incident reports (kept permanently);

(j) A copy of these regulations.

(2) Employee information, which shall include:

(a) Full legal name and exact duties;

(b) Date of birth;

(c) Home address;

(d) Home/Work phone numbers;

(e) Identification photograph;

(f) Dates of employment;

(g) Hepatitis B vaccination status or declination notification; and

(h) Training records.

(3) Client information, which shall include the following; client information shall be kept confidential at all times:

(a) Name;

(b) Age and valid identification;

(c) Address of the client;

(d) Date of the procedure;

(e) Name of the practitioner who performed the procedure(s);

(f) Description of procedure(s) performed and the location on the body;

(g) A signed consent form as specified by § 229-7D(2); and

(h) If the client is a person under the age of 18, proof of parental or guardian identification, presence and consent, including a copy of the photographic identification of the parent or guardian.

(4) Exposure control plan.

F. No person shall establish or operate a mobile or temporary body art establishment.

**§ 229-7. Standards of practice.**

Practitioners are required to comply with the following minimum health standards:

A. A practitioner shall perform all body art procedures in accordance with Universal Precautions set forth by the U.S. Centers for Disease Control and Prevention.

B. A practitioner shall refuse service to any person who may be under the influence of alcohol or drugs.

C. Practitioners who use ear-piercing systems must conform to the manufacturer's directions for use, and to applicable U.S. Food and Drug Administration requirements. No practitioner shall use an ear-piercing system on any part of the client's body other than the lobe of the ear.

D. Health history and client informed consent. Prior to performing a body art procedure on a client, the practitioner shall:

(1) Inform the client, verbally and in writing, that the following health conditions may increase health risks associated with receiving a body art procedure:

(a) History of diabetes;

(b) History of hemophilia (bleeding);

(c) History of skin diseases, skin lesions, or skin sensitivities to soaps, disinfectants, etc.;

(d) History of allergies or adverse reactions to pigments, dyes, or other sensitivities;

(e) History of epilepsy, seizures, fainting, or narcolepsy;

(f) Use of medications such as anticoagulants, which thin the blood and/or interfere with blood clotting; and

(g) Any other conditions such as hepatitis or HIV.

(2) Require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents the client from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by Subsection K.

E. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art

procedures. Before performing body art procedures, the practitioner must thoroughly wash his/her hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

F. In performing body art procedures, a practitioner shall wear disposable single-use gloves. Gloves shall be changed if they become pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Subsection E before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for hand-washing procedures as part of a good personal hygiene program.

G. The skin of the practitioner shall be free of rash or infection. No practitioner affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

H. Any item or instrument used for body art that is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

I. Preparation and care of a client's skin area must comply with the following:

(1) Any skin or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.

(2) Before a body art procedure is performed, the immediate skin area and the areas of skin surrounding where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-service blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.

(3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single-use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with 105 CMR 480.000.

J. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its contents. The applicator or gauze shall be used once and then discarded.

K. The practitioner shall provide each client with verbal and written instructions on the aftercare of the body art site.

(1) The written instructions shall advise the client:

(a) On the proper cleansing of the area which received the body art;

(b) To consult a health care provider for:

[1] Unexpected redness, tenderness or swelling at the site of the body art procedure;

[2] Any rash;

[3] Unexpected drainage at or from the site of the body art procedure; or

[4] A fever within 24 hours of the body art procedure; and

(c) Of the address, and phone number of the establishment.

(2) A copy shall be provided to the client. A model set of aftercare instructions shall be made available by the Board.

L. Contaminated waste shall be stored, treated and disposed in accordance with 105 CMR 480.000, Storage and Disposal of Infectious or Physically Dangerous Medical or Biological Waste, State Sanitary Code, Chapter VIII.

**§ 229-8. Exposure incident reports.**

A. An exposure incident report shall be completed by the close of the business day during which an exposure has or might have taken place by the involved or knowledgeable body art practitioner for every exposure incident occurring in the conduct of any body art activity.

B. Each exposure incident report shall contain:

(1) A copy of the application and consent form for body art activity completed by any client or minor client involved in the exposure incident;

(2) A full description of the exposure incident, including the portion of the body involved therein;

(3) Instrument(s) or other equipment implicated;

(4) A copy of body art practitioner license of the involved body art practitioner;

(5) Date and time of exposure;

(6) A copy of any medical history released to the body art establishment or body art practitioner; and

(7) Information regarding any recommendation to refer to a physician or waiver to consult a physician by persons involved.

**§ 229-9. Injury reports.**

A written report of any injury, infection complication or disease as a result of a body art procedure, or complaint of injury, infection complication or disease, shall be forwarded by the operator to the Board which issued the permit, with a copy to the injured client within five working days of its occurrence or knowledge thereof. The report shall include:

A. The name of the affected client;

B. The name and location of the body art establishment involved;

C. The nature of the injury, infection complication or disease;

D. The name and address of the affected client's health care provider, if any;

E. Any other information considered relevant to the situation.

**§ 229-10. Complaints.**

A. The Board shall investigate complaints received about an establishment or practitioner's practices or acts which may violate any provision of the Board's regulations.

B. If the Board finds that an investigation is not required because the alleged act or practice is not in violation of the Board's regulations, then the Board shall notify the complainant of this finding and the reasons on which it is based.

C. If the Board finds that an investigation is required, because the alleged act or practice may be in violation of the Board's regulations, the Board shall investigate and if a finding is made that the act or practice is in violation of the Board's regulations, then the Board shall apply whatever enforcement action is appropriate to remedy the situation and shall notify the complainant of its action in this manner.

**§ 229-11. Application for body art establishment permit.**

A. No person may operate a body art establishment except with a valid permit from the Board.

B. Applications for a permit shall be made on forms prescribed by and available from the Board. An applicant shall submit all information required by the form and accompanying instructions. The term "application" as used herein shall include the original and renewal applications.

C. An establishment permit shall be valid from the date of issue and shall expire on December 31 of each year. There shall be no pro-rating of licensing fees.

D. The Board shall require that the applicant provide, at a minimum, the following information in order to be issued an establishment permit:

(1) Name, address, and telephone number of:

(a) The body art establishment;

(b) The operator of the establishment; and

(c) The body art practitioner(s) working at the establishment;

(2) The manufacturer, model number, model year, and serial number, where applicable, of the autoclave used in the establishment;

(3) A signed and dated acknowledgement that the applicant has received, read and understood the requirements of the Board's body art regulations;

(4) A drawing of the floor plan of the proposed establishment to scale for a plan review by the Board, as part of the permit application process;

(5) An exposure report plan; and

(6) Such additional information as the Board may reasonably require.

E. The annual fee for the body art establishment permit shall be set by the Board of Health of the Town of Nantucket.

F. A permit for a body art establishment shall not be transferable from one place or person to another.

**§ 229-12. Application for body art practitioner permit.**

A. No person shall practice body art or perform any body art procedure without first obtaining a practitioner permit from the Board. The Board shall set a reasonable fee for such permits.

B. A practitioner shall be a minimum of 18 years of age.

C. A practitioner permit shall be valid from the date of issuance and shall automatically expire in two years from the date of issuance unless revoked sooner by the Board.

D. Application for a practitioner permit shall include:

(1) Name;

(2) Date of birth;

(3) Residence address;

(4) Mailing address;

(5) Phone number;

(6) Place(s) of employment as a practitioner; and

(7) Training and/or experience as set out in Subsection E below.

E. Practitioner training and experience.

(1) In reviewing an application for a practitioner permit, the Board may consider experience, training and/or certification acquired in other states that regulate body art.

(2) Training for all practitioners shall be approved by the Board and, at a minimum, shall include the following: blood-borne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; hand washing techniques; sterilization equipment operation and methods; and sanitization, disinfection and sterilization methods and techniques; and current certification in first aid and cardiopulmonary resuscitation (CPR). Examples of courses approved by the Board include "Preventing Disease Transmission" (American Red Cross) and "Blood-borne Pathogen Training" (U.S. OSHA). Training/Courses provided by professional body art organizations or associations or by equipment manufacturers may also be submitted to the Board for approval.

(3) The applicant for a body piercing practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the anatomy course.

(4) The applicant for a tattoo, branding or scarification practitioner permit shall provide documentation, acceptable to the Board, that s/he completed a course on anatomy and physiology with a grade of C or better at a college accredited by the New England Association of Schools and Colleges, or comparable accrediting entity. This course must include instruction on the system of the integumentary system (skin). Such other course or program as the Board shall deem appropriate and acceptable may be substituted for the anatomy course.

(5) The applicant for all practitioner's permits shall submit evidence satisfactory to the Board of at least two years of actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner permit to perform, whether such experience was obtained within or outside of the Commonwealth.

F. A practitioner's permit shall be conditioned upon continued compliance with all applicable provisions of these rules and regulations.

**§ 229-13. Denial, revocation, or refusal to renew permit.**

A. The Board may deny a permit, revoke a permit or refuse to renew a permit on the following grounds, each of which, in and of itself, shall constitute full and adequate grounds for revocation or refusal to renew:

(1) Any actions which would indicate that the health or safety of the public would be at risk;

(2) Fraud, deceit or misrepresentation in obtaining a permit, or its renewal;

(3) Criminal conduct which the Board determines to be of such a nature as to render the establishment, practitioner or applicant unfit to practice body art as evidenced by criminal proceedings resulting in a conviction, guilty plea, or plea of nolo contendere or an admission of sufficient facts;

(4) Any present or past violation of the Board's regulations governing the practice of body art;

(5) Practicing body art while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;

(6) Being habitually drunk or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

(7) Knowingly permitting, aiding or abetting an unauthorized person to perform activities requiring a permit;

(8) Continuing to practice while his/her permit is lapsed, suspended, or revoked;

(9) Having been disciplined in another jurisdiction in any way by the proper permitting authority for reasons substantially the same as those set forth in the Board's regulations; and

(10) Other just and sufficient cause which the Board may determine would render the establishment, practitioner or applicant unfit to practice body art.

B. The Board shall notify an applicant, establishment or practitioner in writing of any violation of the Board's regulations, for which the Board intends to deny, revoke, or refuse to renew a permit. The applicant, establishment or practitioner shall have seven days after receipt of such written notice in which to comply with the Board's regulations. The Board may deny, revoke or refuse to renew a permit if the applicant, establishment or practitioner fails to comply after said seven days.

C. Applicants denied a permit may reapply at any time after denial.

**§ 229-14. Suspension of permit.**

The Board may summarily suspend a permit pending a final hearing on the merits on the question of revocation if, based on the evidence before it, the Board determines that an establishment and/or a practitioner is an immediate and serious threat to the public health, safety or welfare. The suspension of a permit shall take effect immediately upon written notice of such suspension by the Board.

**§ 229-15. Hearing procedures.**

A. Suspension of a permit.

(1) After a Board suspension of a permit, a hearing shall be initiated pursuant to 801 CMR 1.00 et seq. (Standard Adjudicatory Rules of Practice and Procedure), no later than 21 calendar days after the effective date of the suspension.

(2) Upon written request to the Board of Health, the establishment or practitioner shall be afforded an opportunity to be heard concerning the suspension of the permit by the Board.

(3) In cases of suspension of a permit, the hearing officer shall determine whether the Board has proved by a preponderance of the evidence that there existed

immediately prior to or at the time of the suspension an immediate and serious threat to the public health, safety or welfare. The hearing officer shall issue a written decision, which contains a summary of the testimony and evidence considered and the reasons for the decision.

B. Denial, revocation, or refusal to renew a permit.

(1) If the Board determines that a permit shall be denied, revoked, or not renewed pursuant to the Board's regulations, the Board shall initiate a hearing in accordance with 801 CMR 1.00 et seq.

(2) Following the hearing, the hearing officer shall issue a written decision that contains a summary of the testimony and evidence considered and the reasons for the decision.

### § 229-16. Severability.

If any provision contained in these regulations is deemed invalid for any reason, it shall be severed and shall not affect the validity of the remaining provisions.

### § 229-17. Violations and penalties.

The fine for a violation of any provision of these rules and regulations shall be $50 for the first offense, $100 for the second offense, and $300 for the third and any continuing offense. Each day a violation continues shall be deemed a separate offense.

### § 229-18. Noncriminal disposition.

In accordance with MGL c. 40, § 21D and Chapter 1, Article II, Noncriminal Disposition of Bylaw and Regulation Violations, § 1-2 through § 1-6, of the Code of the Town of Nantucket, whoever violates any provision of these Rules and Regulations may be penalized by noncriminal disposition.

# Chapter 234

# CEMETERIES


**§ 234-1. Authority; amendments.**

**§ 234-2. General rules.**

**§ 234-3. Additional rules and regulations for Polpis Burial Ground.**

**§ 234-4. Definitions.**

**§ 234-5. Interments and inurnments.**

**§ 234-6. Cemetery lots.**

**§ 234-7. Memorials.**

**§ 234-8. Administration.**

**§ 234-9. Cemeteries in Town of Nantucket.**

**§ 234-10. Fees.**

**Schedule of Fees**


**[HISTORY: Adopted by the Cemetery Commission of the Town of Nantucket 4-23-2014; amended in its entirety 7-24-2019. Subsequent amendments noted where applicable.]**

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## § 234-1. Authority; amendments.

In accordance with MGL c. 114 and Chapter 47 of the Acts of 2011, the Cemetery Commission has promulgated the following rules and regulations that govern burials in Town cemeteries, and the use and care of Town cemeteries. These rules and regulations may be amended from time to time, with the approval of the Select Board.

## § 234-2. General rules.

A. Town cemeteries are open daily from dawn to 1/2 hour after sunset.

B. The license holder (owner of a lot) is limited to interring human remains or cremated human remains in that site. The owner also has a limited right to place a monument and plant flowers or shrubs. These limitations are outlined in other sections of these regulations.

C. Cemeteries are places for contemplation and quiet reflection. They are not recreation areas. Please respect these sacred grounds and use common sense: No loud noise, bad behavior or trash.

D. No person shall remove, cut, break or mark any tree or shrub; or mark upon, deface or injure any monument or structure on the grounds.

E. Gravestone repairs require prior authorization of the Cemetery Commission or its designated agent. Rubbings are not permitted. Take photographs only.

F. Firearms shall not be discharged in the cemeteries, except for salutes at military funerals, Memorial Day or Veterans Day.

G. Dogs must be leashed at all times and be under control of their handler. Dog walkers must clean up after their dogs and must ensure that dogs do not trespass on any grave.

H. All trash must be removed from Town cemeteries, as there are no trash receptacles available.

**§ 234-3. Additional rules and regulations for Polpis Burial Ground.**

Polpis Cemetery is open to cremation interments only.

A. Cremation lots are four feet by six feet and shall have no more than four cremations in each lot.

B. Only one monument or marker per cremation lot will be allowed. A foundation must be placed under each monument. Only a professional who normally provides such a service in the community shall be permitted to place the foundation and monument, unless the Commissioners explicitly waive this requirement in writing. Markers may not be set to embrace two or more grave lots. All markers shall be flush with the ground. No wooden crosses shall be allowed.

C. The Town shall not be liable for damage to monuments or markers. Markers may be of granite, marble or bronze, the use of limestone, sandstone, cast or cement stone and metals for monuments shall not be allowed. Monuments may be made of native boulders.

D. Because Polpis Cemetery is a natural setting, no additional planting will be allowed on lots.

E. No other structure but approved markers or monuments may be placed on a lot.

F. No vehicles are allowed in the Polpis Cemetery.

G. No lights of any kind will be allowed.

**§ 234-4. Definitions.**

For the purpose of these rules and regulations, the following words shall have the following meanings, unless a different meaning is ascribed to such terms under the General Laws:

CEMETERY — All property owned by the Town of Nantucket dedicated for the burial of deceased human remains.

CEMETERY ADMINISTRATOR — The person charged by the Cemetery Commissioners with the day-to-day administration of Town cemeteries in accordance with these rules and regulations, the directions of the Cemetery Commissioners and applicable federal and state laws.

CENOTAPH — A monument erected in honor of persons buried at sea, or whose remains lie elsewhere.

COLUMBARIUM — A permanent structure, room or space in a mausoleum or other structure containing niches or other suitable spaces for the permanent placement of cremated human remains.

CREMATED REMAIN — The final physical remains of a human being after having been cremated and processed.

CREMATION LOT — An area of land specifically designed for the interment and placement of cremated remains only.

CREMATION NICHE — See "niche."

CRYPT — A chamber in a mausoleum of sufficient size, generally used to contain the casketed remains of a deceased person.

DURABLE OUTER CONTAINER (GRAVE BOX, GRAVE LINER OR VAULT) — All burials of bodies and cremated remains shall be placed in a durable outer container. Durable outer containers shall be made of reinforced concrete or fiberglass and may include:

A. GRAVE BOX/GRAVE LINER — An unsealed monolithic receptacle of two or more pieces in which the casket is placed at time of burial.

B. VAULT — A two-piece sealed receptacle for protection of the casket.

C. URN VAULT — A two-piece receptacle for protection of an urn.

FOOT MARKER — A flush-to-the-ground memorial made of granite or bronze, which is placed at the foot of a grave.

GOVERNING BODY — The Nantucket Cemetery Commission.

GRAVE — A space in a cemetery used, or intended for use, for the in-ground burial of one or more deceased persons. The size of a grave may vary as laid out by the Cemetery Commission.

INTERMENT — The permanent placement of a dead human body placed in a casket within a durable outer container and buried in the ground.

INURNMENT — The permanent placement of cremated human remains in a niche, space in a columbarium or burial in a grave.

LICENSE HOLDER — The original purchaser of a right of burial and others entitled to rights of burial.

LOT — A place designated in a cemetery comprised of one or more grave spaces.

MEMORIAL OR MONUMENT — A monument or memorial usually made of granite, a flush-to-the ground memorial usually made of bronze or granite or a foot marker, any of which is used for commemorating the life of a deceased person.

NICHE — A discrete chamber, space or recess in a columbarium used for the permanent placement of cremated human remains, encased in an urn.

PERPETUAL CARE — The activities of routine cemetery maintenance such as, but not necessarily limited to, mowing, brush cutting, repair of fences and laneways and signage.

PERPETUAL CARE FUND — A fund authorized by the General Laws, whereby funds are set aside, the income of which is used for the perpetual care and maintenance of the cemetery or lots therein.

RIGHTS OF BURIAL — The exclusive right of burial granted by the Town to a license holder for the use of a specific grave, lot, crypt or niche or other burial space in a cemetery.

URN — A container to hold human cremated remains. An urn can be placed in a columbarium niche or buried in the ground within a durable outer container.

**§ 234-5. Interments and inurnments.**

A. Lots in the cemeteries shall be used for no other purpose than a place for the interment of human remains as full casket burials or inurnment of cremated remains.

B. No interment or inurnment shall be made until the Cemetery Administrator or designee has been furnished with a burial permit and/or cremation certificate as required by law, together with a written interment or inurnment order on a form approved by the Cemetery Commission and endorsed by the license holder, or the legal representative of the license holder, in the lot in which interment is to be made. No grave shall be opened for interment, inurnment or removal unless authorized by the Cemetery Commission and cemetery personnel have flagged the area.

C. All interments and inurnments shall be enclosed in a durable outer container or vault.

D. Each grave (minimum four feet by 10 feet) includes the right of interment of one full casket for regular-depth burial and one cremation burial.

E. Each grave may have additional rights (provided additional fees are paid) of:

(1) Replacement of the cremation burial with a second full casket interment as a "double-deep" burial;

(2) Replacement of the initial full casket burial and inurnment of up to four cremated remains.

F. A cremation lot includes the right of inurnment of up to four cremation burials.

G. Additional regulations will be drafted if a niche wall is constructed.

**§ 234-6. Cemetery lots.**

A. Deed; fees and costs.

(1) When a right of burial is purchased, the license holder will be given a written deed, granting the license holder rights of burial in a specific grave, lot, crypt or niche or other burial space in a cemetery. The deed may contain certain specific terms and conditions for use of the rights of burial, and grant the right of erecting a monument or memorial on such terms and conditions as the Cemetery Commissioners may prescribe. Such deeds and all subsequent deeds of such rights of burial made by owners thereof shall be recorded in the office of the Town Clerk in books kept for that purpose. Copies of lost deeds may be obtained by contacting the Nantucket Town Clerk or the Cemetery Commission. It shall be the duty of the license holder and his/her heirs to notify the Commission of any

changes in their mailing address. Notice sent to the license holder at the last address on record shall be considered sufficient and proper legal notification.

(2) The Cemetery Commissioners shall establish the cost of a burial right and fees related thereto and may amend the same from time to time. Cemetery personnel shall furnish, to those who desire to purchase rights of burial, information relative to the cost of the same and the conditions upon which interments or inurnments may be made. See: Nantucket Cemetery Commission Schedule of Fees.[1]

B. A license Holder, or his/her heirs, shall not sell, transfer or convey the rights of burial, but such rights of burial shall pass to family members as permitted under Chapter 114 of the General Laws. The Town of Nantucket shall have the option of buying back rights of burial, subject to availability of funding. The price to be paid by the Cemetery Commission shall be no greater than the original purchase price, provided that all remains, if any, have been removed from the lot.

C. Should the Town not exercise its option to buy rights of burial, a license holder may assign or transfer such rights of burial only as permitted by the Cemetery Commissioners, who may limit such assignment or transfer to individuals who are current residents of the Town of Nantucket, past residents or relatives of such individuals. A license holder wishing to assign rights of burial should contact the Cemetery Administrator. An assignment form needs to be completed, notarized and submitted to the Cemetery Administrator in order to ensure accurate recording of all assignments.

D. Upon the death of the license holder, rights of burial shall pass in accordance with the laws of the Commonwealth of Massachusetts.

E. An existing single grave (minimum four feet by 10 feet) containing recorded remains may also accommodate one cremation burial, provided the cremated remains are that of a family member, heir or others with verified rights of interment.

F. Graves for the interment of any indigent (by state definition) resident veterans are provided at no cost and are set aside for burials of indigent resident veterans residing in the Town at the time of their entry into service and/or at the time of their death verified by the Veterans Agent and subject to the approval of the Cemetery Commission.

G. Single grave space may be made available for the burial of the stillborn or infants without charge to the resident parents residing in the Town at the time of death.

H. Under MGL c. 114, the Town shall provide grave space for interment or inurnment of the indigent. Heirs may place monuments on indigent burials only if the interment rights are purchased and paid in full prior to placing a memorial. The Cemetery Commission will determine indigent status based on state regulations and definition. **[Amended during codification]**

I. No work shall be performed on graves or lots by or at the direction of license holders unless authorization has been obtained from the Cemetery Administrator, in order to preserve as much as possible the natural appearance of cemeteries.

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**1. Editor's Note: The Schedule of Fees is included as an attachment to this chapter.**

J. The Town shall not be responsible for the maintenance of any flowers, flags, decorations, holiday arrangements or other objects placed on a lot, and shall have the right to remove the same if, in the opinion of the Cemetery Commission, they are unsightly. The Town of Nantucket shall not be liable for items left at a grave, or damage to flowers, flags, decorations, monuments or other objects due to weather, vandalism, theft or wear and tear.

K. Annual/Perennial flowers may be planted at the base of and within 12 inches of a monument/marker, so as to not interfere with the Cemetery Commission's maintenance procedures.

L. Fences, borders, curbing, hedges, shrubbery, trees, rampant-growing plantings and crushed stone are prohibited. No signs or lettered wooden boards of any kind are permitted on a gravesite, unless the Cemetery Commission has granted prior approval.

M. Any materials placed on a grave that are not in compliance with these regulations are subject to removal without notice.

N. The Town may take over the ownership of an unoccupied grave after a minimum of 75 years have elapsed after the issuance of a license for the grave by the Town and provided that the Town cannot locate the owner or the owner's successor in interest after a diligent search. If the ownership of the license is ascertained after such a taking occurs, then the Town shall pay to the owner the fair value of the license at the time of taking.

O. Reuse of an occupied grave will not be permitted except: upon the request and with the consent of a relative or descendant of the decedent occupying the grave, provided that no other descendant objects; to provide for the burial of a relative or descendant of the decedent occupying the grave; and if the remains of the decedent occupying the grave will remain in the grave.

**§ 234-7. Memorials.**

A. The Cemetery Commission must approve any memorial, including gravestones, markers, benches or other structures, in writing, prior to installation.

(1) All inscriptions to be made on memorials shall be approved by the Cemetery Commission prior to carving. The Commission reserves the right to prohibit offensive language or imagery within the cemetery.

(2) Monument dealers, masons, stonecutters and all workers working at any Town cemetery shall comply with the directions of the Cemetery Commission and must carry off all rubbish and restore roads, avenues and paths damaged by their operations. The Town of Nantucket will not be responsible for any errors made by any improper inscription on any memorial.

B. Memorial sizes shall be based on the following; except at Polpis Cemetery, where only flush memorials are permitted:

(1) Single lot: 16 inches by 24 inches flush memorial or 24 inches wide slant in designated areas.

(2) Cremation lot: 12 inches by 18 inches flush memorial or 18 inches wide slant in designated areas. If two or more names are to be inscribed on the memorial, it may be 12 inches by 24 inches wide.

(3) Multiple-grave lots:

(a) Two-grave lot: three-foot-wide base, etc.

(b) Three-grave lot: four-foot-long base or bench, etc.

(c) Four-grave (or more) lot: six-foot-long base or bench, etc.

C. Where family lots have been established in inactive cemeteries (a list of such cemeteries is provided below), those families will be allowed to place memorials that duplicate the style of the existing surrounding markers or headstones or, alternatively, use flush markers.

D. No headstones, monuments, curbing or other structure will be permitted to be erected in the cemeteries without a sufficient foundation. All markers, headstones, monuments and other structures shall be made of granite, marble, slate or other approved material. All monuments are to be centered at the head of the grave/lot. Flush foot markers may be placed at the center of the foot of a grave.

E. A marble or granite bench will be allowed on a lot with three or more graves. If a bench is placed on a lot, no other memorials are permitted other than foot markers on individual graves within the lot.

F. Special permission for alternate memorial sizes may be requested of the Cemetery Commission for consideration.

G. The Cemetery Administrator is required to have written notification prior to any foundation work/memorials placement, with all information outlined and submitted on a Cemetery Department Monument Permit Order. Prior to the initiation of any monument work, the lot must be marked/flagged by Cemetery Department personnel. Monuments are required to be set in such manner that they will not conflict with the alignment of neighboring monuments.

H. Memorials and structures that are not in compliance with these regulations are subject to removal without notice.

**§ 234-8. Administration.**

A. The Cemetery Administrator shall have responsibility for the proper day-to-day administration of Town cemeteries in accordance with the administrative direction of the Town Manager and the policy direction of the Cemetery Commissioners, these rules and regulations and applicable federal and state laws. The Town of Nantucket Home Rule Charter and MGL Ch. 114 and Chapter 47 of the Acts of 2011 established the Cemetery Commission and the appointment of members. Duties of the Cemetery Commissioners are prescribed under MGL Ch. 114.

B. There may be circumstances when the strict or literal enforcement of these rules and regulations may impose unreasonable hardship. The Cemetery Commission reserves the

right to make exceptions, suspensions or modifications to these rules and regulations, without notice, whenever necessary in the judgment of the Cemetery Commissioners.

**§ 234-9. Cemeteries in Town of Nantucket.**

A. Active Town-controlled cemeteries (Burial rights may be available.):

| Cemetery | Location | Status |
|---|---|---|
| Newtown Cemetery | Sparks Avenue | Space available. |
| Polpis Burial Ground (Cemetery) | Polpis Road | Plots to be laid out; cremains only; flush monuments only. |

B. Inactive Town-controlled cemeteries (No burial rights available for sale.):

| Cemetery | Location | Status |
|---|---|---|
| Founders Burial Ground | Off Cliff Road | Closed to new interments. |
| The Colored Cemetery | Mill Hill | No known space available. |
| Native American Burial Grounds | Surfside Road | Closed to new interments. |
| New North Cemetery | New Lane (east) | No new plots, owners only. |
| Old North Cemetery | New Lane (west) | No new plots, owners only. |
| Quaker Cemetery | Madaket Road | Closed to new interments? |

C. Private cemeteries not controlled or maintained by the Town of Nantucket. As information only, the following cemeteries are known to exist within the corporate limits but the Town of Nantucket has no obligation or involvement therewith:

| Cemetery | Status |
|---|---|
| Saint Mary's Cemetery | Private, plots available. |
| Sconset Chapel Columbarium | Private, inurnments only. |
| Saint Paul's Memorial Garden | Private, ashes only. |
| Prospect Hill Cemetery | Private board and regulations; plots available. |
| Edward Lewis Memorial Cemetery and the adjacent Jewish Cemetery on Somerset Road | Private and administered by the Prospect Hill Board. |

D. A cemetery owned and currently maintained by the Nantucket Conservation Foundation:

| Cemetery | Location | Status |
|---|---|---|
| Quaise Asylum Burial Ground | Polpis Road | Closed to new interments. |

### § 234-10. Fees.[2]

The Cemetery Commission shall adopt a schedule of fees for the sale of rights of burial and other rights and services provided by the Cemetery Commission, which may be amended from time to time. All rights of burial must be paid for in full at the time of sale unless there are extenuating circumstances for which the Commissioners may offer a payment plan to the purchaser. No interments, inurnments or improvements shall be made to a lot, and no deeds shall be issued, until the rights of burial have been paid in full.

2. **Editor's Note: The schedule of fees is included as an attachment to this chapter.**

# Chapter 238

# COMPREHENSIVE PERMITS


**§ 238-1. Purpose; compliance with additional requirements.**

**§ 238-2. Definitions.**

**§ 238-3. Application requirements; fee.**

**§ 238-4. Review and consultant fees.**

**§ 238-5. Public hearing and decision.**

**§ 238-6. Changes in application.**

**§ 238-7. Appeals.**


**[HISTORY: Adopted by the Zoning Board of Appeals of the Town of Nantucket 11-12-2015. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Housing Needs Covenant Program — See Ch. 100.** **Zoning — See Ch. 139.**

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## § 238-1. Purpose; compliance with additional requirements.

A. These rules establish procedures for an application to the Zoning Board of Appeals for comprehensive permits granted under MGL c. 40B, § 20 through § 23 and the regulations promulgated thereunder. They are required by MGL c. 40B, § 21 and by 760 CMR 56.00, to facilitate the development of affordable housing in Massachusetts.

B. These rules alone are not sufficient to describe comprehensive permit procedures before the Zoning Board of Appeals. They must be read in conjunction with and implemented in a manner consistent with MGL c. 40B, § 20 through § 23. In addition, the Board's general rules for conduct of hearings under MGL c. 40A apply to comprehensive permit applications. In case of inconsistency or conflict between those general rules for conduct and these rules, these rules shall govern.

## § 238-2. Definitions.

As used in these rules, the following terms shall have the meanings indicated:

BOARD — The Zoning Board of Appeals established under MGL c. 40A, § 12.

LIMITED-DIVIDEND ORGANIZATION — Any applicant which proposes to sponsor housing under MGL c. 40B; and is not a public agency; and is eligible to receive a subsidy from a state or federal agency and which agrees to limit the dividend on its actual invested equity to the maximum amount allowed by the applicable statute or regulations governing the pertinent housing program [see § 238-3A(9).]

LOCAL BOARD — Any local board or official, including, but not limited to, any Board of Survey; Board of Health; Planning Board; Conservation Commission; Historical Commission; water, sewer, or other commission; fire, police, traffic, or other department; Building Inspector or similar official or board; Select Board.

**§ 238-3. Application requirements; fee.**

A. The application for a comprehensive permit shall consist of:

(1) Preliminary site development plans showing the locations and outlines of proposed buildings; the proposed locations, general dimensions and materials for streets, drives, parking areas, walks and paved areas; and proposed landscaping improvements and open areas within the site. An applicant proposing to construct or rehabilitate four or fewer units may submit a sketch of the matters in Subsection A(1) and (3), below, which need not have an architect's signature. All structures of five or more units must have site development plans signed by a registered architect.

(2) A report on existing site conditions and a summary of conditions in the surrounding areas, showing the location and nature of existing buildings, existing street elevations, traffic patterns and character of open areas, if any, in the neighborhood. This submission may be combined with that required in Subsection A(1) above.

(3) Preliminary, scaled, architectural drawings. For each building, the drawings shall be signed by a registered architect, and shall include typical floor plans, typical elevations, and sections, and shall identify construction type and exterior finish.

(4) A tabulation of proposed buildings by type, size (number of bedrooms, floor area) and ground coverage, and a summary showing the percentage of the tract to be occupied by buildings, by parking and other paved vehicular areas, and by open areas.

(5) Where a subdivision of land is involved, a definitive subdivision plan, conforming to all of the requirements of the Planning Board's Rules and Regulations for the Subdivision of Land.[1]

(6) A utilities plan showing the proposed location and types of sewage, drainage, and water facilities, including hydrants. Adequate supporting information, including pre-construction and post-construction drainage calculations and soil test results (which results shall have been witnessed by an appropriate and qualified Town official or a qualified Town consultant), shall be provided to demonstrate that the proposed drainage system shall meet all Stormwater Management Guidelines promulgated by the Massachusetts Department of Environmental Protection, or best management practices, whichever is more stringent, and shall result in no net increase in the rate or volume of stormwater runoff.

(7) A project eligibility letter that satisfies all of the requirements of 760 CMR 56.

(8) A list of requested exceptions to local requirements and regulations, including local codes, ordinances, bylaws or regulations.

(9) A complete copy of any and all materials and applications submitted by the applicant to any prospective subsidizing agency or source, including, but not limited to, applications for site approval.

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**1. Editor's Note: See Ch. 358, Subdivisions, Art. II, of the Town Regulations.**

(10) A list of each member of the development and marketing team, including all contractors and subcontractors, to the extent known at the time of application. The applicant shall also be required to disclose its relationship to all such entities.

(11) A list of all prior development projects completed by the applicant, along with a brief description of each such project.

B. The application shall be accompanied by a filing fee as set from time to time by the Zoning Board of Appeals. **[Amended during codification]**

C. Within seven days of filing of the application, the Board shall notify each local official of the application by sending such official a copy of the list required by Subsection A(8), above, as well as any other information that will enable such local official to assess the proposed project. Based upon that information, it shall also invite the participation of each local official who has a substantial interest in the application by providing such official with a copy of the entire application. In order to allow review by local officials, the applicant shall provide the Board with 25 copies of the completed application, so that all boards, officials and departments may review the same; and one unbound copy for copying purposes. The applicant shall provide an electronic copy of the plans so that the plans can be distributed electronically. Additionally an 11-inch by 17-inch copy of all plans (with matchlines) shall be made available to the Board for copying purposes.

## § 238-4. Review and consultant fees.

A. When reviewing an application for, or when conducting inspections in relation to, a comprehensive permit application, the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project, because of a project's potential impacts, or because the Town lacks the necessary expertise to perform the work related to the comprehensive permit application. Whenever possible, the Board shall work cooperatively with the applicant to identify appropriate consultants and to negotiate payment of the consultant fees. Alternatively, the Board may, by majority vote, require that the applicant pay a reasonable "project review fee" of a sufficient sum to enable the Board to retain consultants chosen by the Board alone. The Board may require that an applicant deposit a lump sum in order to retain consultants. In the event that such sum is insufficient to fund the necessary consulting services, the Board may require additional deposits.

B. In hiring outside consultants, the Board may engage engineers, scientists, financial analysts, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decision or regulations, or inspecting a project during construction or implementation.

C. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer, who shall establish a special account for this purpose, consistent with the terms and provisions of MGL c. 44, § 53G. Expenditures from this special account may be made at the direction of the Board without further appropriation.

Expenditures from this special account shall be made only for services rendered in connection with a specific project or projects for which a project review fee has been or will be collected from the applicant. Accrued interest may also be spent for this purpose. Failure of an applicant to pay a review fee shall be grounds for denial of the comprehensive permit application.

D. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

E. Any applicant may take an administrative appeal from the selection of the outside consultant to the Select Board. Such appeal must be made in writing and may be taken only within 20 days after the Board has mailed or hand-delivered notice to the applicant of the selection. The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field. The required time limit for action upon an application by the Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Select Board within one month following the filing of the appeal, the selection made by the Board shall stand.

**§ 238-5. Public hearing and decision.**

A. The Board shall open the public hearing on the application within 30 days of its receipt of an application, but opening the hearing shall not waive its right to contest the completeness of the application nor shall a constructive grant result if the Board does not open the hearing within 30 days if the application is not complete. To be deemed complete, the application must include all of the information detailed above. The Board may request the appearance at the hearing of such representatives of local officials as it considers necessary or helpful in reviewing the application. In making its decision, the Board shall take into consideration the recommendations of local officials.

B. The Board shall render a decision, based on a majority vote of the Board, within 40 days after termination of the public hearing, unless such time period is extended by written agreement of the Board and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the Board has been received.

C. The Board may dispose of the application in the following manner:

(1) Approve a comprehensive permit on the terms and conditions set forth in the application;

(2) Deny a comprehensive permit in the event that the proposed project presents adverse impacts to local concerns that outweigh the community's housing needs; or

(3) Approve a comprehensive permit with conditions, including but not limited to the number of permitted housing units, the height, size, shape or general appearance of the proposed buildings, the configuration of the site plan, and any other reasonable condition that is necessary to address local concerns while not rendering the construction or operation of such housing uneconomic. In order to assist the Board with determining the permissible extent of conditions, the Board may require that the applicant provide a revised pro-forma at the Board's request, during the latter stages of the public hearing after the parties have had an opportunity to review the proposed project and any revisions thereto.

D. It shall be the applicant's burden to demonstrate that the waiver of any particular local regulation, bylaw or ordinance is necessary in order to maintain the project's economic viability. There shall be a presumption that the waiver of any local bylaw, ordinance or regulation will adversely affect local concerns.

**§ 238-6. Changes in application.**

A. In the event that, during the public hearing, the applicant proposes any change in the application or project plans that, in the Board's discretion, constitutes a material or substantial change, the applicant shall forthwith notify its designated subsidizing agency.

B. In the event of material or substantial changes, the Board may request, and the applicant shall provide, any and all information specified in § 238-3 hereof that is deemed by the Board to be necessary to evaluate such changes.

C. In the event of a material or substantial change, any and all plans and supporting information shall be provided to all of the local entities identified in § 238-3C above.

D. If the applicant submits a revised plan for the Board's consideration and said plan is the plan that is the subject of the Board's hearing and deliberation, then the application shall be deemed to be revised, subject to the foregoing provisions.

**§ 238-7. Appeals.**

A. If the Board approves the comprehensive permit, any person aggrieved may appeal within the required time period as provided in MGL c. 40A, § 17.

B. If the Board denies the comprehensive permit or approves the permit with conditions or requirements considered by the applicant to be unacceptable, the applicant may appeal to the Housing Appeals Committee as provided in MGL c. 40B, § 22 or MGL c. 40A, § 17, as appropriate.

# Chapter 252

# FERTILIZER


**§ 252-1. Findings.**

**§ 252-2. Purpose.**

**§ 252-3. Authority.**

**§ 252-4. Definitions.**

**§ 252-5. Standards of performance.**

**§ 252-6. Education; licensure; enforcement; violations and penalties.**

**§ 252-7. Severability.**

**§ 252-8. Amendments.**

**§ 252-9. Effective date.**

**§ 252-10. Interim provisions.**


**[HISTORY: Adopted by the Board of Health of the Town of Nantucket 2012. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Wetlands — See Ch. 136.**

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**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

**Toxic and hazardous materials — See Ch. 371.**

**Wetlands protection — See Ch. 390.**

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## § 252-1. Findings.

A. There is sound scientific evidence to conclude that nitrogen and phosphorus in fertilizers are contaminants that negatively affect fresh and salt waters when present in excessive amounts. These excessive amounts of nitrogen and phosphorus contribute to undesirable algal and aquatic plant growth within all Nantucket water bodies. This undesirable algal and aquatic plant growth has an adverse effect on public health through the degradation of waters used for drinking water, shell fishing, and recreational swimming and boating.

B. With regard to the above, the Massachusetts Estuaries Program (MEP) has completed reports detailing the excessive nutrient loading of Nantucket's harbors, embayments, salt ponds and coastal resources from multiple sources, including fertilizers. The MEP considers fertilizers as a "locally controllable source" of degradation to the water resources of Nantucket. As a result of the completed MEP Reports in Nantucket Harbor, Polpis Harbor, Madaket Harbor, Long Pond and Sesechacha Pond, the Massachusetts Department of Environmental Protection (MassDEP) has issued total maximum daily loads (TMDLs) in these waters. These TMDLs are directives that the Town must meet with its water quality, which is enforced through the Federal Clean Water Act. Compliance with this Chapter 252 will serve to reduce excessive nitrogen loadings to Nantucket water resources, thus providing a partial solution to meet the TMDLs.

C. Nantucket has significant amounts of glacially deposited coarse, sandy soils that are subject to rapid water infiltration, percolation, and leaching of nutrients. These soil characteristics mean that normal agronomic practices of soil fertilization and amendment do not necessarily apply on Nantucket.

**§ 252-2. Purpose.**

A. It is necessary to control by regulation in the Town and County of Nantucket the use of fertilizer that contains phosphorus and nitrogen so as to improve and restore the quality of its water resources.

B. This regulation provides for a reduction of nitrogen and phosphorus deposition into Nantucket's waters and wetlands by means of an organized system of education, licensure, and regulation of practice and should help Nantucket to achieve compliance with the embayment specific total maximum daily loads (TMDLs) prescribed by the Commonwealth of Massachusetts for controllable nitrogen and phosphorus in its water resources.

**§ 252-3. Authority.**

This regulation is adopted by the Town of Nantucket Board of Health as authorized by MGL c. 111, § 31.

**§ 252-4. Definitions.**

For the purposes of this regulation, the following words shall have the follow meanings unless the context clearly indicates a different meaning:

AGRICULTURE — Farming in all of its branches and the cultivation and tillage of the soil; the production, cultivation, growing, and harvesting of any agricultural, floricultural or horticultural commodities; the raising of crops for commercial sale, where the threshold of "commercial" is $2,500 or more of gross sales per calendar year, measured as an average over a five-year period. See also "horticulture."

AMENDMENT — The application of substances to soils and plantings; amendments include but are not limited to fertilizers and may include other soil conditioners such as lime, compost, and other organic materials.

APPLICATOR — Any person who applies fertilizer to plants and soils.

BEST MANAGEMENT PRACTICE (BMP) — A sequence of activities designed to limit a nonpoint pollution source. For the purposes of this regulation and pursuant to § 252-5A of this regulation, "BMP" means the current edition of Best Management Practices for Fertilizer Use on Lawn and Landscape Plantings on Nantucket, MA.

COMBINATION PRODUCTS — Sometimes known as "weed and feed'; any product that, in combination with fertilizer, contains weed killer, defoliant, crabgrass preventer, or any other chemical for restricting the growth of plants other than turf.

COMPOST — Partially decomposed organic matter that is used as a soil amendment. Compost is considered a fertilizer for the purposes of this regulation.

COMPOST TEA — A liquid infusion of compost that is used as a soil amendment or foliar fertilizer. Compost tea is considered a fertilizer for the purposes of this regulation.

CONTINUING EDUCATION HOURS — Elapsed or actual time spent in an educational, professional-development activity. **[Amended during codification]**

FAST-ACTING NITROGEN — Any water-soluble nitrogen that is immediately available to plants upon application.

FERTILIZE, FERTILIZING or FERTILIZATION — The act of applying fertilizer to plants or soils.

FERTILIZER — A substance that enriches the soil with elements essential for plant growth, such as nitrogen, phosphorus, or other substances. Fertilizer does not include those nutrients that are normally excluded from fertilizer such as those that are chemically part of dolomite, limestone, or lime. Fertilizer includes foliar fertilizers, as defined below. **[Amended during codification]**

FERTILIZER LICENSE — Documentation denoting that an individual or corporate entity has demonstrated, by means of an examination, competency in applying fertilizer on properties within the Town and County of Nantucket.

FOLIAR FERTILIZER — Any fertilizer product designed for uptake into a plant through its leaves and which typically is sprayed directly onto a plant.

HEALTH AGENT or HEALTH DIRECTOR — The individual who has direct oversight of the daily activities of the Nantucket Health Department.

HORTICULTURE — A general term meaning plant science and plant products. For the purposes of this regulation, "horticulture" means the raising of flowers, fruits, vegetables, berries, herbs, nuts, and other similar products for commercial sale, where the threshold of "commercial" is $2,500 of gross sales per calendar year measured as an average over a five-year period. See also "agriculture."

IMPERVIOUS SURFACE — A surface that has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water.

LANDSCAPE PROFESSIONAL — A person who, in exchange for money, goods, services, or other consideration, applies fertilizer to plants or soils.

LANDSCAPING — Establishment by sod, seeding, or transplanting, renovation, maintenance, or fertilization of turf and other plantings.

LICENSED APPLICATOR — A person authorized by the Nantucket Board of Health or Health Agent to apply fertilizer for commercial purposes.

NANTUCKET — Encompasses the land and water of the Town and County of Nantucket, including Tuckernuck and Muskeget.

NANTUCKET BMP — The current edition of the Best Management Practices for Fertilizer Use on Lawn and Landscape Plantings on Nantucket, MA." Pursuant to § 252-5A of this

regulation, the Nantucket BMP is adopted by the Board of Health and is generally available to the public.

NANTUCKET BOARD OF HEALTH — The local board appointed by the Select Board to oversee public and environmental practices through the actions of its Health Department within the Town and County of Nantucket.

NANTUCKET, TOWN AND COUNTY OF — The bodies politic created by state statute (of the Commonwealth of Massachusetts General Court) to govern the lands and waters of Nantucket, as defined above. **[Amended during codification]**

NONPOINT POLLUTION — Contamination which includes but is not limited to sediments, nutrients, pathogens, and pollutants that collect in water bodies from stormwater runoff and boat waste discharges. (301 CMR 26.03, "Definitions" in the "Coastal Pollutant Remediation Program") **[Amended during codification]**

NONPOINT POLLUTION SOURCE (NPS) — Any activity releasing pollution that is not deemed point-source pollution.

NUTRIENT — Any of the following 16 elements needed for growth of a plant: the three nonmineral elements: carbon, hydrogen, and oxygen; the six macronutrients: nitrogen, phosphorus, potassium, calcium, magnesium, and sulphur; and the seven micronutrients: boron, copper, iron, chloride, manganese, molybdenum, and zinc.

NUTRIENT MANAGEMENT — Systematic control of the application of nutrients.

PLANTINGS — Organized cultivation of plants for beneficial purposes.

PLANTS — Biological organisms in the Kingdom Plantae that, for the purposes of this regulation, are used domestically.

POINT-SOURCE WATER POLLUTION — Comes from end-of-pipe stationary locations such as sewage treatment plants, factories, and ships and is subject to regulatory control under the Massachusetts Clean Water Act and the Federal Water Pollution Control Act, both as amended.

SLOW-RELEASE, CONTROLLED-RELEASE, TIMED-RELEASE, SLOWLY AVAILABLE, OR WATER-INSOLUBLE NITROGEN — Nitrogen in a form that delays its availability for plant uptake and use after application and is not rapidly available to turf and other plants.

SOIL — The uppermost layer of the earth's surface, comprised of mineral and organic matter, which can host biological communities.

SOIL TEST — A technical analysis of soil conducted by an accredited soil testing laboratory.

TOTAL MAXIMUM DAILY LOAD (TMDL) — A calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

TURF — Grass-covered soil held together by the roots of the grass; also known as "sod" or "lawn." **[Amended during codification]**

WATERS or WATER-BODIES or WATER RESOURCES — Include, but are not limited to, streams, including intermittent streams, creeks, rivers, freshwater and tidal wetlands, ponds, lakes, marine waters, canals, lagoons, embayments, and estuaries within the Town and

County of Nantucket, including without limitation all waters defined in MGL c. 131, § 40 and Chapter 136, Wetlands, of the Code of the Town of Nantucket.

## § 252-5. Standards of performance.

A. Nantucket best management practices. The Nantucket Board of Health shall adopt the document known as the "Nantucket Best Management Practices' ("Nantucket BMP"), which shall be incorporated into and be part of this regulation. The initial version of the Nantucket BMP has been developed by a broad group of stakeholders representing diverse interests and has been reviewed by soil and turf scientists and educators. It is based on principles of soil science appropriate to Nantucket soils and climate. Therefore, notwithstanding the requirements of MGL c. 111, § 31, no amendment to the Nantucket BMP shall be adopted until such time as the Nantucket Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town and County once in each of two successive weeks, the first publication to be not less than 14 days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by a four-fifths vote of the Nantucket Board of Health.

B. Performance standards for nonlicensed applicators. Applicators who do not hold fertilizer licenses issued in accordance with § 252-6B of this regulation shall comply with the following standards:

(1) Applicators shall not apply fertilizer immediately before or during heavy rainfall, such as but not limited to thunderstorms, hurricanes, or northeastern storms, or when the soil is saturated due to intense or extended rainfall.

(2) Applicators shall not apply fertilizer between October 16 and the following April 14.

(3) Applicators shall not apply, spill, or deposit fertilizer on any impervious surface and fail to remove the applied, spilled, or deposited fertilizer immediately, or to apply fertilizer in a manner that allows fertilizer to enter into storm drains or other man-made storm flowage receptacles and/or channels.

(4) Applicators shall not apply fertilizer closer than 100 feet to any water body as defined above unless a permit is obtained from the Nantucket Conservation Commission allowing such activity (This reflects current Nantucket Wetland Regulations.[1]);

(5) Applicators shall not deposit grass clippings, leaves, or any other vegetative debris into or within 25 feet of water bodies, retention and detention areas, drainage ditches or stormwater drains, or onto impervious surfaces such as, but not limited to, roadways and sidewalks, except during scheduled clean-up programs.

1. **Editor's Note: See Ch. 390, Wetlands Protection, of the Town of Nantucket Regulations.**

(6) The following restrictions shall apply to the content of fertilizer to be applied to turf, other plants, or soil by such nonlicensed applicators:

(a) An applicator shall not apply more than 0.25 lb Nil 000 square feet of fast-release nitrogen fertilizer in any one application.

(b) An applicator shall not apply fertilizer that contains phosphorus, unless a soil test indicates a phosphorus deficiency and it is applied in conformance with the Nantucket BMP.

(c) Applications of compost, which contain phosphorus, may only be applied in conformance with the Nantucket BMP.

(7) A single application of nitrogen for turf shall not exceed 0.5 pound of actual nitrogen per 1,000 square feet and the annual rate shall not exceed 3.0 pounds of actual nitrogen per 1,000 square feet; a single application for trees, shrubs, herbs and other ornamental plantings shall not exceed 0.5 pound of actual nitrogen per 1,000 square feet and the annual rate shall not exceed 2.0 pounds of actual nitrogen per 1,000 square feet.

(8) Applications of nitrogen shall be done at intervals of no less than two weeks until the annual maximum is reached.

(9) The fertilizer application requirements of Subsection B(7) shall apply without limitation to the application of combination products.

(10) Foliar fertilizers shall be applied in compliance with the Nantucket BMP. The nitrogen application rate of foliar products shall be included when calculating the annual total nitrogen application rate.

(11) Compost and compost tea shall be applied in compliance with the Nantucket BMP. The nitrogen and phosphate application rates of compost and compost tea shall be included when calculating the annual total fertilizer application rate.

C. Performance standards for licensed applicators.

(1) Licensed applicators shall be exempt from the performance standards set forth in Subsection B of this section, provided that they comply with the requirements of Subsection C(2) of this section.

(2) All applications of fertilizer by a licensed applicator shall be in accordance with the Nantucket BMP, as amended, at the time of the application.

D. Exemptions. The following activities shall be exempt from Subsections B and C:

(1) Application of phosphorus when establishing vegetation, after land disturbance, and when reestablishing or repairing turf after substantial damage, provided the application is in compliance with the Nantucket BMP. When applied within 100 feet of any water body such application requires a permit from the Nantucket Conservation Commission (This reflects current Nantucket Wetland Regulations.[2]).

**2. Editor's Note: See Ch. 390, Wetlands Protection, of the Town of Nantucket Regulations.**

(2) Application of fertilizer for agricultural and horticultural uses, including sod farms.

**§ 252-6. Education; licensure; enforcement; violations and penalties.**

A. Education.

(1) The Town of Nantucket Board of Health shall maintain a program of fertilizer education that is based on the Nantucket BMP.

(2) The Nantucket Board of Health shall administer an assessment to determine an individual's proficiency with respect to the Nantucket BMP.

(3) Summaries of fertilizer application requirements will be made readily available to the public by the Nantucket Board of Health.

B. Licensure.

(1) No landscape professional shall apply fertilizer in the Town and County of Nantucket without a license issued by the Nantucket Board of Health in accordance with this regulation. Such license may be held but is not required by property owners who apply fertilizer on their own property.

(2) Fertilizer licenses shall be effective beginning on January 1 in the year of issue, and shall be in effect for three calendar years, unless previously revoked in accordance with Subsection C of this section.

(3) Fertilizer licenses may be renewed on application. Renewal applications shall be submitted to the Nantucket Board of Health no later than December 1 of the year preceding the year for which renewal is sought.

(4) Any application for a fertilizer license or for renewal of a fertilizer license shall be accompanied by a fee as set from time to time by the Board of Health and certification that the applicant has shown proficiency of the Nantucket BMP as determined by the Nantucket Board of Health, as set forth in § 252-6A(2) of this regulation. **[Amended during codification]**

(5) Any landscape professional licensed under this regulation shall keep said license in his/her possession, which shall be readily available for display. The license shall indicate the license number and shall include the licensee's signature and date of the license expiration. The licensee shall display such license when requested to do so by any officer of the Nantucket Police Department or Nantucket Board of Health.

C. Enforcement.

(1) License suspension or revocation. The Nantucket Board of Health may suspend or revoke any license issued pursuant to this regulation or any other applicable law. Such revocation or suspension may take place after a hearing held by the Nantucket Board of Health, of which the license holder shall be given seven days' written notice. Such notice shall be deemed given upon certified return receipt mailing same to the address listed on the license application.

(2) Noncriminal disposition. This regulation may be enforced by the Nantucket Health Director, Assistant Health Officer and/or any police officer of the Town of Nantucket. Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D and the Town's noncriminal disposition bylaw, Chapter 1, Article II, of the Code of the Town of Nantucket. If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to a penalty in the amount of $300 per day for each day of violation, commencing 10 days following day of receipt of written notice from the Nantucket Board of Health. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense.

(3) Other. Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in the District Court. Except as may be otherwise provided by law and as the District Court may see fit to impose, the maximum penalty for each violation or offense shall be $1,000. Each day or portion thereof shall constitute a separate offense. If more than one, each condition violated shall constitute a separate offense. The Nantucket Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Nantucket Board of Health shall not preclude enforcement through any other lawful means.

### § 252-7. Severability.

Should any section, part or provision of this regulation be deemed invalid or unconstitutional, such decision shall not affect the validity of the remaining terms of this regulation as a whole or any part thereof, other than the section, part or provision held invalid or unconstitutional.

### § 252-8. Amendments.

This regulation is based on the Nantucket BMP and was developed by a broad group of stakeholders representing diverse interests and has been reviewed by soil and turf scientists and educators. Therefore, notwithstanding the requirements of MGL c. 111, § 31, no amendment to this regulation shall be adopted until such time as the Nantucket Board of Health shall hold a public hearing thereon, notice of the time, place and subject matter of which, sufficient for identification, shall be given by publishing in a newspaper of general circulation in the Town and County once in each of two successive weeks, the first publication to be not less than 14 days prior to the date set for such hearing. No such amendment shall be effective unless the proposed amendment has been reviewed and commented upon by soil and turf scientists and educators and it is passed by a four-fifths vote of the Nantucket Board of Health.

### § 252-9. Effective date.

This regulation shall take effect on January 1, 2013, and upon publication pursuant to MGL c. 111, § 31.

**§ 252-10. Interim provisions.**

Landscape professionals may apply fertilizer without a license during the interim period between the effective date of this regulation and the development of a licensing program by the Nantucket Board of Health, provided that they comply with § 252-5C(2) of this regulation.

# Chapter 256

# FILMING AND VIDEOTAPING ON PUBLIC LANDS


**§ 256-1. Permit required.**

**§ 256-2. Definitions.**

**§ 256-3. Permit request procedure.**

**§ 256-4. Denial of permit; compliance with Uniform Procurement Act.**

**§ 256-5. Consultation with local officials.**

**§ 256-6. Fee waivers.**


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 12-5-2001. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Streets and sidewalks — See Ch. 127.**

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## § 256-1. Permit required. [Amended during codification]

Any person proposing to occupy public property, a street or way for the purpose of any commercial film production where that occupancy has the risk of impeding vehicular or pedestrian traffic, or impeding access to or for the customary enjoyment of such public property, street or way, must obtain a permit to do so from the Select Board or County Commissioners.

## § 256-2. Definitions.

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

COMMERCIAL FILM PRODUCTION AND VIDEO — Includes feature movies, entertainment filming for cinemas and/or television, but does not include news coverage of current events.

## § 256-3. Permit request procedure.

A. The request for the use of the Town or County property, street or way for the above-stated purposes shall be made in writing to the Select Board or the County Commissioners at least 14 days prior to the proposed day of shooting. Such request shall include the proposed dates and times of filming, location(s), and the proposed impact on the public property, street or way. The request will be considered by the Select Board or County Commissioners at a regularly scheduled meeting.

B. If such production will cause any Town street or sidewalk to be either partially or totally blocked, a street/sidewalk blocking permit must be obtained in accordance with requirements set forth elsewhere.[1]

C. A hold-harmless agreement must be submitted for use of any Town- or County-owned property, street or way at the same time as the request is made.

D. Fees.

(1) A fee as set from time to time by the Select Board (to be paid in advance) shall apply if the Select Board/County Commissioners determine the production to be "large-scale." This fee does not include the cost for use of Town employees (i.e., third-party police details for crowd control/traffic control). "Large scale" means any such production involving the use of more than 10 on-site production crew people. **[Amended during codification]**

(2) However, notwithstanding the foregoing, no fee shall be charged for the use of public property, a street or way where:

(a) The person applying for such permit demonstrates that the property, street or way to be used is customarily used by the public as a public forum; or

(b) Such fee would interfere with any right protected by the First Amendment to the United States Constitution or the Declaration of Rights to the Constitution of the Commonwealth of Massachusetts.

## § 256-4. Denial of permit; compliance with Uniform Procurement Act.

A. If the Select Board/County Commissioners determines that the proposed production would cause an unreasonable risk of harm or damage to public property or would unreasonably interfere with the public's right to use and enjoy public property, streets or ways, the permit may be denied.

B. If the fee to be paid is equal to or exceeds any threshold triggering public bidding requirements under Chapter 30B of the General Laws of the Commonwealth, the permit shall not be granted until the completion of compliance with all applicable procurement laws.

## § 256-5. Consultation with local officials.

The Select Board or the County Commissioners may require that the persons who will be engaged in the production meet with any of the following: the Town Administrator, the Police Chief, the Fire Chief, a representative from the Merchant's Association and/or the Nantucket Chamber of Commerce before production commences.

1. **Editor's Note: See Ch. 127, Streets and Sidewalks, of the Code of the Town of Nantucket.**

**§ 256-6. Fee waivers.**

The Select Board may waive the fee if otherwise applicable to any nonprofit organization that serves the public interest.

# Chapter 260

# FISHING AND SHELLFISHING


**ARTICLE I**
**Sale of Fish and Shellfish from Vehicles on Streets and Roadways**

**§ 260-1.1. Vehicle construction.**
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**§ 260-1.3. Sanitizing.**
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**§ 260-4.86. Terms defined.**

**Approved Shellfish Containers and Commercial Shellfishing Maps**

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

**TOWN CODE REFERENCES**

**Taking of shellfish — See Ch. 122.**

**Town wharves and waterways — See Ch. 137.**

**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

**Harbors and waterways — See Ch. 278.**

## ARTICLE I
## Sale of Fish and Shellfish from Vehicles on Streets and Roadways
## [Adopted by the Board of Health 4-30-1980]

### § 260-1.1. Vehicle construction.

A. All vehicle beds or van interiors where fish are placed for sale shall be constructed of a suitable impervious material that may be easily and thoroughly cleaned, and drainage of

all water from said area shall be complete and rapid. Vehicles shall be equipped to catch all drainage from storage and sale areas in suitable containers.

B. Walls and ceilings shall be smooth, washable, and covered with a light-colored paint or other impervious material.

**§ 260-1.2. Insects.**

Vehicles shall be kept free from flies, and screens shall be used as necessary. No insecticides shall be used on or near the vehicle.

**§ 260-1.3. Sanitizing.**

Vehicles shall be equipped with an adequate supply of hot water or a sanitizing solution containing at least 50 parts per million of free chlorine.

**§ 260-1.4. Construction and sanitizing of utensils.**

All pans, pails, knives, tongs, and other utensils or receptacles shall be constructed of a noncorrodible, smooth, impervious material which shall be easily cleanable in the following manner:

A. Complete immersion in hot water of at least 170° for at least two minutes.

B. Complete immersion in a solution containing 50 parts per million of free chlorine for at least two minutes.

**§ 260-1.5. Storage, transit and sale.**

A. All fish and shellfish products inside or outside of any vehicle shall at all times be kept iced and in containers or display cases which are protected from the direct rays of the sun and other elements.

B. All finfish containers shall be covered with clear plastic covers or wrapped individually in a clear plastic wrap.

**§ 260-1.6. Ice and temperature control.**

A. All ice used shall be from a source approved by the Board of Health.

B. Ice must be in actual and continuous contact with fish and shellfish and shall effectively separate all fish from the sides and bottom of the containers.

C. Ice must be sufficient in quantity to last for the duration of the storage and sale period.

D. An easily readable thermometer must be in contact with the ice surface of each container at all times.

E. Fish and shellfish must be maintained at a temperature of 45° F. or below at all times.

### § 260-1.7. Container drainage.

Each container must have a perforated bottom and be elevated off the floor of the vehicle two inches to allow for the draining of the melted ice from the fish and shellfish holding containers. (This melted ice shall be collected by the containers mentioned in § 260-1.1.)

### § 260-1.8. Washing and cleaning of fish and shellfish.

A. Shell stock shall be washed free of bottom sediments.

B. Finfish shall be cleaned and/or gutted before being placed on the vehicle. At no time will the gutting or cleaning of fish be allowed on the streets or roadways of Nantucket.

### § 260-1.9. Cleanliness of personnel.

A. Personnel shall wash their hands with soap and water before beginning work and after each interruption.

B. All personnel shall maintain a clean appearance at all times.

## ARTICLE II
## Scallop Shanties
## [Adopted by the Board of Health 9-23-1981]

### § 260-2.1. Scope and applicability. [Added during codification]

The following regulations shall apply to scallop shanties constructed and used in the Town of Nantucket.

### § 260-2.2. Construction.

Scallop shanties shall have:

A. Floors that are free of cracks and uneven surfaces; graded to drain quickly.

B. Walls and ceilings that are smooth, washable, light-colored, free from cracks and uneven surfaces and in good repair.

C. Shucking benches with tops and backs of smooth, impervious, nonabsorbent, nontoxic material, free from cracks and constructed so that drainage is complete and directed away from all scallops. Corners shall be rounded. Material shall overlap the edges and seams shall be soldered and sanded smooth.

### § 260-2.3. Waste receptacles.

A suitable number of waste containers shall be provided and no waste shall be allowed to accumulate except in those containers, which shall be thoroughly cleaned at the end of each day's use.

**§ 260-2.4. Utensils and equipment.**

A. Parts of utensils coming in contact with scallops shall be of corrosion-resistant, nonabsorbent, nontoxic, smooth material which will not readily crack or disintegrate. All seams and joints shall have a smooth surface for easy cleaning (Knives used shall be so constructed as to seal the joint between blade and handle.). At the end of each day, all implements shall be scalded with at least 180° F. water or disinfected with chlorine solution or sanitizer.

B. After each day's operation, all benches shall be either scalded with hot water of at least 180° F. or washed with a sanitizer or chlorine solution.

**§ 260-2.5. Water.**

Water shall be of a source approved by the Department of Public Health.

**§ 260-2.6. Toilet facilities.**

A. Toilet facilities shall be provided. They shall not be located in any room where shellfish are opened, shucked, stored, handled or packed, nor shall the door of such rooms open directly into rooms in which water closets are located. Doors shall be self-closing. If pit privies are provided, they shall not be located adjacent to the shellfish shucking-packing room. All toilet facilities shall be approved by the Director and/or the State Health Department.

B. Lavatory facilities shall be adequate. Persons shall wash their hands thoroughly prior to commencing work and before resuming work after each interruption. A sink or wash basin with hot and cold water and soap with paper towels shall be provided and conveniently located with respect to the toilet room. Signs directing employees to wash hands after each work interruption shall be conspicuously placed.

**§ 260-2.7. Refrigeration.**

Adequate refrigeration, either ice or mechanical refrigerators, shall be provided to maintain temperature of 40° F. or less as soon as possible after shellfish are open.

**§ 260-2.8. Packing containers.**

All shucked meats shall be packed in new or previously unused containers of metal or such material as may be approved by the Department. These containers shall be clean and adequately sealed at time of packing. Prior to use, containers shall be stored in a sanitary manner and protected from contamination. Metal containers shall be sealed by a friction-type cover. Sealing of other containers shall be adequate to protect scallops from contamination and approved by the Department of Health. The metal containers shall have impressed, embossed or otherwise permanently recorded on the side the permit number of the shipper, preceded by the state abbreviation and the words "Bay Scallops." Labelling of other approved types of containers shall be by a method approved by the Director. Bay scallop producers shall pack in containers bearing their own permit numbers.

## ARTICLE III
## Commercial Shellfish Opening Facilities
## [Adopted by the Board of Health 1-22-1986]

### § 260-3.1. Inspections.

A. All commercial shellfish shall be opened in a facility which has been inspected and approved by the Board of Health of the Town of Nantucket.

B. All facilities shall be inspected for approval yearly, and approval stickers shall expire March 31 of each year.

### § 260-3.2. Reports of violation.

All violations of these local regulations shall be reported to the Board of Health, with a recommendation by the Health Inspector as to any penalty to be imposed if the Board should find a violation.

### § 260-3.3. Hearing on violation.

Within five days of the mailing of any notice of violation, the party charged may request a public hearing on the charges. If no such request is received within the specified time frame, the Board of Health shall decide the matter upon the facts reported to it by the Health Inspector.

### § 260-3.4. Violations and penalties.

A. Any person who shall be found in violation of these regulations shall be subject to the following:

(1) Upon first offense: fine up to $200.

(2) Upon second offense: fine up to $200.

(3) Upon third offense: revocation of license for a minimum of 365 days and fines not to exceed $200.

B. Each day of a continuing violation shall be treated as a separate offense.

## ARTICLE IV
## Shellfishing
## [Adopted by the Board of Selectmen (now Select Board) 3-4-2015]

Part 1

## Policy and Purpose

### § 260-4.1. Purpose and authority.

The purpose of these regulations is to preserve, protect and restore Nantucket's shellfisheries, underwater and intertidal habitats within the Town of Nantucket's jurisdiction. These regulations supplement and are consistent with the requirements of the Commonwealth of Massachusetts, including MGL c. 130, Code of Massachusetts Regulations 322, Chapter 122, Taking of Shellfish, of the Code of the Town of Nantucket, the Town of Nantucket Shellfish Management Plan, the Nantucket and Madaket Harbors Action Plan, and the current Best Management Practices for the Shellfish Culture Industry in Southeastern Massachusetts, developed by Southeastern Massachusetts Aquaculture Center (SEMAC).

### § 260-4.2. Authority to restrict activities.

To implement this policy, the Select Board or its designee may restrict the taking of shellfish by commercial or noncommercial permit holders in any area or in any manner for the purpose of managing the fishery or habitats.

### § 260-4.3. Permits issued to residents only.

The waters of the Town of Nantucket that are used for commercial shellfishing and shellfish aquaculture are a unique resource; therefore, the granting of commercial shellfishing permits and licenses for aquaculture are restricted to declared domiciled residents of Nantucket. (See § 260-4.25.)

Part 2

## General Regulations Applying to Recreational, Commercial and Aquaculture Licenses

### § 260-4.4. License or permit required.

A. All persons taking shellfish for recreational or commercial purposes shall be required to have a shellfish permit as issued by the Town of Nantucket.

B. Display of license. All persons taking shellfish for recreational or commercial purposes shall be required to clearly display a shellfish permit/pin as issued by the Town of Nantucket.

### § 260-4.5. Permitted locations.

Recreational and commercial shellfishing may occur in any area within the Town of Nantucket's waters, unless posted as closed by the Commonwealth of Massachusetts or Town of Nantucket.

**§ 260-4.6. Daily limits.**

No permit holder shall take shellfish or other marine organisms in excess of the daily limit. (See individual species per permit type.)

**§ 260-4.7. Landing shellfish.**

No shellfish shall be brought ashore except in their shells.

**§ 260-4.8. Permitted hours of operation.**

Permit holders shall be able to take shellfish from the waters of the Town by allowed methods from 1/2 hour before sunrise to 1/2 hour before sunset unless otherwise specified in these regulations.

**§ 260-4.9. Closures and red flag.**

Closures of the shellfishery shall apply to both recreational and commercial fisheries and shall be noted by red flags as posted by the Shellfish Warden. The red flag will be raised at the Town Pier (located at 34 Washington Street) and Jackson's Landing in Madaket. Other closure events for water quality or habitat preservation shall be posted by the Shellfish Warden at the specific site of the closure. All closures will be posted at the Town Pier, Natural Resources Office, and on the Natural Resources Department webpage. Closures may be related (but not limited) to temperature or shellfish strandings.

**§ 260-4.10. Temperature restrictions.**

No shellfishing shall be carried on when the air temperature is below 28° F. (2° C.), as determined by the Shellfish Warden; areas licensed for aquaculture are exempt from this regulation. A red flag will be raised at the Town Pier (located at 34 Washington Street) and Jackson's Landing in Madaket. Vessels are required to return to shore and land shellfish if the temperature dips below 28° F.

**§ 260-4.11. Habitat sensitive areas.**

No commercial or recreational shellfishing may occur in areas deemed "habitat sensitive" and which have a posted closure by the Select Board or its designee.

**§ 260-4.12. Bay scallop strandings.**

No taking of bay scallops, either recreational or commercial, shall be carried on during a red flag stranding event as determined by the Shellfish Constable.

**§ 260-4.13. Poaching. [Amended during codification]**

Any unauthorized person who poaches or otherwise disturbs any shellfish in any amount or in any location shall be subject to criminal penalties and potential civil penalties. (See MGL c. 130.)

**§ 260-4.14. Disturbance of licensed or closed areas.**

No person other than the license holder or its designee shall inspect, disturb or handle any shellfish or gear within the marked leased or closed area.

**§ 260-4.15. Inspections.**

All persons harvesting, carrying away, or otherwise having in their possession shellfish or marine organisms of any kind, in a boat, container, shanty, or vehicle, shall exhibit all such shellfish for inspection by the Shellfish Wardens, police officers or any other duly authorized agents.

**§ 260-4.16. Possession of seed.**

An individual or entity must file a state scientific permit, state propagation permit, or aquaculture license with the Natural Resources Department if planning on possessing seed shellfish for any reason. A violation of this regulation shall exist if the total catch contains more than 5% seed shellfish.

**§ 260-4.17. Methods of taking.**

The taking of any shellfish from the waters of the Town of Nantucket shall be limited to hands, dipnets, rakes and tongs, unless otherwise noted within these regulations.

**§ 260-4.18. SCUBA diving and snorkeling.**

All persons taking shellfish using SCUBA or snorkeling shall be required to display a dive flag for each individual in the water. The flag must be within 100 feet of the diver. Recreational divers and snorkelers must have a pin on their person.

**§ 260-4.19. Transplanting.**

A. Transplanting shellfish outside of Nantucket waters. No shellfish of any size shall be taken out of the Town for the purpose of transplanting or to be placed in any waters outside the limits of the Town without proper permits.

B. Shipping of live shellfish for broodstock/propagation purposes. No live shellfish of any size shall be shipped outside of Nantucket for broodstock or propagation purposes until a pathology certificate is provided and permission is granted from the Select Board or its designee.

C. Transplanting shellfish into Nantucket waters. No shellfish shall be planted or transplanted into the waters of the Town of Nantucket without the proper permits, certificates of origin, and approval by the proper authorities.

D. Harvesting seed from the wild not allowed. The taking of seed is prohibited without the proper permits and approval by the proper authorities.

E. Wet storage of recreational shellfish prohibited. The holding or storing of a recreational shellfish catch within Nantucket waters in any amount for any amount of time is prohibited.

### § 260-4.20. By-catch.

No by-catch of any species in excess of 5% of the licensed targeted shellfishery shall be allowed for commercial purposes. Any by-catch that is less than 5% of the total catch must be in season according to the Division of Marine Fisheries and the Town of Nantucket. If allowable by-catch is to be sold commercially, that person must have a commercial license for that species.

### § 260-4.21. Catch reports provided to Town.

A. Commercial catch reports. Holders of commercial shellfish permits shall submit a monthly catch report to the Shellfish Warden, on forms provided. It shall be the responsibility of the permit holder to ensure that he/she submits the required catch report no later than the 15th day of the month following the month for which such report is being made (i.e., December 15, January 15, February 15, March 15, and April 15). Failure to submit a catch report shall be a violation of the Town of Nantucket regulations. **[Amended during codification]**

B. Recreational catch reports. All recreational shellfish permit holders shall file an annual catch report with the Town, stating the amount, species, and place of shellfish harvested, for the 12 months ending on the preceding March 31. A new permit may not be issued until the catch report has been completed by the permit holder.

## Part 3
## Recreational (Noncommercial) Shellfishing

### § 260-4.22. Permit required.

The recreational harvesting of shellfish requires all individuals age 14 or older to obtain a recreational shellfish permit through the Town of Nantucket. All children participating in shellfish harvesting under the age of 14 must be accompanied by a valid permit holder. Shellfish taken by a child under the age of 14 are included in the catch limit of the permit holder.

A. Town of Nantucket recreational shellfish licenses are not transferable or subject to refunds.

B. Fees for annual permits (April 1 through March 30) shall be set from time to time by the Select Board. **[Amended during codification]**

### § 260-4.23. Commercial harvesting prohibited.

No person holding a recreational permit shall harvest shellfish, eels or sea worms for the purpose of sale, trade or other consideration.

### § 260-4.24. Harvest criteria by species. [Amended during codification]

| Species | Season | Days | Limit | Size and Special Considerations |
|---|---|---|---|---|
| Bay scallops | Open October 1 - March 31 | Wednesday - Sunday | 1 bushel per week | Must possess a well-defined growth ring.<br>Exception: Bay scallops that have a well-defined raised annual growth line located less than 10 mm from the hinge of the shell shall be lawful to harvest and possess if the shell height is at least 63.5 mm or 2.5". |
| Quahogs | Open year round | Daily | 1 - 10-quart bucket/day; no more than 1 bushel/week | 1" thick at hinge |
| Soft-shell clams | Closed June 15 - September 15 | Sunday only | 1 - 10-quart bucket | 2" in length<br>Note: Undersized clams must be replanted neck upright covered with a layer of sand. |
| Razor clam | Closed June 15 - September 15 | Sunday only | 1 - 10-quart bucket | 2" in length<br>Note: Undersized clams must be replanted neck upright covered with a layer of sand. |
| Blue mussel | Open year round | Daily | 1 bushel/week | 2" in length<br>Note: can be taken by 1 standard bay scallop dredge outside of eelgrass areas. |
| Oysters | Open year round | Daily | 0.5 bushel/week | 3" in length |
| Conch | Closed December 16 - April 14 | Daily | 1 bushel/week | 2.75" in width |
| Blue crab | Closed January 1 - April 30 | Daily | 25 crabs/day | 5" from spine to spine<br>Note: Hand or dip net only; state permit required for other methods of taking. |
| Horseshoe crabs | | | | Prohibited |
| Green crab | | | | In order to harvest green crabs you must obtain a letter of authorization (LOA) from DMF. |

| Species | Season | Days | Limit | Size and Special Considerations |
|---|---|---|---|---|
| Eels | Open year round | 24 hours/ day | 50/day | 6" minimum<br>Note: can be taken by gigging or by dip net 1.5" mesh netting or bigger; requires state recreational saltwater fishing license. |
| Other shellfish (limpets, periwinkles, blood arks, sea clams, sea quahogs, sea scallops, winkles) | | | | May be taken in accordance with the laws of Massachusetts; see state regulations. |

Part 4

## Commercial Shellfishing

### § 260-4.25. Eligibility for permits.

A. Applicants for commercial shellfishing permits must meet residency requirements. Applicants must be a declared resident of the Town of Nantucket. Written proof that Nantucket is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Select Board or its designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations, an individual must have maintained that residence for one full year. Any commercial permit will be revoked if the holder ceases to meet the residency requirement for the Town of Nantucket.

B. Applicant must be 14 years of age or older.

C. Minors under 14 without a permit. Person under 14 years of age are permitted to harvest shellfish in a commercial area while under the supervision of a parent or a guardian holding a commercial permit. No shellfish may be taken in excess of the daily limit of the permit held by the parent or guardian.

D. Permits will only be issued after the applicant has shown proof of having a valid state commercial permit with a shellfish endorsement and a valid shellfish transaction card from the DMF [322 CMR 7.01(2)(g), (i), (k)].

E. Unnaturalized foreign-born persons. Commercial permits will not be issued to unnaturalized foreign-born persons who have not resided on Nantucket for at least five years prior to making an application (MGL c. 130, § 55). **[Amended during codification]**

**§ 260-4.26. Tagging of harvest.**

Each day at the time of harvest, any commercial permit holder who has shellfish of any kind for sale, trade or other consideration must legibly mark all containers of shellfish using legal tags. (MGL c. 130, § 81, § 83).

**§ 260-4.27. Application for and term of permit. [Amended during codification]**

For other than bay scallops, applications for commercial permits for quahogs, blue mussels, and conchs/whelk shall be filed with the Town of Nantucket or its designee on an annual basis, and permits shall be valid for one year from date of approval.

**§ 260-4.28. Permit required for dragging/dredging.**

The owner or operator of a vessel engaged in commercial shellfishing in the waters of the Town of Nantucket involving the use of a drag, dredge, or other mobile gear shall hold a valid Town of Nantucket commercial shellfishing permit.

**§ 260-4.29. Bay scallops.**

A. Commercial bay scallop permit requirements.

(1) Commercial bay scallop applications and commercial scallop apprentice applications must be filed and paid in full with the Nantucket Police Department prior to 5:00 p.m. on March 31 for the commercial season beginning the following November 1 and lasting through March 31 of any given year.

(2) Late applicants. Applications for commercial scalloping or commercial scallop apprentices filed after 5:00 p.m. on March 31 will not be valid for scalloping until December 1 or as of the 30th day after the date submitted, whichever is later. No waivers will be granted.

(3) Commercial bay scallop permits shall be issued for a period of one year from April 1.

B. Apprentice commercial bay scallop permit requirements.

(1) Apprentice commercial bay scallop permit applicants must meet residency requirements.

(2) All applicants for a commercial scallop permit that do not have a history of being issued such a permit from the Town of Nantucket will be issued an "apprentice permit." Apprentices are required to scallop with a valid commercial scallop permit holder that agrees to participate in the apprentice program for 40 active fishing days. Apprentices and their mentors must attend a pre-season workshop with the Department of Natural Resources. After providing proof of apprenticeship completion to the Department of Natural Resources and the Harbor and Shellfish Advisory Board, the apprentice will be issued a valid commercial scallop permit. For all other purposes, the holder of an apprentice permit will be considered a fully permitted commercial scallop fisherman during

the term of the apprenticeship and thereby bound by all applicable laws and regulations.

C. No transfer or refunds for Town of Nantucket commercial shellfish permits. No transfers or refunds of Town of Nantucket commercial shellfish permits will be granted.

D. Commercial bay scallop season and days. The Select Board shall allow the taking of bay scallops for commercial purposes from November 1 through March 31 on Monday through Friday only, with the exception of Christmas Day. When Christmas falls between Monday and Friday of any given year, scalloping shall be allowed the following Saturday. Any alteration to these dates shall be done in accordance with Chapter 122, Taking of Shellfish, § 122-8, of the Code of the Town of Nantucket. The Select Board may grant permission for the collection of scallop seed outside the commercial season for the purpose of moving seed. **[Amended during codification]**

E. Commercial bay scallop daily start time and landing hours. Dredges may be deployed between the hours of 6:30 a.m. and 4:30 p.m. All commercial bay scallop boats must be at off-loading points by 4:30 p.m.

F. Returning to shore to pick up cullers. A license holder may return to shore to shore to pick up a culler but no more than 2.5 bushels of bay scallops may be on board when the culler boards the vessel.

G. Returning to shore for other reasons with the intention of resuming scalloping on the same day. License holders must notify the shellfish warden if they plan to resume so that the boat may be checked upon arrival.

H. Transferring of scallops. No catch shall be transferred from one boat to another.

I. Commercial bay scallop limits. The Select Board shall allow the taking of five level bushels (shells included) in "Town approved boxes" per commercial bay scallop permit. Each boat may have a maximum of 10 level bushels harvested with two valid commercial bay scallop permit holders on board.

J. Bay scallop size harvest criteria (322 CMR 6.11). No person shall land or possess bay scallops without a well-defined growth line, and that growth line shall measure at least 10 millimeters from the hinge of the shell. Exception: Bay scallops that have an annual growth line located less than 10 millimeters (mm) from the hinge of the shell shall be lawful to harvest if the shell height is at least 63.5 millimeters (mm) or 2.5 inches.

K. Use of dredges for commercial bay scallops. Dredges may not be used before 6:30 a.m. or after 4:30 p.m. on any given scalloping day. The weight of any given dredge is restricted to 35 pounds. The use of two or more dredges connected by an iron bar or any similar device is prohibited. No dredge or dredges greater than 28 inches will be permitted. Power-hoisting of dredges is permitted, provided no dredge is more than 28 inches wide, seven rings deep, and the net on the dredge is not over 18 mesh long. Only eight dredges are allowed to be towed at any given time.

L. Landing location of bay scallops. All bay scallops harvested in Nantucket waters shall be landed in Nantucket and the catch shall remain in boxes.

**§ 260-4.30. Quahogs.**

A. Commercial quahog harvesting days/hours. Quahogs may be harvested daily from 1/2 hour before sunrise to 1/2 hour before sunset.

B. Commercial quahog limit. No more than 20 bushels, including shells, in Town-approved boxes shall be taken per permit per day. If there are two commercial permits on board, then 40 bushels may be harvested.

C. Quahog size harvest criteria. No person shall take or have in his possession quahogs less than one inch thick at the hinge.

D. Commercial harvest methods. Hand collecting and rakes shall be allowed, provided the teeth spacing on rakes is a minimum of one inch and basket openings are a minimum of 15/16 inches across. All other methods of harvesting quahogs, including dredging, must be preapproved in writing by the Town of Nantucket or its designee.

**§ 260-4.31. Blue mussels.**

A. Commercial blue mussel harvesting days/hours. Blue mussels may be harvested daily from 1/2 hour before sunrise to 1/2 hour before sunset.

B. Commercial blue mussel limit. No more than 10 bushels, including shells, in Town-approved boxes shall be taken per permit per day. If there are two commercial permits on board, then 20 bushels may be harvested.

C. Blue mussel size harvest criteria. No person shall take or have in his possession blue mussels less than two inches in length.

D. Commercial harvest methods: hand collecting, rakes, tongs. All other methods of harvesting blue mussels, including dredging, must be preapproved in writing by the Town of Nantucket or its designee.

**§ 260-4.32. Conches and whelks.**

A. Commercial conch/whelk harvesting season/days/hours. Conches/Whelks may be harvested from April 15 to December 15, daily, from 1/2 hour before sunrise to 1/2 hour before sunset.

B. Commercial conch/whelk limit: 200 tagged pots.

C. Conch/Whelk size harvest criteria. Currently 2 3/4 inches at the greatest width, to be raised 1/8 inch per year to the optimal size of 3 1/2 inches (first increase to be implemented by the DMF for the 2014 season).

D. Commercial conch/whelk harvest methods: hand collecting, rakes, and tongs. Pots are limited to state permit holders.

E. Town permit required for commercial conch/whelk harvest in Town waters. A Town permit is required to commercially conch within Nantucket and Madaket Harbors. The boundary line for Nantucket Harbor will be from the end of the east jetty to the end of

the west jetty. The boundary line for Madaket Harbor is from eel point to Ester's Island. (See map included as an attachment to this chapter for details.)

F. Prohibition of harvest. Commercial harvesting of whelks/conch is prohibited every other year. A schedule of closures will be approved by the Town of Nantucket or its designee.

G. Maximum allowable pots in Nantucket and Madaket Harbors. The maximum allowable pots in Nantucket Harbor and Madaket Harbor combined will not exceed 90 pots. Tags will be issued in equal number among permit holders and are transferable.

### § 260-4.33. Other shellfish species.

Other shellfish or crab species shall not be taken for commercial purposes from the waters of the Town of Nantucket without the express written permission of the Natural Resources Department, Harbor and Shellfish Advisory Board, and the Select Board.

### § 260-4.34. Permit fees. [Amended during codification]

Commercial shellfishing permit fees shall be set from time to time by the Select Board.

### § 260-4.35. Commercial seasons, days, limits and size restrictions.

| Species | Season | Daily Harvest Limit | Days/Hours | Size Restrictions |
|---|---|---|---|---|
| Bay scallops | November 1 - March 31 | 5 level bushels per permit (2 permits maximum per boat) | Monday - Friday/ 6:30 a.m. - 4:30 p.m. | Must possess a well-defined growth ring.<br>Exception: Bay scallops that have a well-defined raised annual growth line located less than 10 mm from the hinge of the shell shall be lawful to harvest and possess if the shell height is at least 63.5 mm or 2.5". |
| Quahogs | Year round | 20 bushels per permit (2 permits maximum per boat) | 1/2 hour before sunrise - 1/2 hour before sunset | Must be 1 inch thick at hinge |
| Blue mussels | Year round | 10 level bushels | 1/2 hour before sunrise - 1/2 hour before sunset | Must be 2 inches in length |
| Conches/ whelks | April 15 - December 15 | No limit (200 pots) | 1/2 hour before sunrise - 1/2 hour before sunset | Must be 2.75 inches |

Part 5

**Aquaculture**

**§ 260-4.36. Issuance of shellfish aquaculture licenses (grants) for areas surveyed and subdivided by Town.**

Once areas are identified by the Natural Resources Department as potentially suitable for the location of shellfish aquaculture, and the areas are under the control of the Town, the Select Board may exercise its discretion as the licensing authority for the issuance of license(s) for shellfish aquaculture (grants) in compliance with MGL c. 130.

**§ 260-4.37. Previously established grants that become available.**

In the event that a licensed aquaculture area previously certified by the DMF becomes available, it will be considered on whether it should continue for the purpose of aquaculture and, if so, offered first to the Town of Nantucket for propagation use, and if not needed, the next in line on the waiting list of qualified approved applicants shall be notified by the Natural Resources Department. The Select Board shall hold a public hearing to determine who shall be granted the right to use such available acreage for aquaculture.

**§ 260-4.38. Annual license fee and due date. [Amended during codification]**

The annual fee for an aquaculture license to be paid to the Town by each licensee shall be set from time to time by the Select Board, but in no event shall the fee be more than $25 per acre (or portion thereof) per licensee, as required by MGL c. 130, § 64. The fee shall be due no later than March 31 of any given year.

**§ 260-4.39. Location of areas licensed for aquaculture (grants).**

Grants are located in the following areas:

A. Area 1: Head of Harbor (60 acres).

B. Area 2: Coskata Pond (10 acres).

C. Area 3: Pocomo Meadows (6 acres).

D. Area 4: Coskata entrance (12 acres).

E. Area 5: Polpis Harbor (12 acres).

*Approval of the proposed licensed areas shall be determined by the Natural Resources Department, Harbor and Shellfish Advisory Board, and ultimately the Select Board with appropriate regard for reasonable navigational and recreational/commercial interest in the areas concerned.

**§ 260-4.40. Conditions for use of licensed area.**

The Select Board may license specific areas beneath the waters of the Town to individuals for the purpose of granting exclusive rights to plant, grow and harvest shellfish from that

area. Said license is subject to the provisions of MGL c. 130, those set forth in current regulations of the Division of Marine Fisheries, these regulations or other Town bylaws, as well as any specific conditions or restrictions set forth in the license by the Select Board.

### § 260-4.41. Approval of licenses.

The Select Board or its designee will accept and process applications for area licenses in accordance with MGL c. 130, § 57, and the application procedure of the Town, specifically the Natural Resources Department.

### § 260-4.42. Moratorium on licenses.

The Select Board may, at a duly advertised public hearing, declare a moratorium (a time-specific closure) on license approvals at any time this action is deemed appropriate and in the best interests of the fishery and the environment.

### § 260-4.43. Issuance of licenses.

Licenses issued will be issued only to domiciled residents (See Part 8, Definitions, of this Article IV.) of the Town, 18 years of age or older, who have the knowledge and experience to fulfill the responsibilities specified in the license, provided that the applicant has held and used a Nantucket commercial shellfishing permit during two of the last three years or the applicant can demonstrate some experience in shellfish propagation and aquaculture. This may be supported by a letter from a license holder describing the type of work performed and any other information which might be relevant. At such time as a licensee ceases to be a domiciled resident of the Town, that individual shall be removed from the license and the waiting list.

### § 260-4.44. Term and renewal of licenses.

The initial term for a new license shall be two years. Provided appropriate effort has been demonstrated, as required, the first renewal of a license may be for up to 10 years, unless the licensee agrees to a shorter term. Renewals may be requested and acted upon only during the six months immediately prior to the expiration date of the current license. The renewal period shall begin on the expiration date of the existing license.

### § 260-4.45. Working of grants by nonlicensees. [Amended during codification]

All individuals authorized by a licensed grant holder to work the grant in the absence of a licensed grant holder must be registered with the Natural Resources Department or department designated by the Select Board. Licensees are responsible for the actions of all such employees or otherwise affiliated persons while they are working on the grant designated by their registration.

**§ 260-4.46. Limit on size of grant.**

No licensee shall hold a license for, or have use of, more than one to four acres (depending on availability) during lease years 1 to 3 and upon good standing and demonstrated need for expansion may apply for one to six more acres but not to exceed 10 acres total per lease. Special consideration may be given by the Select Board or its designee for earlier expansions if environmental conditions prohibit or alter production plans as originally proposed. Each person named on a license as a licensee shall be charged with the total acreage covered by that license.

**§ 260-4.47. Rights of use and transfer.**

A. Licensees shall have the exclusive use of the area described in their license for the purpose of aquaculture, for the duration of their terms. No other individual may use the license without the express permission of the licensee(s).

B. Licensees may transfer the rights or responsibilities assigned to their license to any other individuals, companies or corporations by vote of the Select Board. (See MGL c. 130, § 58.)

**§ 260-4.48. Inheritance of rights to use license.**

Any license issued under the provisions of MGL c. 130, § 57 shall, upon the death of the sole licensee, continue in full force and effect, subject to the same terms, conditions and regulations imposed by the original license, for the balance of the unexpired term or one year, whichever is longer. This is for the use and benefit of the immediate family of the deceased licensee. For purposes of this section, the term "immediate family" shall mean a spouse, son, daughter, mother, father, brother or sister of said deceased licensee.

**§ 260-4.49. Liability of Town.**

The Town will not be held liable for any damage to a licensed area, or gear, or stock thereon by reason of any dredging or other harbor improvements undertaken by the Town.

**§ 260-4.50. Evidence of productivity.**

"Evidence of productivity" shall be defined as listed below in § 260-4.51, Minimum levels of production.

**§ 260-4.51. Minimum levels of production.**

There shall be minimum level of shellfish production required in order to retain an aquaculture license. This shall be a minimum inventory maintained of 10,000 shellfish per acre. These standards are subject to review by the Select Board or its designee and may be amended.

**§ 260-4.52. Failure to meet production levels.**

Failure of the licensee(s) to meet the specified production level for any three consecutive years may result in the forfeiture of the aquaculture license and licensed area, as stated in MGL c 130; § 65.

**§ 260-4.53. Waiver of production requirements.**

The Natural Resources Department shall have the right to waive the minimum production requirement when there is evidence that the failure to meet the minimum standard is due to events beyond the control of the license holder.

**§ 260-4.54. Investment and production in extension of or addition to licensed area (grant). [Amended during codification]**

In the event of an extension being granted to a presently licensed area, the same level of effort per acre for the newly licensed area is required as described above.

**§ 260-4.55. Annual reports.**

Licensees shall file annual reports, under oath, on their activities in accordance with MGL c. 130, § 65 on or before December 31 each year. The report must include any changes or deviation from the original plan filed with the original application or any subsequent application.

**§ 260-4.56. Penalty for false reports.**

Any licensee who submits a false licensed area report in violation of MGL c. 130, § 65 shall be penalized by the revocation of his or her license.

**§ 260-4.57. Notification of failure to meet minimum requirements.**

Subsequent to the filing of the annual report, the Natural Resources Department will notify any license holder who, in the opinion of the Town, has failed to meet the minimum requirements. The license holder has the right to appeal to the Select Board within two weeks after notification. If no appeal is filed on a timely basis, the license will be forfeited.

**§ 260-4.58. Annual inspection of grant.**

The Natural Resources Department shall make no less than one visit per year to the site of each licensed area in the company of the license holder.

**§ 260-4.59. State seed permit required.**

No person shall harvest, plant, transplant, transport, sell or otherwise have in his/her possession seed shellfish, without first obtaining a state seed permit from the Massachusetts DMF, as required by MGL c. 130, § 80 and 322 CMR 15.04(1)(b)1.

**§ 260-4.60. Predator control measures. [Amended during codification]**

It shall be unlawful to use lethal means to control or exclude predators or other organisms from any area used for aquaculture. Nonlethal exclosures, including, but not limited to, nets, fences, bubble curtains and noise, may be used, if approved for a specific site and purpose. Invertebrate predators, pests and fouling organisms may be removed manually from an aquaculture site and disposed of in a lawful manner. [(CMR 322, Section 13.7.2); (322 CMR 15.07(2)]

**§ 260-4.61. Horseshoe crabs.**

Horseshoe crabs shall not be intentionally killed while practicing predator control.

**§ 260-4.62. Endangered species.**

No person shall maintain a predator control method that will intentionally threaten any endangered species.

**§ 260-4.63. Removal of bay scallop seed from licensed area.**

In the event that a significant amount of bay scallop seed sets within the boundaries of a licensed aquaculture lease, every effort shall be made to remove and relocate the seed by the licensee and the Department of Natural Resources.

**§ 260-4.64. Grants to be marked.**

A. Every licensee shall mark the corners of the area licensed under his/her license with buoys marked with the license number. From April 1 to November 1, the corners shall be marked with float balls approved by the Natural Resources Department.

B. Buoys shall be attached to their anchor by cables, chains or nonfloating lines. Numbers shall be marked on said buoys, and shall be at least two inches high and shall be black in color. Winter sticks shall be required from November 1 through April 1.

**§ 260-4.65. Marking of gear.**

Every licensee shall clearly and permanently mark any and all trays, boxes, holding cars and all other aquaculture gear with the license number of the license area in a manner that is clearly visible.

**§ 260-4.66. Gear to be secured or disposed of. [Amended during codification]**

All gear on licensed areas must be securely fastened to the bottom or removed. All unusable gear, including loose nets, twisted and damaged racks, loose envelopes, grow-out bags and fastening devices, must be removed from a licensed area and disposed of properly.

**§ 260-4.67. Retrieval of displaced gear.**

If the gear is not properly secured and ends up outside of the leaseholder's designated area or on shore, it is up to the leaseholder to provide immediate removal.

**§ 260-4.68. Winterizing of floating gear.**

Oyster Gro cages or other floating/suspended gear located in NT5 must be sunk and secure by December 15, unless the Natural Resources Department deems it necessary to require an earlier winterizing date due to potential damaging weather or water temperatures.

**§ 260-4.69. Exception for ice in harbor.**

The Shellfish Constable shall have the authority to temporarily waive these regulations if the presence of ice hampers the ability of a licensee to immediately comply with these regulations.

**§ 260-4.70. Fines for gear violations.**

After receiving a written warning, the licensee has seven days to comply. After the seventh day, a $50 ticket shall be issued for each day of noncompliance. After 30 days of noncompliance, the licensee shall have his or her license revoked.

**§ 260-4.71. Hydraulic harvesting of shellfish from grant areas.**

The use of hydraulic harvesting gear for the purpose of harvesting shellfish from within the boundaries of a licensed area is permitted under the following conditions and with the following restrictions:

A. Devices used shall be for the hosed ejection of water under pressure into a shellfish bed.

B. Pressure pumps shall not exceed five horsepower as rated by the manufacturer.

C. Noise-control devices (i.e., mufflers) shall be in place and in good repair at all times.

D. Not more than one device may be used on any grant at any time.

E. Hours of operation shall be between 7:00 a.m. and 1/2 hour before sunset.

F. The Natural Resources Department shall have the authority to direct an individual involved in the use of such equipment to cease and desist if it feels that there is a problem that necessitates such action. Any individual so ordered shall have the right to appeal the decision to the Select Board at its first scheduled meeting after the service of such order.

### § 260-4.72. Extension of acreage without permission.

No aquaculture license holder may willfully extend or cause to extend his or her grant boundaries, or allow cultivation, operation, propagation or products and equipment to exist beyond the duly recorded boundaries of his or her licensed area. The Natural Resources Department may cause a licensed area to be resurveyed by a registered civil engineer in the event that the assigned boundaries of an aquaculture license are called into question. If a violation of this Part 5 is then established, the aquaculture license of the individual guilty of the infraction shall then be revoked.[1]

### § 260-4.73. Abandonment or default of lease.

In the event of abandonment or default of a lease, the leaseholder is required to remove all personal property from the licensed area at his/her cost. If gear is not completely removed, the Town of Nantucket may remove the gear at the expense of the leaseholder.

### § 260-4.74. Adherence to state vibrio protocols.

All licensed aquaculture growers must adhere to all state policies regarding vibriosis and the harvesting of shellfish.

## Part 6
## Scientific Research

### § 260-4.75. Research and propagation projects/plans involving Town waters (noncommercial). [Amended during codification]

The applicants for a permit to conduct scientific collection or shellfish propagation shall provide a plan of the project, including all aspects of their backgrounds and intended management and operations of the project, to the Natural Resources Department, Harbor and Shellfish Advisory Board, and, if appropriate, the Select Board three months prior to the start of the project.

### § 260-4.76. Research license.

Researchers are required to obtain the necessary permits and approvals required for scientific collection or shellfish propagation from the Town of Nantucket and the Division of Marine Fisheries.

### § 260-4.77. Dissemination of data and results. [Amended during codification]

All data and subsequent results and analyses of the project shall be made available to the Natural Resources Department, Harbor and Shellfish Advisory Board, and the Select Board

1. **Editor's Note: Original Sec. 5.38, Disturbance of grant by other than the licensee and (MGL Chapter 130; Section 57, Section 63 and Section 67), which immediately followed this section, was repealed during codification.**

and the Division of Marine Fisheries at predetermined times to be established in the plan of the project.

### § 260-4.78. Excess research product (noncommercial).

Shellfish products resulting from the exercise of these approvals and permits, in excess of those required for the aquaculture research and development, shall be turned over to the Town of Nantucket annually, for appropriate use by the Natural Resources Department.

## Part 7
## Enforcement

### § 260-4.79. Enforcement personnel.

In compliance with Chapter 122, Taking of Shellfish, § 122-16, of the Code of the Town of Nantucket, the Shellfish Warden as designated by the Select Board is the primary enforcement personnel. The Select Board shall assign any other personnel or deputies as it sees fit for shellfish enforcement.

### § 260-4.80. Penalties and appeals.

Recreational and commercial violations and the associated penalties are listed in the tables below. Any penalty may be appealed to the Select Board within 30 days of issuance.

### § 260-4.81. Payment of penalties.

Penalties must be paid in full with a receipt provided to the Natural Resources Department.

### § 260-4.82. Disposition of unlawful catch.

All confiscated catch will be documented and photographed before putting unlawful shellfish back into the water by the Shellfish Warden (MGL c. 130, § 12).

### § 260-4.83. Suspensions.

Suspension applies to open fishing days only.

### § 260-4.84. Recreational violations.

| Violation | 1st Offense | 2nd Offense | 3rd Offense | Final Offense |
|---|---|---|---|---|
| No Town license on record | $125*, loss of catch and cessation of shellfishing for the day | $250, loss of catch and cessation of shellfishing for the day | $500, loss of catch and cessation of shellfishing for the day | $1,000, loss of catch and cessation of shellfishing for the day |
| Refusal of inspection | $250 | $500 | $1,000 | $1,000 and loss of license |
| Over limit for the day/week | $125* (loss of catch) | $250 (loss of catch) | $500 (loss of catch) | $1,000 (loss of catch) |
| Shellfishing in closed areas | $125* | $250 | $500 | $1,000 |
| Taking of undersized shellfish | $125* (loss of catch) | $250 (loss of catch) | $500 (loss of catch) | $1,000 (loss of catch) |
| Taking shellfish on closed days/ hours | $125* (loss of catch) | $250 (loss of catch) | $500 (loss of catch) | $1,000 (loss of catch) |
| Taking shellfish out of season | $125* (loss of catch) | $250 (loss of catch) | $500 (loss of catch) | $1,000 (loss of catch) |
| Taking of shellfish using unapproved methods | $125* (loss of catch) | $250 (loss of catch) | $500 (loss of catch) | $1,000 (loss of catch) |
| No pin displayed | $25*, loss of catch and cessation of shellfishing for the day | $50, loss of catch and cessation of shellfishing for the day | $75, loss of catch and cessation of shellfishing for the day | $100, loss of catch and cessation of shellfishing for the day |
| No dive flag displayed | $25* (cessation of shellfishing for the day) | $50 (cessation of shellfishing for the day) | $75 (cessation of shellfishing for the day) | $100 (cessation of shellfishing for the day) |

| Violation | 1st Offense | 2nd Offense | 3rd Offense | Final Offense |
|---|---|---|---|---|
| Shipping live shellfish off-island without permission for purposes other than consumption (i.e., broodstock or propagation) | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits |

* A verbal warning may be given for the first offense at the discretion of the Shellfish Warden.

**§ 260-4.85. Commercial violations.**

| Violation | 1st Offense | 2nd Offense | 3rd Offense | 4th Offense |
|---|---|---|---|---|
| Refusal of inspection | 10 days off and confiscate catch | 30 days off and confiscate catch | 60 days off and confiscate catch | 1 year off and confiscate catch |
| Seed >5% and undersized shellfish | 1 day off and confiscate catch *1st offense in subsequent years = 5 days off | 10 days off and confiscate catch | 30 days off and confiscate catch | 1 year off and confiscate catch, re-apprentice, and can't purchase license until suspension is up |
| Red flag fishing | 1 day off and confiscate catch | 10 days off and confiscate catch | 30 days off and confiscate catch | 1 year off and confiscate catch, re-apprentice, and can't purchase license until suspension is up |
| Taking of shellfish using unapproved methods | 1 day off and confiscate catch | 10 days off and confiscate catch | 30 days off and confiscate catch | 1 year off and confiscate catch |
| Fishing on suspended license | 10 days off and confiscate catch | 30 days off and confiscate catch | 60 days off and confiscate catch | 1 year off and confiscate catch |
| Shellfishing in closed areas | 1 day off and confiscate catch | 10 days off and confiscate catch | 30 days off and confiscate catch | 1 year off and confiscate catch |

| Violation | 1st Offense | 2nd Offense | 3rd Offense | 4th Offense |
|---|---|---|---|---|
| Taking shellfish on closed days/ hours | 1 day off and confiscate catch | 10 days off and confiscate catch | 30 days off and confiscate catch | 1 year off and confiscate catch |
| Poaching (from aquaculture lease) | Subject to criminal penalties and fines | Subject to criminal penalties and fines | Subject to criminal penalties and fines | Subject to criminal penalties and fines |
| Lack of proper permits | Confiscate catch and $50 fine | Confiscate catch and $150 fine | Confiscate catch, $300 fine and 10 days off | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| Greater than 5% by-catch | Confiscate catch and $50 fine | Confiscate catch and $150 fine | Confiscate catch and $300 fine/ and 10 days off | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| Taking shellfish out of season | Confiscate by-catch and $50 fine | Confiscate catch and $150 fine | Confiscate catch, $300 fine and 10 days off | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| No permit for saleable by-catch | Confiscate by-catch and $50 fine | Confiscate by-catch and $150 fine | Confiscate by-catch, $300 fine and 10 days off | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| Over daily bushel limit (extra box or partial box) | Confiscate catch and $50 fine | Confiscate catch and $150 fine | Confiscate catch and $300 fine | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| Tags on boxes | Confiscate by-catch and $50 fine | Confiscate catch and $150 fine | Confiscate catch, $300 fine and 10 days off | Confiscate catch, lose active permit for 30 days and $1,000 fine |
| Shipping live shellfish off-island for purposes other than consumption (i.e., broodstock or propagation) | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits | $25,000 and not eligible for future Town shellfish permits |
| Fish early/late | 1 day off* | 5 days off | 10 days off | 30 days off |

| Violation | 1st Offense | 2nd Offense | 3rd Offense | 4th Offense |
|---|---|---|---|---|
| Failure to submit monthly catch report | 1 day off* | 5 days off | 10 days off | 30 days off |
| Dredges in excess of 35 pounds | $50 fine* | $150 fine | $300 fine | $500 fine |
| Exceeding bushel limit when picking up a culler | $50 fine* | $150 fine | $300 fine | $500 fine |
| Mounding | Confiscation of extras and $50 fine* | Confiscation of extras and $100 fine | Confiscation of extras and 1 day off | Confiscation of extras and 5 days off |
| Broken/Altered bushel boxes | $50 fine* | $100 fine | 1 day off | 5 days off |
| No dive flag displayed | $50 fine* | $100 fine | 1 day off | 5 days off |

* A verbal warning may be given for the first offense at the discretion of the Shellfish Warden.

## Part 8
## Definitions

### § 260-4.86. Terms defined.

Unless otherwise identified, all cited sections refer to sections of the Town of Nantucket Shellfishing Policy and Regulations. The terms listed in this section, when used in the Town's Shellfishing Policy and Regulations, shall have the meanings that follow:

ANNUAL AQUACULTURE REPORT — A required yearly report form detailing aquaculture production and gear summary for aquaculture licensees to submit annually.

APPRENTICE — Applicant for a commercial shellfishing permit that has never been issued a permit from the Town of Nantucket in previous years (specific requirements as defined in § 260-4.29B).

AQUACULTURE — The farming of aquatic marine organisms, including, but not limited to, fish, mollusks, crustaceans, echinoderms and plants. Farming implies some sort of intervention in the rearing process to enhance production, including, but not limited to, controlled propagation, feeding and protection from predators.

AQUACULTURE LICENSE/PERMIT — An authorization, granted by a vote of the Select Board, to utilize a specific tract of land under coastal waters:

A. To plant and grow shellfish in bottom or off-bottom culture;

B. To place shellfish in or under protective devices affixed directly to the tidal flats or land under Nantucket's coastal waters, such as boxes, pens, trays, bags or nets;

C. To harvest and take legal shellfish;

D. To plant cultch for the purpose of catching shellfish seed; and

E. To grow shellfish by means of racks, rafts or floats (MGL c. 130, § 57 to § 68).

AQUACULTURE LICENSED AREA (GRANT) — A designated bottom area, certified by the Department of Marine Fisheries (DMF) and licensed by a vote of the Select Board, on which the licensee may plant, grow and harvest shellfish (MGL c. 130, § 57 and § 68).

AQUACULTURE PERMIT — See "permit."

BASKET RAKE — A hand-held implement used for the harvesting of shellfish, which is similar to but longer than a standard clam hoe, which has a basket and no more than 20 teeth, is no wider than 12 inches at its widest part, does not have a T handle, and is only to be used on foot.

BAY SCALLOP — A marine mollusk of the species Argopecten irradians.

BLUE CRAB — A species of crustacean known as Callinectes sapidus.

BULL RAKE — A T-handled, hand-held and hauled implement used for the harvesting of shellfish. It shall be 12 inches or wider and have a fixed basket and teeth.

BUSHEL/TOWN-APPROVED BOX — U.S. dry measure; 2150.42 cubic inches, or 32 quarts (see picture in Appendix A[2]).

BY-CATCH — The incidental capture of non-target species.

CLAM RAKE — A hand tool of typically eight tines or less, used to manually bring clams to the surface of the substrate.

CLOSURES — Any area or time period as designated by the Division of Marine Fisheries, Select Board or their designee prohibiting the taking of shellfish.

CMR — Code of Massachusetts Regulations.

COMMERCIAL HARVEST — The harvest of shellfish for sale, trade, or other consideration.

CONCH/WHELK — Any species known as Busycon carica (knobbed whelk) and Busycotypus canaliculatus (channeled whelk).

CONSTABLE (WARDEN) — The municipal employee, appointed by the Select Board, who is in charge of administering the management of the fishery.

(TO) CULL — To remove dead, dying, undersized or otherwise unsuitable organisms (also, the organism which is removed).

**2. Editor's Note: Appendix A is included as an attachment to this chapter.**

(TO) DIG AND TAKE — (archaic) See "(to) harvest."

(TO) DIVE — The use of SCUBA, surface-supplied air, or snorkel to harvest shellfish.

DIPNET — A hand-held net.

DMF — Division of Marine Fisheries.

DRAG/DREDGE — A heavy metal frame with an attached bag, which is towed or dragged along the seafloor to catch bottom-dwelling shellfish. Some have metal teeth along the base of the frame that act like a rake.

EELGRASS — Small genus of widely distributed seagrass.

EELS — An elongated fish Anguilliformes.

FYKE — A long bag-shaped fishing net held open by hoops that act as a cul-de-sac funnel.

GLASS EEL/ELVER — Eel in its transparent, post-larval stage.

GRANT — See "aquaculture license/licensed area."

(TO) HANDPICK — The transfer of shellfish to a container from the substrate by hand or with a hand-held tool of eight tines or less.

HANDPICKER — An individual who practices handpicking.

(TO) HARVEST — To gather shellfish or other marine organisms in a container of any sort after sorting and separating them from what has initially been taken from the habitat.

HARVESTING AREA — An area approved for the taking of shellfish.

INTERTIDAL — The land or area between the mean high and the mean low water marks.

(TO) LAND — To bring harvested shellfish by vessel to the Town Pier and to tie up before proceeding elsewhere; to bring harvested shellfish ashore above the mean high water line.

LICENSE HOLDER — A person or persons, or a firm or corporation holding a license issued by the Select Board under the provisions of MGL c. 130, § 8.

LICENSEE — See "license holder."

MEAN HIGH WATER (MHW)/TIDE — The average elevation of all high waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of high tide.

MEAN LOW WATER (MLW)/TIDE — The average height of the low waters recorded for a particular point or station over a considerable period of time, as determined by the National Geodetic Survey, National Ocean Service or National Oceanic and Atmospheric Administration; the average water level that demarcates the transition from exposed land to submerged land at the point of low tide.

MGL — Massachusetts General Laws.

MOUNDING — The act of piling scallops in an approved bushel box so that the scallops exceed the legal level limit of the box.

MUSSEL — A marine mollusk of the species Mytilus edulis.

NUB SCALLOP — A fall spawned scallop defined by the growth ring being less than 10 mm from the hinge.

OYSTER — A marine mollusk of the species Crassostrea virginica.

PERMIT — A certificate issued by the appropriate authority granting permission to engage in specific activities.

PETITE OYSTERS — Aquaculturally reared oysters, the height of which (from hinge to shell margin) is between 2.5 inches and three inches.

PLANTED AREAS — Areas in which the Natural Resources Department or department designated by the Select Board has planted shellfish for purposes of propagation or transplanting. **[Amended during codification]**

POACHING — The illegal harvesting of shellfish from any area.

QUAHOG — A marine mollusk of the species Mercenaria mercenaria, commonly called the "hardshell clam."

QUART — 67.201 cubic inches (U.S. dry measure).

RAKING — Gathering oysters and/or other materials using a rake and then transferring this accumulation to a container, vehicle or vessel.

RAZOR CLAM — A marine mollusk of the species Ensis directus.

RED FLAG — Closures of both recreational and commercial shellfisheries, which shall be noted by red flags posted by the Shellfish Constable.

RESIDENT — A declared resident of the Town of Nantucket. Written proof that Nantucket is the domicile as well as the legal residence of the applicant shall be required to the satisfaction of the Select Board or its designee. Proof of legal residence may include voter registration, automobile registration, driver's license, income tax filings, census data, or verification information as deemed necessary by the issuing agency. To qualify as a resident under these regulations, an individual must have maintained that residence for one full year.

(TO) SCRATCH — To harvest clams with the aid of a clam rake.

SEED — Quahogs, less than one inch wide across both valves at the hinge; soft-shell clams less than two inches in length (the largest measurement, 90° from the hinge to outer margin of the shell); oysters, with the exception of petites, less than three inches in height (from hinge to outer margins of the shell); and scallops without a defined annual growth ring.

SELECT BOARD — The Nantucket Select Board; Nantucket's elected executive board, designated by the state (MGL c. 30) as the regulatory board that has jurisdiction over shellfishing in the Town.

SHELLFISH — Softshell clams, whelks, mussels, oysters, snails, quahogs, razor clams (razor fish), bay scallops, sea scallops, sea clams, and blood arks.

SHELLFISH TRANSACTION CARD — [322 CMR 7.01(2)(k)] Issued by DMF; authorizes only the named individual holding a commercial fishermen permit endorsed for shellfish and seaworms to sell shellfish and seaworms, and shall be used in conjunction with either a Massachusetts driver's license or a Registry of Motor Vehicles identification card.

SOFTSHELL CLAM (STEAMER) — A softshell clam of species Mya arenaria.

SPAT — An oyster or similar bivalve mollusk in the larval stage, especially when it has settled on and attached itself to a surface on which it can then proceed to grow.

STATE AQUACULTURE PERMIT — "Seed" or propagation permit as defined in MGL c. 130, § 80 and § 69 and 322 CMR 15.04(1)(b)1; authorizes the possession and growing of seed shellfish from an approved source. May be endorsed for the use of upwellers or similar nursery systems to enlarge hatchery seed for planting, but not for resale. May be endorsed for the sale of regulated species below the minimum size established by regulation if an operational plan to control sale, shipment, tagging and record keeping is approved by the Director.

STATE COMMERCIAL PERMIT (COMMERCIAL FISHING PERMIT/SHELLFISH PERMIT) — Issued by DMF; allows an individual to take, land and sell (to a licensed dealer) shellfish and seaworms. A state commercial harvester license and shellfish transaction card from the Division and Town permit are also required. **[Amended during codification]**

STRANDINGS — When shellfish are beached or at risk in shallow waters due to wind-driven storm events.

SUBTIDAL — The body of water or area below that of mean low water for spring tides; habitats rarely, if ever, completely uncovered by low tides.

SURF CLAM (SEA CLAM) — A clam of the species Spisula solidissima.

(TO) TAKE — To harvest.

TONGS — A hand-held and hauled implement used for the harvesting of oysters. Tongs have a scissor mechanism to close two baskets upon themselves.

TOWN — The Town of Nantucket.

TRANSACTION CARD — See "permits"; "shellfish transaction card.'

(TO) TRANSPLANT — The moving of shellfish from one area to another.

WARDEN — See "Constable."

WATERS — Coastal waters, tidal flats, tidal creeks, and all salt water or fresh waters within the boundaries of the Town of Nantucket.

WEIGHTS (FOR DREDGES) — Window weights used to make the dredge heavier.

# Chapter 265

# FOOD SERVICE ESTABLISHMENTS


ARTICLE I
**Exterior Areas of Restaurants and Retail Fish Markets**

**§ 265-1. Construction.**
**§ 265-2. Hot water.**
**§ 265-3. Enclosure.**
**§ 265-4. Violations and penalties.**

ARTICLE II
**Toilet Facilities**

**§ 265-5. Facilities required.**
**§ 265-6. Construction.**
**§ 265-7. Maintenance.**
**§ 265-8. Chemical toilets.**
**§ 265-9. Number of fixtures.**

ARTICLE III
**Grease Interceptors**

**§ 265-10. Types of establishments requiring grease interceptors.**
**§ 265-11. Compliance deadline.**
**§ 265-12. Construction, connection and placement.**
**§ 265-13. Violations and penalties.**


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

**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

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## ARTICLE I
## Exterior Areas of Restaurants and Retail Fish Markets
**[Adopted by the Board of Health 9-10-1980]**

### § 265-1. Construction.

All exterior cleaning areas shall consist of a sealed concrete pad no less than 30 square feet in area unless specified by the Nantucket Board of Health. Said pad shall have contoured sides sloping to a centrally located drain. The drain shall be attached to a cleanable grease trap before entering the sewer line or in-ground septic system.

### § 265-2. Hot water.

Forced hot water shall be at the cleaning pad.

**§ 265-3. Enclosure.**

The cleaning area shall be enclosed, subject to the rules and regulations of the Historic District Commission.

**§ 265-4. Violations and penalties. [Amended during codification]**

Violators of these regulations shall be subject to Article X of the State Sanitary Code, § 590.019.

## ARTICLE II
## Toilet Facilities
## [Adopted by the Board of Health 4-28-1982]

**§ 265-5. Facilities required.**

The operator of each food service establishment with a seating capacity of 25 or more patrons shall provide adequate, conveniently located toilet facilities for its patrons.

**§ 265-6. Construction.**

A. Doors to toilet rooms shall not open directly into areas in which food is handled, stored or prepared.

B. Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors. **[Amended during codification]**

C. Toilet facilities provided for patrons shall meet the requirements of the State Plumbing Code in construction standards and installation.

**§ 265-7. Maintenance.**

A. The operator shall keep all toilet facilities, including rooms and fixtures, in a clean condition, and in good repair, and free of objectionable odors.

B. Toilet fixtures shall be of sanitary design and readily cleanable.

C. The operator shall provide easily cleanable covered receptacles for waste materials and shall cause all receptacles to be emptied as frequently as necessary to prevent excessive accumulation of waste material.

D. The operator shall provide toilet tissue at each toilet at all times.

**§ 265-8. Chemical toilets.**

No privy or chemical toilet may be constructed or used.

**§ 265-9. Number of fixtures.**

Toilet fixtures shall be installed in accordance with the following table:

| Occupancy Load | Minimum Number of Waterclosets | Minimum Number of Lavatories |
|---|---|---|
| 20 - 50 | 1 | 1 |
| 51 - 99 | 2 | 2 |
| 100 - 149 | 3 | 3 |
| 150 - 200 | 4 | 4 |
| 201 - 300 | 5 | 5 |
| 301 - 400 | 6 | 6 |
| 401 - 1,000 | 7 | 7 |
| 1,001 - 1,500 | 8 | 8 |
| 1,501 - 2,000 | 9 | 9 |
| More than 2,000 | 1 per 200 | 1 per 400 |

ARTICLE III

**Grease Interceptors**

**[Adopted by the Board of Health 4-30-1986]**

**§ 265-10. Types of establishments requiring grease interceptors.**

The following types of food service establishments require grease interceptors:

A. All food service establishments having a seating capacity of 25 seats or more.

B. All food service establishments serving shallow- or deep-fried foods for consumption off premises.

C. Any food service establishment not strictly defined as being in the above-noted categories but, in the determination of both the Health Inspector and Department of Public Works Superintendant, contributing substantial grease particulates to a Town sanitary sewer line.

**§ 265-11. Compliance deadline.**

All food service establishments shall install, prior to June 1, 1987, a grease interceptor filter, or other equipment acceptable to the Board of Health, which shall effectively remove all grease from drain water discharged to the sanitary sewer.

**§ 265-12. Construction, connection and placement.**

A. Required interceptors shall be connected to and located downgradient from all dishwashers, sinks and floor drains preceding the discharge of their graywater into the Town sanitary sewer.

B. Said interceptors shall be easily cleanable and checked daily for grease buildup.

**§ 265-13. Violations and penalties.**

Failure to comply with these regulations shall result in nonlicensure or revocation of the establishment's food service establishment permit.

# Chapter 272

# GRILLS, CHARCOAL AND GAS

**§ 272-1. Prohibited fires.**

**§ 272-2. Beach restrictions.**

**§ 272-3. Violations and penalties.**

**[HISTORY: Adopted by the Fire Department of the Town of Nantucket; amended in its entirety during codification. Subsequent amendments noted where applicable.]**

**TOWN REGULATIONS REFERENCES**

**Beaches — See Ch. 216.**

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## § 272-1. Prohibited fires.

Bonfires and wood fires are not permitted anywhere on Nantucket.

## § 272-2. Beach restrictions.

A. Fires not meeting 527 CMR 1.00 cannot be used on any of the public beaches or other beaches patrolled by lifeguards, within their boundaries or jurisdiction marked by signs.

B. Permitted fires on Tuckernuck are restricted to "Whale Point."

## § 272-3. Violations and penalties.

Failure to comply with the above-mentioned regulations may result in possible court action under the General Laws of the Commonwealth of Massachusetts.

# Chapter 278

# HARBORS AND WATERWAYS


ARTICLE I

**Dumping of ~~Sewage~~ waste in Island Waterways**

**§ 278-1. Disposal of ~~refuse~~ waste prohibited.**

**§ 278-2. Violations and penalties.**

ARTICLE II

**Harbors and Town Pier**

**§ 278-3. Definitions.**

**§ 278-4. General prohibitions and restrictions.**

**§ 278-5. Moorings.**

**§ 278-6. Town pier.**

**§ 278-7. Fees.**

**§ 278-8. Enforcement; violations and penalties.**

**§ 278-9. Severability.**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of penalties — See Ch. 1, Art. II.**

**Town wharves and waterways — See Ch. 137.**

**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

**Fishing and shellfishing — See Ch. 260.**

**Boats used as residences — See Ch. 283, Art. I.**

ARTICLE I

**Dumping of ~~Sewage~~ waste in Island Waterways**

~~[Adopted by the Board of Health 8-14-1985]~~

**§ 278-1. Disposal of ~~refuse~~ waste prohibited.**

No person shall dispose of, or if in control of any vehicle, boat or other conveyance, allow to be disposed of, in or on any way to which the public has access, or in or on any stream, pond, creek, waterway, estuary, harbor, beach or foreshore in the Town of Nantucket, any garbage, refuse, bottles, cans, containers, gray water, treated or untreated sewage or other refuse material of any kind or nature.

**§ 278-2. Violations and penalties.**

Any person violating this regulation shall be punished by a fine of not more than $300 for each offense.

ARTICLE II

**Harbors and Town Pier**

**§ 278-3. DEFINITIONS**

"BERTH" means any space wherein a vessel is confined by wet slip, dry stack, float, mooring, or other type of docking facility.

"COMMERCIAL USE", a vessel engaged in commercial trade or that carries passengers for hire.

"COMMERCIAL FISHING BOAT", a vessel which is used to engage in the industry or occupation devoted to the catching, processing, or selling of fish, shellfish, or other aquatic animals.

"DINGHY", a small self-propelled vessel used for transportation to and from a dock or wharf, and/or between vessels moored in the harbor.

"DINGHY PERMIT", an annual permit issued by the Town of Nantucket for a Dinghy.

"DIVER", includes swimmers using fins and/or masks and/or snorkel tubes or self-contained underwater breathing devices and may include those diving without aids, where the circumstances are appropriate.

"GRAY WATER", in Nantucket waters as defined above, gray water is a vessel's water/soap discharge, which is derived from galley, bath, showers, dishwashing and laundry equipment.

"IMMEDIATE FAMILY", parents, grandparents, children, sister, brother, and spouse.

"HARBOR MASTER", officer appointed by the Town to perform the duties of Harbor Master.

"LIVEABOARD", a liveaboard is a person who sleeps aboard a vessel and the vessel is considered as a residence for any period of time as determined by the Harbor Master.

"MOORING", A means of temporarily berthing a vessel utilizing a dead weight, mushroom or pyramid type bottom anchor affixed to a chain or other method approved by the Harbor Master, which is affixed to a buoy.

"MOORING PERMIT", annual permit issued by the Town of Nantucket for the placement and use of a Mooring in Nantucket Waterways pursuant to M.G.L. c.91, s.10A. Mooring Permit does not include the Mooring License Agreement permitting the installation of Rental Moorings.

"NANTUCKET WATERWAYS or WATERWAYS", includes all of the navigable waters within the boundaries of Nantucket County, which shall include all harbors, rivers, bays or ponds, including waterways which, from time to time, may be temporarily non-navigable by reason of low tides, drought or seasonal weather and water conditions.

"PERSONS", includes an individual, corporations, societies, associations, partnerships, trusts or other business or corporate entity recognized by law as having the standing of a person.

"RAFT" or "FLOAT", a non-propelled floating craft, not intended for transportation purposes.

"RENTAL MOORING". Mooring installed and maintained by the Mooring Licensee pursuant to a Mooring License Agreement between the Mooring Licensee and the Town.

"RECREATIONAL VESSEL ", a vessel manufactured or operated primarily for pleasure.

"TOWN", Town of Nantucket, Massachusetts.

"TOWN PIER", municipal pier located at 34 Washington Street, to include timber pier and floating dock.

"TRANSIENT", a vessel visiting Nantucket Waterways for a short period of time not exceeding forty-eight (48) hours.

"VESSEL", ships and boats of all kinds, including barges, sailing vessels, watercraft and powerboats of any type or kind by whatever means propelled; every structure, designed, adapted, or capable of being navigated, towed or operated on water from place to place for the transportation of merchandise, people or for any other purpose.

"WAITING LIST", the official list of names of mooring permit applicants managed by the Town.

"WATER-DEPENDENT USES", those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: marinas, recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, and channels, industrial uses dependent upon waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site.

## § 278-4. General prohibitions and restrictions.

A. Except in an emergency, no vessels shall be made fast to any of the Town's wharves, floats or piers without the permission of the Harbor Master.

B. No person shall leave any vessel, fishing equipment, fish or any other personal property upon Town landing places, floats, wharves or pier for longer than is necessary in the act of loading or unloading the same to and from vessels or vehicles.

C. The Town shall not be responsible for any loss or damage to vessels at the Town wharves, floats, pier or moorings. Owners will be held responsible for damage caused by them or their vessels to structures and pilings and related facilities owned by the Town.

D. No warp or line shall be passed across the channels or any dock so as to obstruct or interfere with vessels navigating in the area.

E. Except in an emergency, no vessel shall fuel at any of the Town's wharves, floats or piers without the permission of the Harbor Master.

F. Vessels shall not be permitted to tie up or otherwise made fast at the Nantucket Town pier or wharves in Madaket, except as authorized by the Harbor Master.

G. All vessels using the Town wharves and Waterways shall observe all police, fire, health and sanitary regulations of the Town, and the owners or operators of such vessels shall not permit acts contrary to good order, public safety or public health, including public profanity or obscene language or indecent exposure. Unnecessary noise, loud talking or playing of musical instruments between the hours of 11:00 p.m. and 8:00 a.m. is not permitted. No person upon such vessel shall throw garbage, paper, refuse or debris of any kind into the harbor.

H. Commercial or business use of any vessel or watercraft docked at any Town-owned dock, pier or wharf is prohibited, except that Charter or commercial fishing boats or other uses defined as "water dependent" as herein defined and provided that such uses and the vessels employed in such uses are first allocated dock space in accordance with these regulations.

I. No vessel or watercraft of any kind whatsoever which is painted with paints containing butyltin compounds shall be permitted to moor in Town waters or tie up at the Town wharves, whether private or public.

J. Between October 15 and April 15, all Dinghies not servicing vessels presently moored in the harbor shall be removed from any ~~Town~~ property where dinghy storage has been permitted.

K. The Town may remove after October 30, any Dinghy left on Town any property where storage has been permitted. Following such removal, the Harbor Master shall give notice of the removal as follows:

(1) if the owner is known, then by mail, email, or hand-delivery;

(2) if the owner is unknown, then by publication in a newspaper of general circulation within the Town;

(3) if, after thirty (30) days following the publication or written notice, the owner has failed to claim the Dinghy and reimburse the Town for removal costs, the Dinghy may then, at the discretion of the Harbor Master, be sold at public auction to cover the costs of removal. If said auction produces surplus proceeds after payment of the costs of removal, said surplus shall be held in a separate account and be paid over to the owner upon proof of ownership.

L. There shall be no Liveaboards at any Town Pier or Wharf. Liveaboards shall only be allowed within the Nantucket Boat Basin, or in Nantucket Waterways if the vessel is tied to a Mooring that is authorized by the Town pursuant to these regulations. Vessels used as Liveaboards that are anchored are prohibited.

M. Vessels using Nantucket Waterways for more than forty-eight (48) hours, which are not berthed or trailered, must utilize a Mooring which has been permitted under these regulations or a Rental Mooring. The Harbor Master may, in the event of no suitable berthing space being available, allow transient vessels to anchor in an approved area until such time as a berthing space becomes available.

## § 278-5. Moorings

A. Mooring Equipment

(1) All Moorings must be registered and a permit for the Mooring must be approved prior to the placement of the Mooring. No Mooring shall be placed by any person or Mooring Handler unless a Mooring Permit has been issued. The Harbor Master may authorize a temporary Mooring placement on a case by case basis pending issuance of a Mooring permit.

(2) The location of all Moorings shall be determined from time to time by the Harbor Master. No Mooring shall be located in the main stream, channel or turning basin of any of the harbors of the Town, unless, in the opinion of the Harbor Master, the particular circumstances require it. Moorings shall be located so that vessels lying on them shall not block any channel or approach to wharves or other Moorings in the vicinity or create any other hazard to navigation.

(3) No vessel shall use a Mooring in Nantucket Waterways unless the Mooring is in good condition and meets the following minimum standards unless otherwise determined by the Harbor Master:

| Length of Boat | Mushroom Mooring | Concrete Block Mooring |
|---|---|---|
| Under 14’ | 75 lbs. | Subject to individual approval by the Harbor Master |
| 15’ to 18’ | 150 lbs. | |
| 19’ to 22’ | 200 lbs. | |
| 23’ to 26’ | 300 lbs. | |
| 27’ to 32’ | 500 lbs. | |
| Over 32’ | Subject to individual approval by the Harbor Master | |

(4) No vessel shall use a Mooring unless the chain is in good condition and that the length is at least the vertical height above the sea bottom to four feet above mean high water. Maximum length of chain shall be no more than 2.5 times the maximum depth of the water, except where the Harbor Master determines otherwise. All Mooring chains shall be of a grade suitable for Moorings and meet the following minimum size standards:

| Length of Boat | Chain Minimum Size |
|---|---|
| 10’ to 23’ | 1/2” |
| 24’ to 32’ | 5/8 |
| Over 33’ | 3/4" - 1” as determined by the Harbormaster |

(5) No vessel shall use a Mooring pennant unless it is in good condition and of a type suitable for Moorings. The length shall be no longer than half the length of the vessel. Pennant line size shall be:

| Length of Boat | Line Minimum Size |
|---|---|
| Up to 10’ | 7/16” |
| 11’ to 23’ | 1/2” |
| 24’ to 32’ | 5/8” |
| Over 33’ | 3/4" |

NOTE: The use of synthetic lightweight high-strength pennant lines such as Dyneema and Spectra may be used in lesser dimensional sizes provided that such use provides equal or greater tensile strength than the standard line sizes listed above.

(6) Moorings shall be inspected by the Harbor Master, or by a designated representative at least once every two (2) years to determine their compliance with the regulations herein. Proof that the Mooring has been inspected is a requirement for a Mooring permit to be issued. If a permit is not issued pending an inspection, and a period of thirty (30) days elapses from the date that the permit is requested to be issued, the Harbor Master shall notify the permit holder by certified mail at the address appearing on the permit application that if the permit holder fails to provide proof of inspection within thirty (30) days, the Mooring permit will be forfeited.

(7) The Harbor Master may remove, relocate or order the removal of any Mooring not in compliance with these regulations. The expense of such removal or relocation shall be the responsibility of the owner.

(8) The Harbor Master may order the removal or relocation of any Mooring whenever, in the judgment of the Harbor Master, the safety of other vessels or the optimum use of the area requires such action. The expense of such removal or relocation shall be the responsibility of the owner. Except when immediate removal is deemed necessary by the Harbor Master, an owner shall have at least fourteen (14) days to relocate or remove a Mooring when so ordered by the Harbor Master.

(9) All Moorings shall be removed from areas designated by the Harbor Master as shell fishing areas prior to October 15.

(10) All Mooring buoys shall be white and have a minimum one-inch blue band visible above the water. Buoys shall be marked with the permit number assigned by the Harbor Master. The numbers shall be a minimum of three inches in height and be clearly visible. Mooring buoys shall be of customary shape and materials as determined by the Harbor Master.

(11) Spar buoys shall be upright at all times and not less than 40° at any period of tide and not less than 18 inches exposed.

(12) The Harbor Master may order the removal of any buoy deemed to be inappropriate in form, appearance or construction.

(13) Helix type or any other permanent Mooring that has not been permitted pursuant to Chapter 91 of the General Laws or received a permit from the U.S. Army Corps of Engineers is prohibited.

(14) Any existing Helix Mooring not permitted under Subsection A (13) shall be removed.

B. Mooring Permits

(1) To be eligible for a Mooring Permit, any vessel habitually moored in Nantucket Waterways shall have paid any excise tax due pursuant to Chapter 60B of the General Laws. Furthermore, only Massachusetts registered vessels, non-motorized vessels, or vessels with a valid Federal documentation certificate showing the vessels hailing port of Nantucket shall be eligible for a mooring permit.

(2) All applications for a Mooring space in any Nantucket harbor or waterway shall be submitted to the Town on the Mooring Permit Application form. All information requested on the form must be supplied or the application may be rejected.

(3) The Mooring Permit decal issued by the Town shall be firmly affixed to boat on the port side of the bow, or in the case of classic-design wooden sail boats, the port side of the mast.

(4) Only the registered boat, displaying a current and valid mooring permit decal, which is owned by the person to whom the Mooring Permit was issued, shall fasten to the Mooring.

(5) At the time of the Mooring Permit issuance, if the Mooring Permit holder does not currently own a vessel or is not a person lawfully entitled to possession and use of a vessel for the season for which a Mooring Permit is granted, no Mooring Permit will be issued. The mooring permit holder will have twelve (12) months to acquire a vessel of the same type and size as stated on their Mooring Permit Application. If, at the end of twelve (12) months, the vessel has not been obtained, the Mooring Permit shall be forfeited and the person will be placed at the bottom of the wait list.

(6) If an individual holds a valid Mooring Permit and sells his/her rights to the boat with the intention of replacing it with a vessel of the same type and length, he/she will have twelve (12) months to replace the vessel. If, at the end of twelve (12) months, the vessel has not been replaced with a vessel of the same type and length, the Mooring Permit shall be forfeited and the individual will go to the top of the waiting list for an appropriate mooring location.

(7) No Mooring Permit shall be transferable to another person, except to a person within the immediate family of the permit holder upon approval of the Harbor Master.

(8) The sale, rental or subletting of a Mooring Permit issued pursuant to these regulations is prohibited. However, the Harbor Master may permit the time sharing of Moorings in order to maximize the usage of the Mooring fields provided that payment of the Permit fee has been paid by the Mooring Permit holder and the time share vessel is of the same type and approximate length of the vessel shown on the Mooring Permit. Time sharing of a Mooring shall be limited only to registered Mooring Handlers for vessels less than twenty-six feet (26') in length. Vessels engaged in a time share situation shall comply with marking and reporting requirements as determined by the Harbor Master.

(9) Mooring Permits shall be for a period of one year, or any fraction thereof, terminating on December 31 of each year, unless earlier revoked by the Harbor Master, and shall be

renewable annually for one year. All Mooring Permit holders shall ensure annually that their vessel information, contact information, Mooring Handler and other information as required by the Town is current and up to date. Failure to update and/or review the information annually may result in the non-renewal of the Mooring Permit until such information is verified.

(10) Payment for the annual Mooring Permit shall be paid in full by January first of each year.

(a) If payment is not received by this date, the Town shall:

[1] Assess a late fee ~~of $25.00~~;

[2] Send notice of non-payment by first class mail to the address that the permit holder currently has on file advising them that the permit will be forfeited if payment is not received by February 15.

[3] If payment is not received by March 15, the Town shall send notice by certified mail advising the Permit holder that their Mooring Permit has been revoked.

[4] If the Permit holder responds to the certified mail notice by April 15, the Permit shall be reinstated for a $100 fee and also upon payment of the applicable Mooring Permit fee.

(b) If no response is received, or full payment of late fees and all Permit fees is not made by April 15, the Permit is forfeited and the Mooring location will be offered to the next person on the waiting list.

(11) In areas where no additional Mooring spaces are available, applicants shall be placed on a waiting list maintained by the Town.

(a) The waiting list shall include the names of applicants waiting for Moorings in chronological order of application, regardless of the applicant's preference for a particular Mooring location. The person at the top of the official waiting list shall have priority to obtain the next available location, but may waive the right to the next available location if it is not in a place convenient for him without losing his place at the top of the waiting list. In the event of a waiver, the next person on the list shall be offered the location, and if that person waives the right to the location, the next successive person shall be offered the location until someone in succession on the list elects to take the Mooring location. Notice to the person entitled to the next available Mooring shall be in writing or by any reasonable method.

(b) It shall be the responsibility of wait list applicants to notify the Town of any address or information change. Notification of mooring availability to wait list applicants shall be only to the information supplied to the Town on the Mooring Permit application. The Town is under no obligation to seek out wait list applicants who fail to respond to notice of mooring space availability.

(12) Dinghies of less than ten feet (10') attached to permitted Moorings shall be required to have a Dinghy Permit. Dinghies less than ten feet (10') are otherwise exempt from the Mooring Permit requirements herein provided that the Mooring is properly permitted and there is a primary vessel regularly attached to the Mooring which bears a valid Mooring Permit decal.

Vessels that are greater than ten feet (10') in length are subject to all Mooring Permit requirements and shall not be fastened to a mooring unless it is properly permitted.

C. Dinghy Permits

(1) In waterfront areas where the Harbormaster has constructed racks or designated an area for the storage of dinghies, any dinghy in these areas shall have a dinghy permit issued by the Town.

(2) Dinghy permits shall be issued by the Town only to those persons who have a valid Mooring Permit upon payment of a fee. Only one dinghy permit shall be issued to each mooring.

(3) Dinghy permits shall be affixed the left (port) side of the dinghy where it is clearly visible.

(4) Only permitted dinghys shall be stored in dinghy storage racks. If rack space is not available, then dinghies shall be stored neatly in an area designated by the Harbormaster.

(5) Dinghy storage is prohibited if there is insufficient storage space in the racks or insufficient space in areas so designated as dinghy storage areas. Dinghys shall be removed from the area by the owner immediately after use. The determination of dinghy storage spaces shall be in the sole determination of the Harbormaster.

(6) The Harbormaster may remove any permitted dinghy improperly stored or any dinghy not properly displaying a dinghy permit. Disposition of dinghies so removed shall be pursuant to section §278-4 K of these regulations.

D. Liveaboards

(1) There shall be no Liveaboards at any Town Pier or Wharf. Liveaboards shall only be allowed within the Nantucket Boat Basin, or in Nantucket Waterways if the vessel is tied to a Mooring that is authorized by the Town pursuant to these regulations. Vessels used as Liveaboards that are anchored are prohibited.

(2) No vessel shall be moored in Nantucket waterways and used as a liveaboard for a period exceeding forty-eight (48) hours unless the owner of the vessel is present during that period of time or there is a person who is licensed as a U.S. Coast Guard Captain with a minimum rating as an Operator of Uninspected Passenger Vessels on board.

(3) Vessels used as a liveaboard shall be required to complete a registration form listing information as required by the Harbormaster to include at a minimum the vessel owners name, address, vessel type, and identifying information of persons using the vessel as a liveaboard.

(4) Vessels used as a liveaboard shall have a current boaters insurance policy.

(5) Vessels used as a liveaboard shall be capable of traveling under its own motorized propulsion to a sewer pumpout station located at the Town Pier or Nantucket Boat Basin.

## § 278-6. Town Pier

A. Capacity and Slip Assignments

(1) The Standing or Fixed Pier has fifty-five (55) slips which can accommodate recreational vessels up to and including thirty feet (30') in length. Three (3) slips are designated for the Town for the pump-out and patrol boats. The Harbor Master may designate additional spaces for Town purposes as needed.

B. Slip Assignments Revocable License

(1) Slips assignments to vessels will be subject to a revocable license agreement between the Town and the vessel owner. The revocable license agreement shall contain the terms of the agreement for the slip assignment. Failure to comply with the terms of the license agreement shall result in the termination of the license and forfeiture of the slip without refund.

(2) Only persons who are at least eighteen (18) years of age are eligible to enter the slip lottery and execute a slip license.

(3) Only vessels with mechanical power, thirty-five (35) feet in length or smaller, and either have a current and valid Massachusetts vessel registration or valid Federal documentation certificate showing the vessels hailing port of Nantucket are eligible for entry into the slip lottery and subsequent awarding of a slip assignment.

(4) The term of any revocable slip assignment license will be from May 1st through September 30th whether or not the revocable license is automatically renewable from year to year.

(5) No vessel may be placed in a slip prior to May 1st, and no vessel may remain in a slip after September 30th without permission of the Harbor Master. The permission of the Harbor Master notwithstanding, no additional rights or term of occupancy is to be implied as a result of the Harbor Master allowing early arrival or late departure from a licensed slip.

C. Recreational Vessels

(1) Recreational Vessel slips are divided into two categories, 'A' and 'B'. Thirty-five (35) ~~Fifty (50) percent of the available~~ slips will be designated as category 'A', and thirty-five (35) slips will be designated as category 'B' ~~for Vessels less than 30'. The Harbormaster shall determine the percentage of eligible slips available for a class 'A' or 'B' based on Vessel length. The intent is to evenly distribute the percentage available 'A' or 'B' classes based upon Vessel length recognizing that most slip locations are determined by Vessel size.~~

(2) Category 'A' recreational slip assignments shall be awarded by lottery and be allowed a two (2) year slip license. The category 'A' revocable slip license will be renewable for the second year without participation in the lottery as long as the slip holder remains current with payments and is in compliance with all applicable rules, regulations and by-laws of the Town or unless otherwise cancelled by the Town of Nantucket or the license holder. When a category 'A' slip becomes available, its initial assignment shall be by lottery pursuant to Section §278-6 H ~~250.4.3.8~~

(3) Category 'B' recreational slip assignments shall annually be awarded by lottery. The category 'B' revocable slip license will expire each year. They will not be renewable and any previous category 'B' holder must participate in the annual slip lottery.

~~(4) The annual lottery will be held in October of each year. The date of the lottery shall be advertised for at least two (2) weeks to the lottery date. Names of applicants shall be entered based upon information provided to the Town on the slip assignment application form. Slip~~

~~applications shall be accepted up to twenty-four (24) hours prior to the lottery provided that the new slip application fee has been paid.~~

NOTE: THIS TEXT MOVED TO NEW Section §278-6 H

(4) Persons who are awarded a recreational 'A' or 'B' slip assignment shall have thirty (30) days after the lottery to make payment and execute a revocable slip assignment license. If no payment is made end/or the revocable slip license is not returned within the thirty (30) days, then the slip assignment shall be forfeited and offered to the next eligible vessel on the lottery waiting list.

(5) Notwithstanding any other provision herein, the Harbormaster may remove any vessel from eligibility for a revocable slip license if the available slip spaces are insufficient to safely accommodate the size of the vessel.

D. Commercial Use/Commercial Fishing Vessels

(1) Commercial Use/Fishing Vessels slips are divided into two categories, 'A' and 'B'. Six (6) slips on the floating dock will be designated for each category for vessels less than forty feet (40'). Commercial fishing vessels forty feet (40') and greater and transient fishing vessels will ~~Moor~~ tie-up at the end of the fixed pier and will not participate in the lottery. There is no guarantee of space on the fixed pier for commercial fishing vessels forty (40') and greater or transient fishing vessels. Accommodation of space for these vessels will be made upon the determination of availability by the Harbormaster.

(2) Category "A"

(a) Six (6) Available spaces: Initial Commercial Use/Fishing vessels slip space is drawn at lottery. Once awarded, the revocable slip license will be renewable each year without participation in the lottery as long as the slip holder remains current with payments and is in compliance with all applicable rules, regulations and by-laws or unless otherwise cancelled by the Town of Nantucket or the license holder. When a category 'A' slip becomes available, its initial assignment shall be by lottery pursuant to paragraph 278.4.8.

(b) Eligibility: Any person wishing to apply for a Category 'A' Commercial Use/Fishing vessel ~~Use~~ slip and entry into the Commercial Use/Fishing vessel slip lottery must provide sufficient information which proves beyond a reasonable doubt that the applicant spends a major portion of their annual work time in water-based commercial industry and that greater than 60% of their annual income is derived from the commercial business. Proof of eligibility may include, but not necessarily be limited to:

[1] Coast Guard Licenses and Inspection

[2] Federal Tax Identification number and tax returns

[3] State and Federal Commercial Fishing Licenses

[4] Vessel size and equipment

[5] Catch reports or fish sale reports

[6] Other information that the Harbor Master may require

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(3) Category B

(a) Six (6) Available spaces: Category 'B' Vessel is drawn in the lottery annually pursuant to the procedures in paragraph 278.4.8 ~~250.4.3.3 and 250.4.3.4.~~ The revocable license is for one year.

(b) Eligibility: Any person wishing to apply for a Commercial Use/Fishing Vessel slip must provide sufficient information which proves beyond a reasonable doubt that the applicant spends a major portion of their annual work time in water-based commercial industry and that greater than sixty percent (60%) of their annual income is derived from the commercial business. Proof of eligibility may include, but not necessarily be limited to:

- Coast Guard Licenses and Inspection
- Federal Tax Identification number and tax returns
- State and Federal Commercial Fishing Licenses
- Vessel size and equipment
- Catch reports or fish sale reports
- Other information that the Harbor Master may require

~~(4) Eligibility for a handicap accessible slip requires the applicant be eligible for a State issued handicap parking sticker.~~

NOTE- Moved to Section §278-6 E

(4) The Town may assess a commercial use user fee for vessels utilizing the Town Pier, Children's Beach ramp and Barrett Pier in Madaket as a primary loading and off-loading point for customers and/or wares. The Town will require that any Commercial users subject to this fee be required to obtain an insurance liability policy naming the Town as an additional insured.

E. Handicap Accessible Slips

(1) Two (2) slips on the floating pier shall be made available for handicapped persons. Initial handicap slip space is drawn at lottery. Once awarded, the revocable slip license will be renewable each year without participation in the lottery as long as the slip holder remains current with payments and is in compliance with all applicable rules, regulations and by-laws or unless otherwise cancelled by the Town of Nantucket or the license holder. When a handicap slip becomes available, its initial assignment shall be by lottery pursuant to Section §278-6 H.

(2) For eligibility for a handicap accessible slip requires the applicant be eligible for a State issued handicap parking sticker.

F. Slip Assignment Wait list

(1) For Recreational vessels, a wait list of twenty (20) will be drawn at the annual lottery. For Category B–Commercial Use/Fishing vessels, a waitlist of three (3) will be drawn at the annual slip lottery. For Handicap slips, a waitlist of one (1) will be drawn at the annual slip lottery.

G. Floats and Rafts

(1) No Raft or Float shall be moored in Nantucket Waterways unless the location of said Float or Raft has been approved by the Harbormaster and a Mooring Permit issued by the Town.

(2) Any vessel which is tied to a Raft or Float as a moored vessel shall have a Mooring Permit for each individual vessel so tied.

(3) The Harbormaster shall make the determination of the maximum allowable vessels which may be tied to a Raft or Float. The Harbormaster may fine either the vessels so tied and/or the Raft or Float owner in violation if the number of vessels so approved is exceeded.

H. Slip Lottery

(1) The annual lottery will be held in October of each year. The date of the lottery shall be advertised for at least two (2) weeks prior to the lottery date.

(2) Only a single entry into the lottery for a vessel shall be allowed. Requirements for entry into the slip lottery are:

(3) vessel is thirty (30) feet in length or less;

(4) vessel is mechanically powered, and;

(5) vessel has an active Massachusetts vessel registration or is federally documented with Nantucket as the hailing port.

(6) Vessel registration number shall be entered into the lottery based upon information provided to the Town on the slip lottery assignment application form. Slip applications shall contain such information that the Town may require and be accepted up to forty-eight (48) (24) hours prior to the lottery provided that the new slip lottery application fee has been paid.

(7) The lottery shall be conducted by placing the vessel number, (or other corresponding unique number) into a bin where they will be randomly drawn by the Harbormaster or their designee. The number drawn shall be publicly announced with the corresponding vessel and owners name. Such information shall be recorded by the Harbormaster at the time of the lottery. Separate lottery draws shall be done for assignment of each class of slip license, (A&B Recreational, Commercial and Handicap).

## § 278-7. Fees

A. Mooring Fees. Fees for mooring permit applications, mooring permits, mooring permit wait list, rafts or floats shall be set from time to time by the Select Board.

B. Fees for Town pier slips and slip applications shall be set from time to time by the Select Board.

(1) The minimum slip per-foot charge per season is 22 feet.

C. Payment for all mooring fees, commercial and category “A” recreational slips shall be received by January 1. If payment is not received by this date, the Town shall:

(1) Assess a late fee;

(2) Send notice of non-payment by first class mail to the address that the permit holder currently has on file or by email advising them that their slip will be forfeited if payment is not received by February 1.

(3) If payment is not received by February 15, the Town shall send notice by certified mail and email advising the slip holder that their mooring permit or revocable Town Pier Slip License has been revoked.

(4) If the mooring permit or slip license holder responds to the certified mail or email notice by March 15, the mooring permit or revocable slip license shall be re-issued for a reissuance fee and also upon payment of the annual applicable fees.

(5) If no response is received, or full payment of late fees and all Permit fees is not made by April 1, the Permit is forfeited and the mooring or slip location will be offered to the next person on the waiting list.

(6) Refunds will not be provided.

D. Fees for other items, including the following, shall be set from time to time by the Select Board:

(1) Commercial use vessel fee for Town ramps and piers.

(2) Nonresident commercial off-load.

(3) Transient rates.

(4) Commercial fishing transients.

~~278.5 Fees~~

~~278.5.1 Mooring Fees~~

~~278.5.1.1 Mooring Permit Renewal Fees per Season:~~

| ~~Length of Boat~~ | ~~Annual Fee~~ |
|---|---|
| ~~up to 16'~~ | ~~$80.00~~ |
| ~~17' to 23'~~ | ~~$100.00~~ |
| ~~24' to 32'~~ | ~~$200.00~~ |
| ~~33' to 49'~~ | ~~$300.00~~ |
| ~~Over 50'~~ | ~~$500.00~~ |
| ~~Commercial Fishing~~ | ~~$80.00~~ |
| ~~Livery/Rental~~ | ~~$200.00~~ |
| ~~Boat Handler/Repair~~ | ~~$175.00~~ |

~~278.5.1.2 Fees for Rafts or Floats shall be based upon the table in 278.5.1.1~~

~~278.5.1.3 Mooring Permit Application Fee: $25.00 payable at the time of Mooring Permit application.~~

~~278.5.1.4 Mooring Permit Wait List Fee: $10.00 annually by those applicants wishing to remain on the official waiting list.~~

~~278.5.2 Town Pier Slip- Recreational and Handicap vessel slips~~

~~278.5.2.1 Category 'A' $100.00 per foot per season.~~

~~278.5.2.2 Category 'B' $80.00 per foot per season.~~

~~278.5.2.3 Minimum per foot charge per season is twenty-two (22) feet.~~

~~278.5.2.4 Payment for Recreational 'A' Slips shall be received paid in full by January 1 of each year.~~

~~278.5.2.5 Payment for Recreational 'B' slips shall be received within thirty (30) days following the date of the lottery. If payment is not received by this date, the applicant will forfeit his slip and the next person on the waiting list will be chosen.~~

~~278.5.3 Town Pier Slip- Commercial Use:~~

~~278.5.3.1 Category A: $150.00 per foot per season.~~

~~278.5.3.2 Commercial Use Category B: $125.00 per foot per season.~~

~~278.5.3.3 50% of payment for Commercial 'A' and 'B' slips shall be received by June 1; the remaining 50% payment is due by July 1.~~

~~278.5.3.4 Refunds will not be provided.~~

~~278.5.4 Other Fees:~~

~~Commercial use vessel fee for Town ramps and piers: $100.00 per year.~~

~~Non-Resident Commercial Off-Load Fee: $100.00 per year.~~

~~Transient Rate: $15.00 per hour or $75.00 per day.~~

~~Commercial fishing transient 50' or less: .75¢ cents per foot per night.~~

~~Commercial fishing transient 51' or greater: $1.50 per foot per night, to be capped at $100 per foot annually.~~

~~Slip Lottery Application Fee: $25.00~~

## § 278-8. Enforcement

A. Enforcement. The Harbor Master, Assistant Harbor Masters, Mooring Enforcement Officers and any Police Officer are authorized to enforce these regulations.

B. Non-Criminal Violation Citation. Officers authorized to enforce these Regulations may use the Standard Town Non-Criminal Violation Notice for violations.

C. Penalties. Whoever violates any of the provisions of the Regulations shall be punished by a fine amount of one hundred dollars ($100.00) each day of continual violation constituting a

separate offense.

## § 278-9. Severability

The provisions of these Regulations are hereby declared to be severable; and if any provision of the Rules and Regulations is invalid, such invalidity shall not affect or impair any other provision hereof.

# Chapter 283

# HOUSING STANDARDS

ARTICLE I
**Boats Used as Residences**

**§ 283-1. Permission required.**
**§ 283-2. Emergency haven.**
**§ 283-3. Vessel placement.**
**§ 283-4. Violations and penalties.**

ARTICLE II
**Minimum Standards of Fitness for Human Habitation**

**§ 283-5. Adoption of state standards.**

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

**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**

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## ARTICLE I
## Boats Used as Residences
**[Adopted by the Board of Health 7-11-1984]**

### § 283-1. Permission required.

No person shall use as a residence any boat, vessel, raft, float, or other water-borne conveyance in Nantucket Harbor, Polpis Harbor, or Madaket Harbor or any creek or estuary thereof without written permission from the Nantucket Board of Health or its agent.

### § 283-2. Emergency haven.

This shall not prevent any vessel from seeking safe haven from a storm in harbors during the period immediately before, during, and after such a storm, but such vessels shall not make any discharge of waste, garbage, or other pollution.

### § 283-3. Vessel placement.

Relocation of any and all vessels subject to this regulation will be performed by either the Health Agent or Marine Superintendant acting as Harbormaster.

### § 283-4. Violations and penalties.

Any person violating this regulation shall be punished by a fine of not more than $200 for each offense, and each day that such violation continues shall be considered a separate offense.

ARTICLE II

**Minimum Standards of Fitness for Human Habitation**
**[Adopted by the Board of Health 4-24-1996]**

### § 283-5. Adoption of state standards.

Pursuant to MGL c. 111, § 31, and MGL c. 40, § 21D, the Board of Health of the Town of Nantucket formally adopts 105 CMR 410.000, Minimum Standards of Fitness for Human Habitation, as a local regulation of the Nantucket Health Department.

# Chapter 288

# HUMMOCK POND WATERSHED


ARTICLE I

**Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems**

**§ 288-1. Purpose and authority.**

**§ 288-2. Definitions.**

**§ 288-3. Deadline for inspection of existing systems.**

**§ 288-4. Inspections.**

**§ 288-5. Repairs to failed systems.**

**§ 288-6. Inspection evaluation period and report.**

**§ 288-7. Exemptions.**

**§ 288-8. Enforcement.**

ARTICLE II

**Septic Wastewater Flow Limitations**

**§ 288-9. Purpose.**

**§ 288-10. Definitions.**

**§ 288-11. Effluent flow restrictions.**

**§ 288-12. Amendments.**

**§ 288-13. Violations and penalties; enforcement.**

**§ 288-14. Authority.**


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

**TOWN REGULATIONS REFERENCES**

**Administration of Board of Health regulations; definitions — See Ch. 223.**
**Septic systems — See Ch. 327.**
**Sewage disposal and treatment — See Ch. 332.**
**Sewers — See Ch. 336.**

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ARTICLE I

**Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems**
**[Adopted by the Board of Health 9-2-2010]**

### § 288-1. Purpose and authority.

A. Purpose. Whereas ongoing research by the Town of Nantucket in cooperation with the Commonwealth of Massachusetts Department of Environmental Protection has documented increasing levels of nutrient loading in the Hummock Pond watershed system, these regulations are promulgated to further limit said nutrients and other sources of contamination loading, and to protect and enhance the quality of groundwater flowing into and affecting the waters of Hummock Pond.

B. Authority. These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

### § 288-2. Definitions.

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

HUMMOCK POND WATERSHED PROTECTION DISTRICT — The area constituting the watershed for Hummock Pond as delineated on a map entitled "Hummock Pond Watershed," Nantucket GIS, dated July 1, 2010.

**§ 288-3. Deadline for inspection of existing systems.**

A. Properties utilizing in-ground soil absorption systems located within Zone A of the Hummock Pond Watershed Protection District as established by these regulations, and as demonstrated on a map titled "Hummock Pond Watershed Protection District," shall have the existing soil absorption system(s) inspected by a Massachusetts-licensed system inspector prior to June 30, 2015. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

B. Properties utilizing in-ground soil absorption systems located within Zone B of the Hummock Pond Watershed Protection District as established by these regulations, and as demonstrated on a map titled "Hummock Pond Watershed Protection District," shall have their existing soil absorption system(s) inspected by a Massachusetts-licensed system inspector prior to June 30, 2015. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

**§ 288-4. Inspections.**

A. All systems shall be inspected to determine the presence and/or absence of hydraulic failure and depth to groundwater. Depth to groundwater shall be determined by direct observation of highest groundwater elevation (including seasonal perched and tidally influenced groundwater) in a test pit excavation, unless an alternative method for accurately determining the depth to groundwater has been approved in writing by the Health Director.

B. The Health Director may, based on unique development conditions or due to the proximity of multiple systems within a limited geographic area, substitute a preapproved groundwater monitoring protocol for test pit excavation. This monitoring protocol shall require at a minimum:

(1) Data collected over a twelve-month period.

(2) A minimum of three wells offset to define groundwater flow direction as well as depth.

**§ 288-5. Repairs to failed systems.**

A. The owner of a system meeting hydraulic failure criteria pursuant to these regulations as stated on the Town of Nantucket Board of Health septic system inspection report/ certificate of compliance form shall bring the system into compliance with all applicable state and local regulations within 60 days of the date of the inspection.

B. The owner of a system meeting failure criteria, exclusive of hydraulic failure, pursuant to these regulations as stated on the Town of Nantucket Board of Health septic system inspection report/certification of compliance form shall bring the system into

compliance with all state and local regulations within 18 months of the adoption of the assessment report required in § 288-6 and/or within 30 months of the expiration date of Zone A and B inspections.

### § 288-6. Inspection evaluation period and report.

A. Within three months of the inspection expiration date of Zones A and B, the Health Department shall tabulate and publish the inspection results.

B. Within six months of the inspection expiration date of Zones A and B, the Health Department shall provide a preliminary assessment report to the Board of Health. This report shall include a brief evaluation of treatment options to effectuate implementation of best available engineering design for all required repairs/upgrades.

C. No later than six months following the expiration date of Zone B inspections, the Board of Health shall adopt the Hummock Pond Watershed Protection Area Assessment Report, including recommendations.

### § 288-7. Exemptions.

The following are exempt from the requirements of these regulations:

A. Properties whose on-site sewage disposal design is documented to be based on test pit and percolation testing observed by the Board of Health after June 1, 2008.

B. Properties which have been inspected and have both a Town of Nantucket Board of Health septic system inspection report and a certificate of compliance form filed with the Nantucket Health Department and dated within 24 months prior to promulgation of these regulations are exempt from inspection and compliance standards as set forth in these regulations.

### § 288-8. Enforcement.

A. Enforcement of these regulations shall be effected through Chapter 223, Board of Health Administration, Article II, Enforcement of Regulations, of the Town Regulations.

B. These regulations and any amendments thereto shall become effective upon the date of publication.

## ARTICLE II

## Septic Wastewater Flow Limitations
## [Adopted by the Board of Health 9-2-2010]

### § 288-9. Purpose.

Whereas ongoing research by the Town of Nantucket in cooperation with the Commonwealth of Massachusetts's Department of Environmental Protection has documented increasing levels

of nutrient loading with resultant degradation of water quality within the Hummock Pond watershed system, these regulations are promulgated to maintain and/or restrict additional effluent flows which may further degrade Hummock Pond and North Head of Hummock Pond water quality through increased nutrient loading.

### § 288-10. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

HUMMOCK POND WATERSHED PROTECTION DISTRICT — The area constituting the watershed for Hummock Pond and North Head of Hummock Pond as delineated on a map entitled "Hummock Pond Watershed," Nantucket GIS, dated July 1, 2010.

NITROGEN-SENSITIVE AREA — Areas that have been determined by the Nantucket Board of Health to be particularly sensitive to the discharge of pollutants from on-site sewage disposal systems, including nitrogen, nitrogen as nitrate, phosphorous and pathogens. Such areas are depicted on a plan entitled "Board of Health Nitrogen Sensitive Areas," which is hereby incorporated by reference herein, and as such warrant the imposition of the loading restrictions set forth within these regulations.

### § 288-11. Effluent flow restrictions.

A. All properties currently existing or created which are served by in-ground septic systems and located within the Hummock Pond Watershed Protection District as defined within these regulations shall not be constructed or reconstructed to receive design flows over 110 gallons of effluent for every 10,000 feet of lot area. The use of abutting roads and rights-of-way to a property shall not be considered in calculating the permissible effluent flows for the subject property.

B. Existing developed properties shall be allowed to repair/replace existing subsurface disposal systems for existing flows determined by a qualified licensed Massachusetts professional with nutrient-reducing technologies or technologies acceptable to the Nantucket Board of Health as deemed appropriate.

C. Properties located within Zone A of the Hummock Pond Watershed Protection District as identified on a map entitled "Hummock Pond Watershed," Nantucket GIS, dated July 1, 2010, and connected to a municipal water service shall not be exempted from compliance with Subsection A of this section.

### § 288-12. Amendments.

No part of these regulations may be modified and/or rescinded without a majority vote of Town of Nantucket Board of Health.

### § 288-13. Violations and penalties; enforcement.

Without limiting any other available remedies or penalties, the Board of Health may punish any person or entity that violates these regulations by assessing a penalty of $300. Each day or part thereof on which violation occurs or continues shall constitute a separate offense. As

an alternative to criminal prosecution or civil action, the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter 1, Article II, of the Code of the Town of Nantucket may be used with a penalty of $300 for each violation, each day or part thereof during which such violation occurs or continues constituting a separate offense. The Health Director and Assistant Health Officer are hereby empowered to enforce this Chapter 288, Article II.

**§ 288-14. Authority.**

These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

# Chapter 303

# MADAKET HARBOR WATERSHED


ARTICLE I
**Madaket Regulations**

**§ 303-1. Purpose and authority.**
**§ 303-2. Subject area.**
**§ 303-3. Separation distances for soil absorption systems.**
**§ 303-4. System location on lot.**
**§ 303-5. Well certificate of compliance and water test.**

ARTICLE II
**Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems**

**§ 303-6. Purpose and authority.**
**§ 303-7. Definitions.**
**§ 303-8. Deadline for inspections.**
**§ 303-9. Types of inspections.**
**§ 303-10. Repairs to failed systems.**
**§ 303-11. Inspection evaluation period; assessment report.**
**§ 303-12. Exemptions.**
**§ 303-13. Enforcement; when effective.**

ARTICLE III
**Septic Wastewater Flow Limitations**

**§ 303-14. Purpose.**
**§ 303-15. Definitions.**
**§ 303-16. Effluent flow limitations.**
**§ 303-17. Amendments.**
**§ 303-18. Violations and penalties; enforcement.**
**§ 303-19. Authority.**

ARTICLE IV
**Tight Tank Policy**

**§ 303-20. Purpose.**
**§ 303-21. Requirements.**
**§ 303-22. Definitions.**
**§ 303-23. Amendments.**
**§ 303-24. Violations and penalties; enforcement.**

**Tight Tank Area Map**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**

**Nantucket and Madaket Harbor Watersheds — See Ch. 99.**

**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**
**Septic systems — See Ch. 327.**
**Sewage disposal and treatment — See Ch. 332.**
**Sewers — See Ch. 336.**

ARTICLE I

## Madaket Regulations
## [Adopted by the Board of Health 9-19-1973]

### § 303-1. Purpose and authority.

In order to preserve, protect and manage the quality and supply of fresh water, and to protect the health and welfare of the inhabitants of the Town of Nantucket, the following regulations are hereby adopted by the Board of Health of the Town of Nantucket, pursuant to authority granted by MGL c. 11, § 31.

### § 303-2. Subject area.

These regulations shall be applicable in that part of the Town of Nantucket known as "Madaket," more particularly described to be within the area bounded by the center line of Hither Creek, the center line of Cambridge Street, Madaket Harbor, Broad Creek, and the Atlantic Ocean.

### § 303-3. Separation distances for soil absorption systems.

A. In any part of said area where the percolation rate is two minutes or less per inch, the distance between the soil absorption system and any potable water supply well shall be 150 feet, notwithstanding the fact that such a system or well is located on an adjacent lot of land.

B. The distance of a soil absorption system from a property line shall be 50 feet. Where the property abuts a road way or other land restricted from a building, the width of the roadway or restricted land can be included as part of the fifty-foot setback requirement. No soil absorption system may be located closer than 10 feet to any property line.

C. Every soil absorption system shall have a 100% reserve area which shall be no closer than 15 feet to such a soil absorption system.

### § 303-4. System location on lot.

Every on-site system and potable water supply well shall be on the same lot of land as the building, dwelling, facility, or structure which they serve.

### § 303-5. Well certificate of compliance and water test.

No well shall be connected to the water distribution system of any dwelling or other building without a certificate of compliance issued by the Board of Health that said potable well and

water distribution system does not endanger the health of any potential user. Prior to the issuance of such a certificate of compliance, the applicant therefor shall provide the Board of Health with proof of a satisfactory bacteriological and chemical analysis of the water from such a well.

## ARTICLE II

## Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems [Adopted by the Board of Health 6-14-2006]

### § 303-6. Purpose and authority.

A. Whereas ongoing research by the Town of Nantucket in cooperation with the Commonwealth of Massachusetts Department of Environmental Protection has documented increasing levels of nutrient loading in the Madaket Harbor/Hither Creek watershed system, these regulations are promulgated to further limit said nutrient and other sources of contamination loading and to protect and enhance the quality of groundwater flowing into and affecting Nantucket's harbor waters.

B. These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

### § 303-7. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

MADAKET HARBOR WATERSHED — The area constituting the watershed for Madaket Harbor/Hither Creek, as delineated on a map entitled "Madaket Harbor Watershed with Sub-Areas," Nantucket GIS, dated January 13, 2003.

### § 303-8. Deadline for inspections.

A. Properties utilizing in-ground soil absorption systems located within Zone A of the Madaket Harbor Watershed District as established by these regulations and as demonstrated on a map titled "Madaket Harbor Watershed District" shall have the existing soil absorption system inspected by a Massachusetts-licensed system inspector within 42 months of promulgation of these regulations. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

B. Properties utilizing in-ground soil absorption systems located within Zone B of the Madaket Harbor Watershed District as established by these regulations and as demonstrated on a map entitled "Madaket Harbor Watershed District" shall have the existing soil absorption system inspected by a Massachusetts-licensed system inspector within 48 months of promulgation of these regulations. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

**§ 303-9. Types of inspections.**

A. All systems shall be inspected to determine the presence and/or absence of hydraulic failure and depth to groundwater. Depth to groundwater shall be determined by direct observation of highest groundwater elevation (including seasonal perched and tidally influenced groundwater) in a test pit excavation, unless an alternative method for accurately determining the depth to groundwater has been approved in writing by the Health Director.

B. The Health Director may, based on unique development conditions or due to the proximity of multiple systems within a limited geographic area, substitute a preapproved groundwater monitoring protocol for test pit excavation. The monitoring protocol shall require, as a minimum:

(1) Data collected over a twelve-month period.

(2) A minimum of three wells offset to define groundwater flow direction as well as depth.

**§ 303-10. Repairs to failed systems.**

A. The owner of a system meeting hydraulic failure criteria pursuant to these regulations as stated on the Town of Nantucket Board of Health Septic System Inspection Report/ Certificate of Compliance Form shall bring the system into compliance with all applicable state and local regulations within 30 days of the date of inspection.

B. The owner of a system meeting failure criteria, exclusive of hydraulic failure, pursuant to these regulations as stated on the Town of Nantucket Board of Health Septic System Inspection Report/Certificate of Compliance Form shall bring the system into compliance with all state and local regulations within 18 months of the adoption of the assessment report required in § 303-11 and/or within 30 months of the expiration date of Zone A and B inspections.

**§ 303-11. Inspection evaluation period; assessment report.**

A. Within three months of the inspection date of Zone A and B inspections, the Health Department shall tabulate and publish the inspection results.

B. Within six months of the expiration date of Zone A and Zone B inspections, the Health Department shall provide a preliminary assessment report to the Board of Health. This report shall include a brief evaluation of treatment options to effectuate implementation of best available engineering design for all required repairs/upgrades.

C. No later than six months of the expiration date of Zone B inspections, the Board of Health shall adopt the Nantucket/Madaket Assessment Report, including recommendations.

**§ 303-12. Exemptions.**

A. Properties whose on-site sewage disposal design is documented to be based on test pit and percolation testing observed by the Board of Health after November 1, 2003, are exempt from the requirements of these regulations. **[Amended during codification]**

B. Properties which have been inspected and have both a Town of Nantucket Board of Health Septic System Inspection Report and a Certificate of Compliance Form filed with the Nantucket Health Department and dated within 24 months before promulgation of these regulations are exempt from inspection and compliance standards as set forth in these Regulations.

C. In all areas where Town of Nantucket mapping shows that the separation between the bottom of the soil absorption system and the predicted groundwater elevation (based on Horsley/Whitten/Hegeman study and/or USGS Hydrologic Investigation Atlas Water Resources Map 1980) exceeds 10 feet, documentation of high groundwater levels shall not be required.

**§ 303-13. Enforcement; when effective.**

A. Enforcement of these local regulations shall be effected through Chapter 223, Board of Health Administration, Article II, Enforcement of Regulations, of the Town Regulations.

B. These regulations and the amendments thereto shall become effective upon the date of publication.

## ARTICLE III
## Septic Wastewater Flow Limitations
## [Adopted by the Board of Health 8-24-2009]

**§ 303-14. Purpose.**

Whereas ongoing research by the Town of Nantucket in cooperation with the Commonwealth of Massachusetts Department of Environmental Protection has documented increasing levels of nutrient loading with resultant degradation of water quality within the Madaket Harbor/ Hither Creek watershed system, these regulations are promulgated to maintain and/or restrict additional effluent flows which may further degrade Madaket Harbor/Hither Creek water quality through increased nutrient loading.

**§ 303-15. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

MADAKET HARBOR WATERSHED PROTECTION DISTRICT — The area constituting the watershed for Madaket Harbor/Hither Creek, as delineated on a map entitled "Madaket Harbor Watershed with Sub-Areas," Nantucket GIS, dated January 13, 2003.

NITROGEN-SENSITIVE AREA — Areas that have been determined by the Nantucket Board of Health to be particularly sensitive to the discharge of pollutants from on-site sewage disposal systems, including nitrogen, nitrogen as nitrate, phosphorous and pathogens. Such areas are depicted on a plan entitled "Board of Health Nitrogen Sensitive Areas," which is hereby incorporated by reference herein, and as such warrant the imposition of the loading restrictions set forth within these regulations.

### § 303-16. Effluent flow limitations.

A. All properties currently existing or created and located within the Madaket Harbor Watershed Protection District as defined within these regulations shall not be constructed or reconstructed to receive design flows over 110 gallons of effluent for every 10,000 feet of lot area. The use of abutting roads and rights-of-way to a property shall not be considered in calculating the permissible effluent flows for the subject property.

B. Existing developed properties shall be allowed to repair/replace existing subsurface disposal systems for existing flows determined by a qualified licensed Massachusetts professional with nutrient-reducing technologies or technologies acceptable to the Nantucket Board of Health as deemed appropriate.

C. Properties connected to a municipal water service shall not be exempted from compliance with Subsection A of this section.

### § 303-17. Amendments.

No part of these regulations may be modified and/or rescinded without a majority vote of Town of Nantucket Board of Health.

### § 303-18. Violations and penalties; enforcement.

Without limiting any other available remedies or penalties, the Board of Health may punish any person or entity that violates these regulations by assessing a penalty of $300. Each day or part thereof on which a violation occurs or continues shall constitute a separate offense. As an alternative to criminal prosecution or civil action, the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter 1, Article II, of the Code of the Town of Nantucket may be used with a penalty of $300 for each violation, each day or part thereof during which such violation occurs or continues constituting a separate offense. The Health Director and Assistant Health Officer are hereby empowered to enforce this Chapter 303, Article III.

### § 303-19. Authority.

These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

ARTICLE IV

**Tight Tank Policy**

**[Adopted by the Board of Health 5-21-2015]**

## § 303-20. Purpose.

Whereas ongoing research by the Town of Nantucket in cooperation with the Commonwealth of Massachusetts Department of Environmental Protection (MassDEP), and in coordination with the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST) under the Massachusetts Estuaries Program (MEP), has documented increased levels of nutrient loading due to on-site wastewater disposal systems with resultant degradation of water quality in embayments, estuaries and associated water resources within the identified Madaket Harbor Watershed, this regulation is promulgated to maintain and/or restrict additional effluent flows which further degrade the watershed that is the subject of the MEP through increased nitrogen loading. In addition, this geographical location is located in an area subject to severe erosion with subject areas within the Velocity Zone. There are no plans to extend municipal sewer in this area due to the technical issues of physically constructing infrastructure over Millie's Bridge and the potential damage to infrastructure located in areas subject to erosion. This watershed area, identified as the Madaket Harbor Watershed, and more specifically the area identified as those streets located over Millie's Bridge and as shown on the attached Figure 1,[1] which becomes a part of this regulation and is identified as the "Madaket Tight Tank District." This regulation details the conditions under which a tight tank may be required in order to reduce nitrogen loading into this well-documented, nitrogen-sensitive MEP area, as well as provide a last resort for wastewater disposal due to no other feasible available alternative for wastewater disposal as determined by the Board of Health.

## § 303-21. Requirements.

A. If a party currently owns and/or operates an on-site wastewater disposal system located on property that is shown on Figure 1, Madaket Tight Tank District,[2] which the Board has determined requires an upgrade pursuant to 310 CMR 15.00 (Title 5) and as defined in the Board of Health regulations under local regulations and is located within the above-referenced geographic location, the Nantucket Board of Health has determined that the property owner may be required to utilize a tight tank in lieu of a conventional Title 5 system and/or innovative alternative (I/A) system in order to reduce nutrient degradation to the watershed, as well as provide a last-resort alternative to wastewater disposal.

B. The Board of Health reserves the right to require any property owner with a failed septic system, in this identified area where no future municipal sewer is being considered and/or where connection to the municipal sewer system is not technically feasible, to apply to the BOH for a tight tank in lieu of a conventional or innovative/ alternative on-site system. All upgrades/repairs must be approved and permitted by the Health Department and subsequently MassDEP, prior to installation. In addition, the

1. **Editor's Note: Figure 1 is included as an attachment to this chapter.**

2. **Editor's Note: Figure 1 is included as an attachment to this chapter.**

Board of Health reserves the right to maintain jurisdiction over the maintenance of the tight tank system, as well as the right to pass over land where a tight tank system is installed under these regulations in order to inspect said system.

C. The Nantucket Board of Health determines the ability or inability of the on-site wastewater disposal systems to meet this regulation and ultimately determines if the parcel qualifies under this regulation through an inspection paid for by the property owner.

D. Tight tanks will not be allowed for new construction or increases in design flow, but rather only as a last resort in this identified area as shown on Figure 1.

**§ 303-22. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

BOARD OF HEALTH — The Town of Nantucket department with local jurisdiction of on-site wastewater systems in addition to all other health-related issues.

COMPREHENSIVE WASTEWATER MANAGEMENT PLAN/CWMP UPDATE — The Town's twenty-year wastewater planning document completed according to the Department of Environmental Protection Bureau of Municipal Facilities Guide to Comprehensive Wastewater Management Planning, January 1996. The CWMP update is a revision to the 2004 Report under 2013/2014 current conditions.

HYDRAULIC FAILURE — An on-site wastewater system failure due to ponding of surface water, back-up of sewage into the dwelling and/or evidence of flooding within the wastewater system's distribution box, septic tank, cesspool or metal tank.

MADAKET HARBOR WATERSHED — The area constituting the watershed for Madaket Harbor/Hither Creek, as delineated on a map entitled "Madaket Harbor Watershed with Sub-Areas," Nantucket GIS, dated January 13, 2003.

MADAKET TIGHT TANK DISTRICT — The geographic area shown on a map entitled "Figure 1, Madaket Tight Tank District," included as part of this local regulation.[3]

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (MassDEP) — The agency charged with proposing and enforcing environmental law.

MASSACHUSETTS ESTUARY PROGRAM (MEP) — The Massachusetts DEP and the UMASS/Dartmouth School of Marine Science and Technology (SMAST) collaborating together with Coastal Zone Management, the Cape Cod Commission and several municipalities to classify the nitrogen sensitivity of southeastern Massachusetts's coastal bays and estuaries. SMAST technical experts work with MassDEP to evaluate nitrogen sensitivity through comprehensive water quality testing, quantitative TMDL (total maximum daily load) modeling, and preparation of technical reports allowing communities to consider how implementation of nitrogen management scenarios within watersheds will influence water quality in embayments. The MEP has identified three geographical regions as nitrogen-sensitive due to on-site wastewater disposal systems on Nantucket: 1) Madaket Harbor Watershed; 2) Nantucket Harbor Watershed; and 3) Hummock Pond Watershed.

**3. Editor's Note: Figure 1 is included as an attachment to this chapter.**

MUNICIPAL SEWER — The physical infrastructure that collects, treats and discharges wastewater through a public system.

NANTUCKET — Encompasses the land and water of the Town and County of Nantucket, including Tuckernut and Muskegat.

NITROGEN-SENSITIVE — A physical environment deemed sensitive to the discharge of pollutants, mainly nitrogen, from on-site wastewater disposal system discharge. Water resource areas whose physical characteristics and water quality testing detail intolerance to nitrogen loading and are documented in the MEP reports as showing a decline in habitat. The outcome is a determination of where nutrient reductions are needed to preserve or restore long-term water quality, which are mandated through a TMDL.

NEEDS AREA — Geographic delineation of land/property area that has been determined to be unsustainable in the long term with on-site wastewater disposal systems in the Town of Nantucket's Comprehensive Wastewater Management Plan.

TECHNICAL FAILURE/NANTUCKET LOCAL REGULATIONS — An on-site wastewater system failure due to diminished distance to groundwater; less than six feet in designated watershed protection zones; less than five feet in non-watershed protection zones/within 100 feet to private drinking water well, missing or undersized system components and leach field within 100 feet of private drinking water well.

TITLE 5 — The environmental code in Massachusetts governing on-site wastewater systems in Massachusetts found at 310 CMR 15.00.

TOTAL MAXIMUM DAILY LOAD (TMDL) — A calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

TOWN — The bodies politic created by statute (of the Commonwealth of Massachusetts General Court) to govern said lands and waters.

VERTICAL SEPARATION — According to 310 CMR 15.212, Depth to Groundwater, refers to the distance between the bottom of the leaching facility or soil absorption system and the groundwater. Title 5 of the Environmental Code required a four-foot separation.

### § 303-23. Amendments.

No part of these regulations may be modified and/or rescinded without a majority vote of the Board of Health.

### § 303-24. Violations and penalties; enforcement.

Once an inspection is finalized and it has been determined that a system in failure meets the requirements of this regulation, and without limiting any other available remedies or penalties, the Board of Health may punish any person or entity that violates these regulations by assessing a penalty of $300. Each day or part thereof on which a violation occurs or continues shall constitute a separate offense. As an alternative to criminal prosecution or civil action, the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter 1, Article II, of the Code of the Town of Nantucket may be used, with a penalty of $300 for each violation; each day or part thereof during which such violation occurs or continues

constitutes a separate offense. The Health Director or Assistant Health Officer is hereby empowered to enforce this Chapter 303, Article IV.

# Chapter 309

# NANTUCKET HARBOR WATERSHED

ARTICLE I
**Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems**

**§ 309-1. Purpose and authority.**
**§ 309-2. Definitions.**
**§ 309-3. Deadline for inspection.**
**§ 309-4. Types of inspections.**
**§ 309-5. Repairs to failed systems.**
**§ 309-6. Inspection evaluation period.**
**§ 309-7. Exemptions.**
**§ 309-8. Enforcement; when effective.**

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

**TOWN CODE REFERENCES**

**Nantucket and Madaket Harbor watersheds — See Ch. 99.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**
**Septic systems — See Ch. 327.**
**Sewage disposal and treatment — See Ch. 332.**
**Sewers — See Ch. 336.**

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## ARTICLE I
## Inspection and Upgrading of Substandard On-Site Sewage Disposal Systems
## [Adopted by the Board of Health 9-29-2005]

### § 309-1. Purpose and authority.

A. Purpose. Whereas the Nantucket Harbor Study of March 1997, as completed by the Woods Hole Oceanographic Institution, denotes increasing levels of nutrient loading in Nantucket Harbor, these regulations are promulgated to further limit said nutrient loading and other sources of contamination and to protect and enhance the quality of groundwater flowing into and affecting Nantucket's harbor waters.

B. Authority. These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

### § 309-2. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

NANTUCKET HARBOR WATERSHED — The area constituting the watershed for Nantucket Harbor, as described in a technical report entitled "Nantucket Water Resource

Management Plan," 1990, by Horsley Witten Hegemann, Inc., and as delineated on a map entitled "Nantucket Harbor Watershed," Nantucket GIS, dated January 1999.

**§ 309-3. Deadline for inspection.**

A. Properties utilizing in-ground soil absorption systems located within Zone A of the Nantucket Harbor Watershed District as established by these regulations, and as demonstrated on a map entitled "Nantucket Harbor Watershed District with 1,000 foot Buffer Belt," shall have the existing soil absorption system inspected by a Massachusetts-licensed system inspector within 30 months of promulgation of these regulations. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

B. Properties utilizing in-ground soil absorption systems located within Zone B of the Nantucket Harbor Watershed District as established by these regulations, and as demonstrated on a map entitled "Nantucket Harbor Watershed District with 1,000 foot Buffer Belt," shall have the existing soil absorption system inspected by a Massachusetts-licensed system inspector within 36 months of promulgation of these regulations. Said inspection report shall be recorded with the Nantucket Health Department within 21 days of the completed inspection.

**§ 309-4. Types of inspections.**

A. All systems shall be inspected to determine the presence and/or absence of hydraulic failure and depth to groundwater. Depth to groundwater shall be determined by direct observation of highest groundwater elevation (including seasonal perched and tidally influenced groundwater) in a test pit excavation, unless an alternative method for accurately determining the depth to groundwater has been approved in writing by the Health Director.

B. The Health Director may, based on existing unique development conditions or due to the proximity of multiple systems within a limited geographic area, substitute a preapproved groundwater monitoring protocol for the test pit excavation. The monitoring protocol shall require, as a minimum;

(1) Data collected over a twelve-month period.

(2) A minimum of three wells offset to define groundwater flow direction as well as depth.

**§ 309-5. Repairs to failed systems.**

A. The owner of a system meeting hydraulic failure criteria pursuant to these regulations as stated on the Town of Nantucket Board of Health Septic System Inspection Report/ Certificate of Compliance Form shall bring the system into compliance with all applicable state and local regulations within 30 days of the date of inspection.

B. The owner of a system meeting failure criteria, exclusive of hydraulic failure, pursuant to these regulations as stated on the Town of Nantucket Board of Health Septic System

Inspection Report/Certificate of Compliance Form shall bring the system into compliance with all state and local regulations within 18 month of the adoption of the assessment report as required in § 309-6B and/or within 30 months of the expiration date of Zone A and B inspections, subject to § 309-6C.

**§ 309-6. Inspection evaluation period.**

A. Within three months of the inspection date of Zone A and B inspections, the Health Department shall tabulate and publish the inspection results.

B. Within six months of the expiration date of Zone A and Zone B inspections, the Health Department shall provide a preliminary assessment report to the Board of Health. This report shall include a brief evaluation of treatment options to effectuate implementation of best available engineering design for all required repairs/upgrades.

C. No later than six months after the expiration date of Zone B inspections, the Board of Health shall adopt the Nantucket/Madaket Assessment Report, including recommendations.

**§ 309-7. Exemptions.**

A. Properties whose on-site sewage disposal design is documented to be based on test pits and percolation testing observed by the Board of Health after November 1, 2003, are exempt from the requirements of these regulations. **[Amended during codification]**

B. Properties which have been inspected and have both a Town of Nantucket Board of Health Septic System Inspection Report and a Certificate of Compliance Form filed with the Nantucket Health Department and dated within 24 months before promulgation of these regulations are exempt from inspection and compliance standards as set forth in these regulations.

C. In all areas where Town of Nantucket mapping shows that the separation between the bottom of the soil absorption system and the predicted groundwater elevation (based on HWH study and/or USGS Hydrologic Investigation Atlas Water Resources Map dated 1980) exceeds 10 feet, testing will not be required.

**§ 309-8. Enforcement; when effective.**

A. Enforcement of these local regulations shall be effected through Chapter 323, Board of Health Administration, Article II, Enforcement of Regulations, of the Town Regulations.

B. These regulations and the amendments thereto shall become effective upon the date of publication.

# Chapter 316

# PEDICABS


**§ 316-1. Definitions.**

**§ 316-2. Pedicab owners.**

**§ 316-3. Pedicab operators.**

**§ 316-4. Operating regulations.**

**§ 316-5. Revocation of licenses.**

**Pedicab Service Area Map**


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 7-1-2011. Amendments noted where applicable.]**

**TOWN REGULATIONS REFERENCES**

**Traffic — See Ch. 375.**

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## § 316-1. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

PEDICAB — A bicycle with three or more wheels, which is designed to transport passengers on seats attached to the vehicle, which is operated by one person, which is powered solely by human power, and which is used for transporting passengers for hire.

## § 316-2. Pedicab owners.

A. No person shall engage in the business of transporting persons for hire in a vehicle without first having obtained a license from the Nantucket Select Board (hereinafter "Board") authorizing him/her to engage in such business. The Select Board shall set the number of pedicab owner licenses available in any calendar year at will.

B. Pedicabs must be registered to a residential address in the Town of Nantucket.

C. The applicant must have already had the pedicab inspected by the Nantucket Police Department in advance of receiving a license each year and submit a form completed by the Police Department to the Board upon filing an application.

D. No pedicab license shall be issued by the Board until the applicant has presented proof of the vehicle's insurance, that the insurance policy covers no more than four passengers, including the driver, riding in the vehicle, and the applicant provides a certificate of vehicle insurance naming the Town as an additional insured.

E. An applicant shall set forth under oath all information that the Board may require, including, but not limited to:

(1) The full name, address and phone number of the owner;

(2) The name and address of all legal and registered owners of the pedicab;

(3) A description of the pedicab, including trade name, if any, serial number, and body style; and

(4) The Physical address of pedicab storage.

F. When a pedicab owner changes his/her address or the place at which a pedicab owned by him/her is kept, the owner shall notify the Board within three days of such change.

G. All pedicabs shall have the business name and the business telephone number posted on rear of the cab in letters no less than three inches high and one-half inch wide. All lettering must be in the form of painted or self-adhesive contrasting lettering. (Magnetic or other removable signs are not permitted.)

H. Hours of operation shall not exceed the hours of 6:00 a.m. to 2:00 a.m. daily. Hours of operation for applicants less than 18 years of age will not extend past 10:00 p.m. daily. **[Amended during codification]**

I. Pedicab licenses shall be valid only during the calendar year for which they are issued.

J. A license issued for any pedicab is not transferable.

K. No placards, banners, or advertisements of any description will be permitted upon the outside of any pedicab without the approval of the Board.

L. All pedicab operators shall maintain a neat and clean pedicab while on duty.

M. The pedicab license fee shall be set from time to time by the Select Board. **[Amended during codification]**

N. The Nantucket Police Department, under supervision of the Chief of Police, is hereby designated as the enforcement agency of these regulations and shall notify the Board of any violation thereof. Pedicab owners/operators shall comply with all regulations. Any violation of the Board's regulations or any state or local laws or bylaws may result in a suspension or revocation of the license.

O. Pedicab owners shall notify the Board when operators leave the company.

P. Owners/Operators shall charge no fare for pedicab service; operators shall be paid through voluntary payments or tips from passengers only.

Q. No smoking is allowed in pedicabs at any time.

R. The operating company will provide a shift supervisor during the hours of 6:00 p.m. to 2:00 a.m. and proof of radio contact upon request for juvenile-manned shifts. **[Amended during codification]**

### § 316-3. Pedicab operators.

Pedicab operator licenses are issued by the Nantucket Police Department and applications shall be filed with the Police Department, 4 Fairgrounds Road, Nantucket.

A. The applicant must be 18 years of age or older, or 16 years of age with written parental/guardian permission.

B. The applicant must have a valid state driver's license and/or internationally approved driver's license, and present a copy to the Board upon filing an application.

C. A certificate of physical fitness issued by a practicing physician shall be mandatory to accompany all new applications for a pedicab operator's license.

D. Pedicab operator's licenses shall be valid only during the calendar year for which issued.

E. When a pedicab operator changes his/her address, the operator shall notify the Board within three days of such change.

F. A neat and clean appearance is expected of all pedicab operators while on duty.

G. The pedicab operator fee shall be set from time to time by the Select Board. **[Amended during codification]**

H. Pedicab operators shall not, when otherwise available for hire, refuse to transport anyone requesting a ride except under the following circumstances:

(1) The transportation requested is such that the operator may not legally accept such passenger.

(2) The proposed passenger is disorderly, engaged in the commission of any crime, or is otherwise unfit to be transported as a passenger.

**§ 316-4. Operating regulations.**

A. It shall be unlawful for any person:

(1) To operate a pedicab while under the influence of alcoholic beverages or controlled substances other than medication prescribed by a physician. No operator shall operate a pedicab within four hours of having consumed any alcoholic beverage.

(2) To operate a pedicab in any manner that impedes or blocks the normal or reasonable movement of pedestrian or vehicular traffic unless such operation is necessary for safe operation or in compliance with law.

(3) To operate, or cause to be operated, any pedicab upon or along any route unless the Select Board first approves such route. The Board shall approve a map designating a Pedicab Service Area which shall apply to this requirement. The Board may alter the map as it deems necessary.[1]

(4) To operate or cause to be operated at night a pedicab without using headlights and taillights.

B. There shall be no more than four passengers, including the operator, in a pedicab at any one time. Passengers being transported shall remain seated throughout the ride.

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**1. Editor's Note: The Pedicab Service Area Map is included as an attachment to this chapter.**

**§ 316-5. Revocation of licenses.**

The Board may suspend or revoke any pedicab license or operator's license for failure to comply with these regulations, state law or local bylaw. The Board shall provide notice and an opportunity for a hearing to licensees prior to taking any such action. The Board may suspend or revoke any pedicab license or operator's license immediately at the Board's discretion for public safety reasons.

# Chapter 327

# SEPTIC SYSTEMS


ARTICLE I
**Regulations**

**§ 327-1. Submitted septage plans.**

**§ 327-2. Separation distances for soil absorption systems.**

**§ 327-3. Permit expiration and extension.**

**§ 327-4. Septage flow estimates.**

ARTICLE II
**Septic System Upgrade, Replacement or Repair Deferrals**

**§ 327-5. Findings and purpose.**

**§ 327-6. Compliance required; deferrals authorized.**

**§ 327-7. Issuance of deferral; conditions.**

**§ 327-8. Deferral procedure.**

**§ 327-9. Definitions.**

**§ 327-10. Amendments.**

**§ 327-11. Violations and penalties; enforcement.**

**§ 327-12. Authority.**


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

**TOWN CODE REFERENCES**

**Sewers and wastewater facilities — See Ch. 120.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**

**Sewage disposal and treatment — See Ch. 332.**

**Sewers — See Ch. 336.**

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ARTICLE I

**Regulations**
**[Adopted by the Board of Health]**

## § 327-1. Submitted septage plans.

A submitted septage plan shall show, as a minimum, the lot to be served, location and dimensions of the system (including reserve area), design calculations, existing and proposed contours, location and log of deep observation hole, location and results of percolation tests, approved soils analysis forms, locations of any wetlands, all known sources of water supply within 200 feet of the soil absorption system, location of any proposed potable water supply well to serve the lot, location of water lines on the property, maximum groundwater elevation in the area of the soil absorption system and a profile of the system. The plans shall be

prepared by a professional engineer or other professional authorized by law to prepare such plans.

### § 327-2. Separation distances for soil absorption systems.

A. No soil absorption system shall be located or installed within 100 feet of a wetland. On a lot in existence prior to the effective date of these regulations, where lot configuration and/or maximum square footage prohibit locating a soil absorption system the minimum 100 feet from a wetland, the soil absorption system shall have a maximum design flow of 330 gallons per day.

B. Soil absorption systems shall not be constructed in areas where the maximum groundwater elevation is less than five feet below the bottom of the soil absorption system.

### § 327-3. Permit expiration and extension.

A. All systems for which a disposal system construction permit has been issued shall be completed, and the certificate of compliance shall be obtained, within three years of issuance of the permit. Unless an extension pursuant to Title 5, 310 CMR 15.020(3), is issued, the permit, and any variances or local upgrade approvals from 310 CMR 15.00 allowed therewith, shall expire if the work authorized by said permit is not completed within a three-year period.

B. The local approving authority or the Department may issue a written one-year extension to the disposal system construction permit and certificate of compliance expiration date, upon the presentation of documented facts preventing the completion of the approved system within the time frame of the original permit. Only one extension shall be granted.

### § 327-4. Septage flow estimates.

Sewage flow estimates shall be determined using procedures given in the Massachusetts State Environmental Code; Minimum Requirements for the Subsurface Disposal of Sanitary Sewage: Title 5.

## ARTICLE II
## Septic System Upgrade, Replacement or Repair Deferrals
## [Adopted by the Board of Health]

### § 327-5. Findings and purpose.

A. The Town is mandated, through the Massachusetts Estuaries Program (MEP), under the jurisdiction of the Massachusetts Department of Environmental Protection (MassDEP), to reduce nitrogen loading in specific areas of Nantucket and to meet total maximum daily loads (TMDLs) set by the commonwealth in Nantucket Harbor, Madaket Harbor, Long Pond, Sesachacha Pond and potentially other embayment areas of Nantucket,

including the Hummock Pond Area. Nantucket's harbor watershed districts (Nantucket and Madaket) also detail reductions of nutrient loading from on-site wastewater disposal systems.

B. In order to meet these mandates, the Town is currently engaged in facilities planning for future phases of a municipal Comprehensive Wastewater Management Plan (CWMP), which includes provisions for additional sewering of portions of the Town. Because the planning, design and installation of sewers in these new areas is expected to take some time, the Board of Health wishes to provide options for property owners who currently have failed on-site wastewater systems in areas proposed for municipal sewer. Therefore, to alleviate the burden on property owners who may have to pay for an expensive septic system upgrade, replacement or repair and then have to pay again to connect to the municipal sewer, the Board is enacting this regulation to provide for deferrals in certain circumstances.

**§ 327-6. Compliance required; deferrals authorized.**

A. Owners or operators of residential or commercial property on the Island of Nantucket shall upgrade, replace, or repair any on-site wastewater disposal system that fails to meet the requirements of the State Environmental Code, Title 5, the Nantucket Board of Health Regulations, and/or orders of the Nantucket Board of Health, within the time required by such code, regulations, and/or orders.

B. The Board of Health may defer any requirement to upgrade, replace, or repair a failing on-site wastewater disposal system until such time as a municipal sewer is available, for owners and operators of residential and commercial property located in a proposed future municipal sewer service area, identified as a "Needs Area" in the CWMP Update.

C. Any such deferrals shall be subject to the conditions set forth in § 327-7 of this regulation and the terms of an administrative consent order (ACO) executed by the owner and operator of the property.

**§ 327-7. Issuance of deferral; conditions.**

A. The issuance of a deferral shall be at the sole discretion of the Board of Health, which shall determine that the costs of upgrading, replacing, or repairing the system is excessive in light of the probability that municipal sewer will be available in the near future and that such upgrade, replacement, or repair can be deferred for a definite period of time without creating an unreasonable threat to public health, safety, or the environment.

B. All upgrade deferrals shall be subject to the following minimum conditions:

(1) The applicant must demonstrate that the system is not in hydraulic failure, as that term is defined in § 327-9 of this regulation, and that the condition of the system does not pose an imminent threat to public health, safety, or the environment;

(2) The applicant must execute an administrative consent order (ACO) acknowledging that the system fails to meet the requirements of the State

Environmental Code, Title 5, the Nantucket Board of Health regulations and/or orders of the Nantucket Board of Health;

(3) The applicant shall agree, in writing, to abandon the system and connect the property to the municipal sewer within 60 days of receipt of notice of sewer availability, or to upgrade, repair or replace the system as required by the Board of Health within 60 days of receipt of notice that such upgrade, repair, or replacement is required;

(4) The applicant shall deposit a sum of money into an insured and interest-bearing escrow account of the Town established and maintained by the Finance Director pursuant to MGL c. 44, § 53A, said sum to be used solely for the purpose of defraying the cost of connecting to municipal sewer or upgrading, repairing, or replacing the system;

(5) The applicant shall agree to have the system periodically inspected by a duly licensed Title 5 inspector;

(6) The applicant shall agree to comply with all interim orders of the Board of Health; and

(7) Said administrative consent order shall be recorded with the title to the property and shall run with the land.

**§ 327-8. Deferral procedure.**

A. Any property owner seeking a deferral in accordance with § 327-6 of this regulation shall apply, in writing, to the Board of Health.

B. The application shall include an inspection report from a duly licensed Title 5 inspector showing the nature of the failure.

C. If the application is approved, the applicant shall execute an administrative consent order and shall pay, by certified check, bank or cashiers check, a sum of money for the escrow account required by § 327-7B(4) of this regulation.

D. Within 14 days of the execution of the ACO, the applicant shall provide the Board of Health with proof that it has been recorded with the Nantucket County Registry of Deeds.

E. The applicant shall make any interim repairs required by the Board of Health within the time ordered by the Board.

F. If the application is denied, the applicant may request a hearing before the Board of Health. Said request shall be in writing and shall be received by the Board no later than 30 days after the Board's decision to deny the application. The Board's decision after said hearing shall be final. **[Amended during codification]**

**§ 327-9. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

ADMINISTRATIVE CONSENT ORDER — Duly executed and recorded document that allows a property owner in a specific area of Nantucket to defer major repair and/or upgrade of a failed on-site wastewater treatment system until municipal sewer is available for connection. Specific provisions for deferment are detailed in the ACO document. **[Amended during codification]**

BOARD OF HEALTH — The Town of Nantucket department with local jurisdiction of on-site wastewater systems in addition to all other health-related matters.

COMPREHENSIVE WASTEWATER MANAGEMENT PLAN — The Town's twenty-year wastewater planning document completed according to the Department of Environmental Protection Bureau of Municipal Finances Guide to Comprehensive Wastewater Management Planning, including any updates thereto. **[Amended during codification]**

ESCROW ACCOUNT — An account set up with the Town's Finance Department for the purpose of collecting funds, based on an estimate to repair a failed on-site wastewater system to Title 5 and local standards, to apportion towards the capital cost assessed to the property owner for municipal sewer or for repair/upgrade of on-site system.

HYDRAULIC FAILURE — An on-site wastewater system failure due to ponding of surface water, back-up of sewage into the dwelling, and/or evidence of flooding within the wastewater system's distribution box, septic tank, cesspool, or metal tank.

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION (MassDEP) — The agency charged with proposing and enforcing environmental law.

MASSACHUSETTS ESTUARIES PROGRAM — The Massachusetts DEP and the UMASS/Dartmouth School of Marine Science and Technology (SMAST) collaborating together with Coastal Zone Management, the Cape Cod Commission, and several municipalities to classify the nitrogen sensitivity of Southeastern Massachusetts's coastal bays and estuaries. SMAST technical experts work with MassDEP to evaluate the nitrogen sensitivity through comprehensive water quality testing, quantitative TMDL (total maximum daily load) models, and preparation of technical reports allowing communities to consider how implementation of nitrogen management scenarios within watersheds will influence water quality in embayments.

MUNICIPAL SEWER — The physical infrastructure that collects, treats, and discharges wastewater through a public system.

NANTUCKET — Encompasses the land and water of the Town and County of Nantucket, including Tuckernuck and Muskeget.

NANTUCKET COUNTY REGISTRY OF DEEDS — The County of Nantucket Office of Recorder of Deeds is a government office tasked with maintaining public records and documents, especially records relating to real estate.

NEEDS AREA — Geographic delineation of land/property area that has been determined to be unsustainable in the long-term with on-site wastewater disposal systems in the Town of Nantucket's Comprehensive Wastewater Management Plan.

TECHNICAL FAILURE — An on-site wastewater system failure due to diminished distance to groundwater, less than six feet in designated watershed protection zones, less than five feet in non-watershed protection areas/within 100 feet to private drinking water well, missing or

undersized system components and leach fields within 100 feet of a private drinking water well.

TITLE 5 — The environmental code in Massachusetts governing on-site wastewater systems in Massachusetts found under 310 CMR 15.00.

TOTAL MAXIMUM DAILY LOAD (TMDL) — A calculation of the maximum amount of a pollutant that a water body can receive and still safely meet water quality standards.

TOWN — The bodies politic created by statute (of the Commonwealth of Massachusetts General Court) to govern said lands and waters.

### § 327-10. Amendments.

No part of these regulations may be modified and/or rescinded without a majority vote of the Board of Health.

### § 327-11. Violations and penalties; enforcement.

A. Without limiting any other remedies or penalties, the Board of Health and/or the Board of Health's agent may punish any person or entity that violates these regulations by assessing without demand a stipulated penalty of $500 per day. Each day of noncompliance shall constitute a separate violation.

B. The penalty shall be paid by certified check, cashier's check or money order payable to the Town of Nantucket.

### § 327-12. Authority.

These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

# Chapter 332

# SEWAGE DISPOSAL AND TREATMENT


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**§ 332-24. Innovative/Alternative (I/A) Tracking Program.**

**§ 332-25. Registration of all on-site systems.**

**Nantucket Harbor Watershed Protection District Map**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**
**Nantucket and Madaket Harbor watersheds — See Ch. 99.**
**Sewers and wastewater facilities — See Ch. 120.**
**Wetlands — See Ch. 136.**
**Zoning — See Ch. 139.**

**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**
**Septic systems — See Ch. 327.**
**Sewers — See Ch. 336.**
**Wetlands protection — See Ch. 390.**

## ARTICLE I
## Upgrading of Substandard On-Site Sewage Disposal Systems
## [Adopted by the Board of Health 8-29-1990, effective 8-31-1990]

### § 332-1. Purpose and authority.

A. Purpose. These regulations are intended to protect the public health and general welfare by ensuring the upgrading of substandard sewage disposal systems in a manner which will protect the quality of the groundwater on the Island of Nantucket.

B. Authority. These regulations are adopted by the Town of Nantucket's Board of Health as authorized by MGL c. 111, § 31.

### § 332-2. Compliance requirements.

Systems of domestic sewage disposal which do not presently comply with the minimum standards specified by state and local regulations shall be brought into compliance when:

A. An application for a building permit for which expansion of the existing system is required is filed with the proper departments. The soil absorption system shall comply with the maximum separation and/or setback distance attainable up to 300 feet without the use of a lift pump.

B. Any property transfer, not exempt, takes place. Exempt property transfers are defined in § 332-4B.

### § 332-3. Compliance standards.

A. All subject systems shall comply with the minimum standards of the current State Sanitary Code, and with current local regulations to the maximum extent possible, meaning that systems shall be located as close to the horizontal separation distance requirements as lot contours and size allow unless the attainable increase in required horizontal separation distance is 20 feet or less. Systems which cannot meet current Title 5 standards shall require a variance (see Chapter 223, Article I, Variances, of the Town Regulations). **[Amended during codification]**

B. Prior to selling, conveying, or transferring title to real property in Nantucket which contains an existing system, the owner thereof shall have had an inspection of said system by a system inspector certified by the state, indicating that said system is functioning, nonfunctioning, or in failed condition.

C. The inspection shall take place not more than 270 days prior to or 180 days after the transfer of property. The Agent of the Board of Health must receive the signed official inspection form and/or certificate of compliance within seven days of the inspection.

**§ 332-4. Exemptions.**

A. The systems described in the following subsections shall be exempt from this upgrade regulation to the extent therein provided.

(1) Any system complying with the 1978 State Sanitary Code as evidenced by an "as-built" plan on file with the Nantucket Board of Health, which permit is dated less than three years from the date of transfer and has proof of annual pumping, shall be exempt from this compliance standard and no inspection of the system shall be required.

(2) Any system which complies with the 1978 State Sanitary Code as evidenced by an "as-built" plan on file with the Nantucket Board of Health which has been inspected less than three years from date of transfer and has proof of annual pumping shall be exempt from these compliance standards and no inspection of the system shall be required.

B. Any transfer of real estate which qualifies for a (b) through (l) exemption, inclusive, from the Nantucket Island Land Bank fee imposed by Chapter 669 of the Acts of 1983 of the Commonwealth of Massachusetts, as amended, as more specifically set forth in Section 12 of such Act, as amended, shall also be exempt from these upgrade-upon-transfer compliance requirements unless said transfer is to a third party for fair market, monetary consideration.

C. Whenever a person has submitted a subdivision or preliminary subdivision plan followed within seven months by a definitive plan, or a plan referred to in MGL c. 41, § 81P, as the case may be, the land shown on such plan shall be governed by the provisions of the State Environmental Code and Board of Health regulations, if any, which differ from the health codes which are in effect at the time of first submission of the plan. Such provisions shall apply while the plan is processed until rejected, or if approved, until three years from the date of filing pursuant to MGL c. 111, § 127P.

**§ 332-5. Effective date.**

The effective date of this upgrade-upon-transfer requirement shall be February 1, 1991.

ARTICLE II

**Connections to New and Existing Publicly Owned Sanitary Sewers**
**[Adopted by the Board of Health 5-7-2003]**

### § 332-6. Purpose and authority.

A. The intent of these regulations is to further protect all existing and potential groundwater, surface waters, harbors and estuaries on Nantucket Island from contamination from septic system failure.

B. These regulations are promulgated by the Board of Health of the Town of Nantucket pursuant to its authority under MGL c. 111, § 31.

### § 332-7. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

OWNER — Any person named within a deed on file with the Nantucket Registry of Deeds as the legal and rightful owner of a residential or commercial property subject to these regulations.

PERSON — Any individual, association, group, business, proprietor, partnership, corporation, firm, trust, or unit of government.

RESIDENTIAL OR COMMERCIAL PROPERTY — Any combination of land or buildings used for human habitation or the operation of a business engaged in the manufacture or sales of goods and/or services.

SEPTIC SYSTEM — Any subsurface sewage disposal system that includes both a holding tank and a leach facility or a cesspool.

### § 332-8. Connection to Town sanitary sewer system required.

Owners of residential or commercial properties located on the Island of Nantucket shall connect the structures located on their property by a connection in accordance with existing building and public works requirements to any sanitary sewer line installed or approved by the Town of Nantucket Department of Public Works under any street that abuts the subject property.

### § 332-9. Required connection time frame.

A. Connections to sanitary sewers shall be completed within two years of notice of the availability of the line for connection.

B. In environmentally sensitive areas as defined by the Nantucket Board of Health, where new sewer lines are available for connection pursuant to § 332-8, the property owners shall complete the required connection(s) within six months of notice from the Nantucket Department of Public Works, weather permitting, but in no case in more than one year of said notice.

C. The Board of Health may extend the time periods for required connections set forth in Subsection A or B in the event of an incapacity of the Surfside Wastewater Treatment Facility to handle additional flowage.

### § 332-10. Notification of Health Department.

The Nantucket Department of Public Works shall notify the Nantucket Health Department upon the completion of each connection.

### § 332-11. Variances.

A. The Nantucket Board of Health may vary the application of any provision of these regulations, unless otherwise prohibited by state law or regulation, in any case when, in the opinion of the Board of Health, lot size restrictions or hydrogeological conditions make enforcement of the provisions impractical or the owner has demonstrated a degree of environmental protection equivalent to that required under these regulations. The Board of Health also may vary the application of any provision of these regulations in any case when, in the opinion of the Board of Health, enforcement will do manifest injustice to the property or its owner.

B. No variance shall be granted for environmentally sensitive areas or areas defined by the Nantucket Board of Health as groundwater or harbor and water bodies protection districts.

C. Variances shall be considered for on-site disposal systems installed five years or less before a sanitary sewer is installed or completed. Example: If an on site disposal system installed two years before a sewer line is installed or completed, a three-year variance may be granted.

D. Every request for a variance shall be in writing to the Nantucket Board of Health and be subject to a hearing before the Board of Health. The owner of the subject property shall, at his/her expense, notify all abutters by certified mail at least 10 days prior to the public hearing, and is responsible for payment for advertisement.

E. Any variance granted by the Board of Health shall be in writing.

F. Any denial of a variance by the Board of Health shall also be in writing and shall contain a statement of reasons for the denial.

### § 332-12. Right of entry.

The Nantucket Board of Health or its agent may enter upon privately owned property with reasonable notice and at reasonable hours for the purpose of ensuring compliance with these regulations.

### § 332-13. Violations and penalties; enforcement.

A. Any person violating any portion of these regulations shall be punished be a fine of not more than $100. Each day, or portion thereof, shall constitute a separate offense.

B. If a violator holds any license and/or permit issued by the Nantucket Board of Health, said license and/or permit may be suspended for up to 24 hours for each violation.

C. If more than one provision of these regulations is violated, each violation shall constitute a separate offense. Each day shall constitute a separate violation.

### § 332-14. Severability.

In the event that any provision of these regulations is declared invalid or unenforceable for any reason, all other provisions will be unaffected and shall remain in full force and effect.

## ARTICLE III
## On-Site Sewage Disposal Systems
## [Adopted by the Board of Health 12-1-2004]

### § 332-15. Purpose, authority and findings.

A. Purpose. The purpose of these regulations is to protect the public health and general welfare by regulating on-site soil absorption systems in a manner which will protect the quality of the Town of Nantucket's groundwater and surface waters. These regulations are intended to complement Title 5 of the State Environmental Code.

B. Authority. These regulations are adopted pursuant to the authority granted to the Board by MGL c. 111, § 31.

C. Findings. The Board has determined that the State Environmental Code Title 5, Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, is not adequate to protect groundwater and surface waters from contamination by nutrients, bacteria, viruses, and hazardous materials associated with septic system effluent, particularly in areas with extremely rapid infiltration rates, and in coastal areas characterized by tidally induced groundwater fluctuations, coastal flooding, and shifting sand.

### § 332-16. General requirements for individual disposal systems.

A. Disposal works construction permit. No individual on-site septic system or other means of sewage disposal shall be located, constructed, altered, repaired, or installed where a common sanitary sewer is accessible adjoining the property and where permission to enter such sewer can be obtained from the Nantucket Board of Public Works having jurisdiction over it (310 CMR 15.00) or if a common sanitary sewer is not accessible until a permit for an on-site system's location, construction, alteration, repair or installation shall have been issued by the Board of Health. A permit shall not be issued for any system of individual sewage disposal when the total volume of the sewage to be disposed of on any lot is in excess of 10,000 gallons per day, or where an on-site system is proposed on the lot to be served, until the plans for such system have been approved by the Massachusetts Department of Environmental Protection in accordance with MGL c. 111, § 17. Where sewage flows on a lot exceed 10,000 gallons per day, the Department of Environmental Protection may require additional treatment of the

waste prior to its disposal to the ground. The applicant is also obligated to comply with any applicable requirements established by the Division of Water Pollution Control pursuant to MGL c. 21, § 43, and the Wetlands Protection Act, MGL c. 131, § 40. A permit shall not be issued in designated Nantucket nitrogen-, phosphorous- and/or pathogen-sensitive areas except as provided in § 332-19 of this article.

B. Application for disposal works construction permit. An application for a disposal works construction permit shall be submitted to the Board of Health and must be accompanied by a plan stamped by a qualified licensed professional engineer or registered sanitarian. The Board shall revoke such permit if conditions different from those set forth in the application are found to exist prior to or during actual construction of the system. The permit so granted shall expire two years from the date of issue in accordance with Chapter 303, Article I, Madaket Regulations, § 303-5 of the Town Regulations if the work authorized by the permit is not completed within two years of the date the permit was issued.

C. Plan of on-site system or subsurface sewage disposal system or systems. The submitted plan must show at a minimum: the lot to be served, location and dimensions of the system (including reserve area), design calculations, existing and proposed contours at one- or two-foot intervals, location and log of deep observation holes, locations and results of percolation tests, location of any streams, surface and subsurface drains and wetland resource areas within 100 feet of the system, known sources of water supply within 200 feet of the system, location of any proposed well to serve the lot, location of water lines on the property, depth to groundwater/maximum groundwater elevation in the area of the soil absorption system, and a profile of the system. The plan must be prepared, reviewed and stamped by a professional engineer or a registered sanitarian and stamped by a licensed professional land surveyor as required.

D. Use. The use of an individual system shall be in compliance with the terms of the permit issued therefor and shall not exceed the design capacity of the system. Design capacity shall not be reduced for seasonal use.

E. Building or plumbing permits/subdivision plans. No building permit, foundation permit, special building permit or plumbing permit shall be issued until a disposal works construction permit has been first obtained, unless the Board of Health determines that the existing system is adequate for a proposed alteration or addition to an existing dwelling.

F. Certificate of compliance. A new individual system and alteration and repairs to an existing individual system shall not be placed in service, nor shall new dwellings or buildings or additions thereto, which must rely on new individual systems for sewage disposal, be occupied until the Board of Health has issued a certificate of compliance indicating that said system has been located, constructed, altered, or repaired in compliance with the terms of the permit and the requirements of this regulation. The Board shall require inspection of all construction by a professional engineer or a registered sanitarian and the agent of the Board of Health; and require certification in writing that all work has been completed in accordance with the terms of the permit and the approved plans. Such certification shall include an as-built plan stamped by the licensed professional engineer or registered sanitarian and stamped by a professional land surveyor as required.

G. Fees. Fees for the issuance of a construction permit, issuance of a certificate of compliance, and test pit/percolation test observation shall be charged by the Board of Health at the time an application is made, and shall be in accordance with the fee schedule adopted by the Board of Health.

H. Conditions for permit issuance. In addition to the obligation to meet the general requirements above, and those set forth in Title 5 of the State Environmental Code hereby incorporated by reference, no certificate of compliance and no permit for the construction of an individual system shall be granted unless the additional standards set forth in §§ 332-17 through 332-21 and all other applicable Town of Nantucket Board of Health regulations are met.

**§ 332-17. Determination of maximum groundwater elevation/depth to groundwater.**

A. On any lot there will be at least two deep observation holes in the area to be used for leaching plus any additional number of deep observation holes which, in the opinion of the Health Agent, will be necessary to determine the consistency (or lack thereof) of the character of the soil. The observation holes shall be examined to a depth of at least six feet below the bottom of the proposed leach facility, but in no case shallower than 10 feet total depth, unless this depth is unattainable because of existing site conditions as determined by an agent for the Board. Groundwater elevations/depth to groundwater shall be determined as set forth in Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations.[1]

B. All deep observation holes shall be witnessed by the Board of Health or its designated agent.

C. Maximum groundwater elevation/depth to groundwater shall be determined for all soil absorption system (SAS) repairs, expansions and/or new construction of on-site sewage disposal systems.

**§ 332-18. Location of soil absorption systems.**

A. All soil absorption systems located in non-nitrogen-sensitive areas shall be designed and located so that at least five feet of naturally occurring pervious material remains below the bottom of the system. The bottom of the system shall be constructed at least five feet above maximum groundwater elevation/depth to groundwater (Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations[2]) as determined by soil tests conducted by a certified soil evaluator and witnessed by an agent for the Board of Health. Soil absorption systems shall be located in accordance with § 332-18.

B. All soil absorption systems located within a nitrogen-sensitive area that incorporate innovative/alternative technologies with enhanced nitrogen/phosphorous removal shall be designed and located so that at least five feet of naturally occurring pervious material remains below the bottom of the system. The bottom of the system shall be

1. **Editor's Note: See the definition of "depth to groundwater" in § 223-13.**

2. **Editor's Note: See the definition of "depth to groundwater" in § 223-13.**

constructed at least five feet above maximum groundwater elevation/depth to groundwater (Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations[3]) as determined by soil tests conducted by a certified soils evaluator and witnessed by an agent for the Board of Health. Soils absorption systems shall be located in accordance with § 332-18.

C. All soil absorption systems located within nitrogen-sensitive areas shall be designed and located so that at least six feet of naturally occurring pervious material remains below the bottom of the system. The bottom of the system shall be constructed at least six feet above maximum groundwater elevation/depth to groundwater (Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations[4]) as determined by soil tests conducted by a certified soils evaluator and witnessed by an agent for the Board of Health. Soil absorption systems shall be located in accordance with § 332-18.

D. Repair/Upgrades of existing failed on-site sewage disposal absorption systems that service an existing structure which is not within a nitrogen-sensitive area, where no addition of habitable space is proposed, shall not require innovative/alternative technologies, and shall be constructed to meet the minimum separation of five feet above maximum groundwater elevation/depth to groundwater (Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations[5]) as determined by soil tests conducted by a certified soil evaluator and witnessed by an agent for the Board of Health. Soil absorption systems shall be located in accordance with § 332-18.

E. No system shall be permitted within coastal wetlands resource areas, including but not limited to coastal wetlands as defined in Chapter 136, Wetlands, of the Code of the Town of Nantucket and regulations adopted thereunder,[6] except as provided in Subsection C.

F. No system shall be permitted within the a V or VE Zone shown on the FEMA Maps for the Town of Nantucket.[7] Systems approved by the Board or its designated agent may be constructed within other special flood hazard areas (100-year flood zones) if designed to minimize the release of contaminants from the disposal system into the floodwaters. Disposal systems in these areas shall include the following features:

(1) Vents shall extend at least one foot above the one-hundred-year flood elevation.

(2) Access ports for all components of the system shall be watertight and shall either have bolted lids or shall extend above the level of the one-hundred-year flood.

(3) Where sewage or effluent pumping is necessary, electrical switching shall be provided to prevent the pumps from operating during periods of inundation.

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**3. Editor's Note: See the definition of "depth to groundwater" in § 223-13.**

**4. Editor's Note: See the definition of "depth to groundwater" in § 223-13.**

**5. Editor's Note: See the definition of "depth to groundwater" in § 223-13.**

**6. Editor's Note: See Ch. 390, Wetlands Protection, of the Town Regulations.**

**7. Editor's Note: See Ch. 139, Zoning, § 139-12A, Flood Hazard Overlay District, of the Code of the Town of Nantucket.**

(4) No plumbing fixtures below the one-hundred-year flood elevation shall be connected to the disposal system except by means of an ejector pump connected to the gravity waste plumbing of the structure at a point above the flood level.

**§ 332-19. Performance standards for leaching facilities.**

A. No soil absorption system shall be installed within 300 feet of any designated Nantucket nitrogen-, phosphorous- and/or pathogen-sensitive area (Chapter 223, Board of Health Administration, Article III, Definitions, of the Town Regulations[8]).

B. Nitrogen loading limitations.

(1) No system serving new construction in nitrogen-sensitive areas as defined in § 223-13 of the Town Regulations shall be designed to receive or shall receive more than 110 gallons of design flow per day per 10,000 square feet of lot area.

(2) In all non-nitrogen-sensitive areas serving new construction in areas where the use of both on-site systems and drinking water supply wells is proposed to serve the facility, systems may be designed to receive or may receive more than 110 gallons of design flow per day per 10,000 square feet of lot area from residential uses, provided that any cumulative flow exceeding 330 gallons of design flow per day demonstrates a minimum 25% TN effluent reduction. **[Amended during codification]**

C. Phosphorous loading limitations.

(1) No system serving new construction in nitrogen-sensitive areas shall be designed to received or shall receive more than 440 gallons of design flow per day per acre.

(2) All on-site leaching facilities for new construction and repairs/upgrades shall be located a minimum of 300 feet from the edge of the downgradient surface water body, unless documented that water recharge beneath the subject on-site system is not directed to the adjacent surface water body. All on-site system leaching facilities for repairs/upgrades shall be located a minimum 300 feet from the edge of the downgradient freshwater surface water body or demonstrate maximum feasible compliance.[9]

D. System weight loading criteria. All such systems shall be installed to withstand H-20 wheel loading.

E. Nitrogen loading limitations and required inspections within the Nantucket Harbor Watershed Protection District.[10]

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**8. Editor's Note: See the definition of "nitrogen-sensitive area" in § 223-13.**

**9. Editor's Note: Original Subsection D, Pathogen loading limitations, which immediately followed this subsection, was repealed during codification.**

**10. Editor's Note: See also Ch. 309, Nantucket Harbor Watershed, Art. I, of the Town Regulations**

(1) All conventional septic systems located within Nantucket Harbor Watershed Protection Districts Zones A and B (Figure 1[11]) shall be inspected every five years from the date of these amended regulations. Inspection reports shall be filed with the Nantucket Health Department.

(2) All properties within the Nantucket Harbor Watershed Protection District not currently connected to municipal sanitary sewer lines shall have installed upon new construction, septic system expansion, repairs, upgrades and transfers of property, a Department of Environmental Protection approved nitrogen reducing technology wastewater disposal system.

F. Nantucket Harbor Watershed Protection District hydraulic and technical septic system failure replacement requirements.

(1) Properties with septic systems exhibiting hydraulic failure by inspection within Nantucket Harbor Watershed Protection District Zones A and B (Figure 1[12]) shall have their systems repaired with Department of Environmental Protection approved nutrient reducing technology components within six months of the date of inspection.

(2) Properties within Nantucket Harbor Watershed Protection District Zones A and B with septic systems exhibiting, by inspection, groundwater separation distances less than six feet shall have their system repaired with Department of Environmental Protection approved nutrient reducing technology components within 12 months of the date of these amended regulations.

(3) All properties located within Nantucket Harbor Watershed Protection District Zones A and B not currently connected to municipal sewer lines and exhibiting technical failure criteria as defined in Chapter 223, Article II, Definitions, § 223-13, of the Town Regulations, and located within documented sewer needs areas as described within the Town of Nantucket Community Waste Water Management Plan (CWMP), may apply for the existing administrative consent order as documented within Chapter 327, Septic Systems, Article II, of the Town Regulations through the Nantucket Board of Health until final wastewater determinations are documented.

(4) Properties located within Nantucket Harbor Watershed Protection District Zones A and B demonstrating a separation distance from the bottom of the leach facility to groundwater in excess of 15 feet may seek a waiver from the Board of Health from Subsection F(1) through (3) of this section.

## § 332-20. Septic system access.

A. A minimum of one access hole and one inspection hole and cover for septic tanks and leach pits shall be provided and brought to grade for new construction. Access and covers for any pump chambers shall be at grade.

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**11. Editor's Note: Figure 1 is included as an attachment to this chapter.**

**12. Editor's Note: Figure 1 is included as an attachment to this chapter.**

B. Access and inspection hole covers must be a minimum diameter of 18 inches. The cast iron ring and cover must be of medium or heavier duty weight and must withstand a minimum of H-20 wheel loading.

**§ 332-21. Relief procedures.**

A. Any lot referred to in a deed or shown on a plan duly recorded at the Nantucket Registry of Deeds or filed in the Land Registration Office before the effective date of this regulation (August 31, 1990) shall comply with § 332-18A and § 332-19 of this regulation to obtain maximum feasible compliance, meaning that soil absorption systems shall be located as close to the regulation distance requirements as lot size allows.

B. In the event that a preexisting lot cannot comply with the three-hundred-foot horizontal setback requirement set forth in § 332-19A and/or the six-foot separation requirement set forth in § 332-18A of these regulations, then, in that event, the Board may, in its sole discretion, grant to said lot an exemption from said requirements upon the following conditions:

(1) The applicant shall submit to the agent of the Board of Health a design plan stamped by a licensed professional engineer, registered sanitarian, and licensed professional land surveyor as required, showing the location of the proposed soil absorption system on said lot, the location of all wells, soil absorption systems and water bodies within 300 feet of said soil absorption system, or as far from said locus as deemed necessary to determine that compliance with this section cannot be met, and the groundwater gradient and direction of flow for said lot (as determined by use of Horsley Whitten and Heggimin Report of March 1990 on file with the Board of Health, the United States Geologic Survey Map HA 615, or more detailed map duly adopted by the Board at a public hearing).

(2) For preexisting vacant lots held in contiguous ownership prior to the effective date of this regulation (August 31, 1990), the applicant shall also file a stamped plan with such design and location information showing maximum feasible compliance with the three-hundred-foot downgradient setback requirements and/or six-foot vertical separation from groundwater requirement for contiguous lots abutting the subject lot.

(3) Failed soil absorption systems on an improved lot shall, if necessary, be relocated on said lot at the time said soil absorption systems are replaced to the maximum setback distances attainable up to 300 feet and/or maximum vertical separation distance attainable up to six feet with incorporation of I/A (innovative/alternative) technology.

(4) Adjustments to preexisting lot lines shall not subject said lot to compliance with the three-hundred-foot setback requirements on the condition that such adjustments do not create an additional "buildable" lot and the distance between the soil absorption system on said lot and water body is not diminished.

(5) In addition to these requirements, on site systems constructed within the one-hundred-year flood zone as shown on the current FEMA map shall be subject to

the engineering design requirements for "mounded" systems as set forth in § 332-18A of this regulation.

C. The applicant may design a system using design flows for a smaller number of bedrooms than are presumed in this definition by granting to the approving authority a deed restriction limiting the number of bedrooms to the smaller number.

**§ 332-22. Variances.**

A. The Board of Health, in its sole discretion, may issue a variance from the strict application of these regulations to any particular case in accordance with its procedures and its regulations set forth below.

B. Prior to granting a variance from its regulations, the Board of Health shall conduct a hearing to consider granting a variance from the strict application of its regulations. The Board of Health may grant a variance, with or without conditions, upon its finding that:

(1) The person requesting the variance has established that enforcement of the provisions of these regulations from which a variance is sought would be manifestly unjust, considering all the relevant facts and circumstances of the individual case; and

(2) The person requesting a variance has established that a level of environmental protection that is at least equivalent to that provided under these regulations can be achieved without strict application of the provision of these regulations from which a variance is sought.

C. Pursuant to its regulations and other applicable law, the Board of Health shall enact rules and regulations pertaining to its hearings and its review hereunder. Said rules and regulations shall be known as the "Nantucket Board of Health Special Variance Regulations," and shall be on file with the Town Clerk of the Town of Nantucket.

**§ 332-23. Violations and penalties; enforcement.**

Without limiting any other available remedies or penalties, the Board of Health may punish any person or entity that violates these regulations by assessing a penalty of $300. Each day or part thereof during which such violation occurs or continues shall constitute a separate offense. As an alternative to criminal prosecution or civil action, the noncriminal disposition procedure set forth in MGL c. 40, § 21D, and Chapter 1, Article II, of the Code of the Town of Nantucket may be used, with a penalty of $300 for each violation; each day or part thereof during which such violation occurs or continues constitutes a separate offense.

ARTICLE IV

**Innovative/Alternative Sewage Treatment Technologies**
**[Adopted by the Board of Health 2-20-2014]**

### § 332-24. Innovative/Alternative (I/A) Tracking Program.

A. As allowed by MGL C. 111, § 31, the Board of Health of the Town of Nantucket hereby requires that owners and operators of all innovative/alternative sewage treatment technologies and all systems where the soil absorption system is designed for pressure distribution of effluent must report the results of all operation, maintenance, and monitoring activities to the Barnstable County Department of Health and the Environment. Such reporting must be performed in a manner specified by the Barnstable County Department of Health and the Environment and must occur within 30 days after each maintenance or monitoring event.

B. Further, when a system operator performs a system inspection and finds that a sewage treatment technology has malfunctioning components which have compromised the system's ability to treat sewage as designed, the operator shall report on the system's status and any planned corrective actions to the Board of Health and the Barnstable County Department of Health and the Environment within 48 hours of the inspection.

### § 332-25. Registration of all on-site systems.

The Board of Health of the Town of Nantucket, pursuant to its responsibilities to enforce 310 CMR 15.00 (Title 5) and to facilitate comprehensive wastewater planning within the Town of Nantucket, seeks to compile information regarding on-site septic systems in a usable, retrievable format. Accordingly, under the authority of MGL c. 111, § 31, the Board of Health requires that all applicants for disposal works construction permits for subsurface sewage disposal systems within the Town of Nantucket register selected details regarding the application with an on-line database maintained by the Barnstable County Department of Health and the Environment. A receipt of said registration shall be required as part of the application for a disposal works construction permit.

# Chapter 336

# SEWERS

**CURRENT SEWER REGULATIONS**
Nantucket Board of Sewer Commissioners CH 336
Adopted 5/20/2020, Effective 6/1/2020
Revisions Adopted 1/5/2022, Effective 2/1/2022


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Article II, Exhibit 3, 310 CMR 15.203

Article II, Exhibit 4, Sewer Capacity Fee Policy

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# Chapter 336

# SEWERS

**CURRENT SEWER REGULATIONS**
Nantucket Board of Sewer Commissioners CH 336
Adopted 5/20/2020, Effective 6/1/2020
Revisions Adopted 1/5/2022, Effective 2/1/2022

[HISTORY: Adopted by the Town of Nantucket
5/20/2020; Effective 6/1/2020

Revised 1/5/2022; Effective 2/1/2022]

ARTICLE I

**Use of Common Sewers; Regulations**

Purpose

The purpose of the Rules and Regulations of the Sewer Department of the Town of Nantucket are:

A. To establish the technical and administrative procedures for making connections to the sanitary sewer system including in accordance with the Nantucket Sewer Standards and Specifications;

B. To establish requirements, restrictions, and controls on the quantities and quality of what may be discharged to the sanitary sewer system; such as discharges that may:

   (1) Interfere with the operation of the publicly owned treatment works (POTW) in any way;

   (2) Pass through the POTW, to the groundwaters, inadequately treated effluent that may cause contravention of standards for these waters or surface waters or cause violation of the POTW's Groundwater Discharge Permit (GWDP) or negatively impact the watershed into which treated effluent is discharged;

   (3) Reduce the opportunity to reclaim or recycle treated wastewater and/or sludge from the system;

   (4) Increase the cost or otherwise hamper or limit the disposal of sludges and other residuals;

   (5) Endanger municipal employees or the public;

   (6) Cause, directly or indirectly, any public nuisance condition;

C. To prevent new sources of inflow and infiltration and eliminate private source inflow;

D. To provide for equitable distribution to all users of the POTW, all costs associated with the collection, transmission, treatment, and residuals disposal, and to provide for the collection of such costs; and

E. To provide for the orderly planning, implementation, and operation of sewer systems' and treatment systems' components to improve the health and environmental quality of the Town of Nantucket and its people and resources.

The following rules and regulations are a part of the contract with every person who discharges water and waste into the Nantucket Sewer System and governs the relationship between the Sewer Department and its consumers, contractors and/or developers, and all other persons who install sewers, discharges wastewater, are connected into the sewer system or apply for a connection to the sewer system.

Modifications

Modifications, additions to or rescinding of these Rules and Regulations may take place from time to time as approved by the Select Board as required by Massachusetts General Laws, Chapter 83, Section 10 and Chapter 396 of the Acts of 2008 ("Nantucket Sewer Act"). The aforesaid Rules and Regulations and all the Previous Amendments shall be deemed to be valid and in full force and affect; and notwithstanding anything to the contrary which may be contained therein, all further amendments, changes, modifications, revisions, additions, or rescission of the aforesaid Rules and Regulations and Previous Amendments shall not be valid without the approval of the Select Board. Or take any other action in relation thereto.

**§ 336-1. Definitions.**

Unless the context specifically indicates otherwise, the meaning of the terms used in this regulation shall be as follows:

ACT or THE ACT – The Federal Water Pollution Control Act, also known as the "Clean Water Act," as amended, 33 U.S.C. § 1251 et seq., and the regulations promulgated thereunder, as amended from time to time.

BIOCHEMICAL OXYGEN DEMAND — or "BOD" is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in milligrams per liter.

BUILDING SEWER – That part of the lowest horizontal piping of a building plumbing system that receives the discharge of wastewater from inside the walls of the building and conveys it to the sewer service. The building sewer extends 10 feet beyond the building foundation.

COMMERCIAL ESTABLISHMENT – A structure, room, enclosed floor space, or combination of the aforementioned used in the course of providing professional, public and/or private services. An existing commercial establishment is defined in this regulation as being substantially complete prior to the availability of the Nantucket Sewer System or Siasconset Sewer System Areas or those that received construction approvals prior to December 31, 2017. A new commercial establishment is defined in this regulation which as not being substantially complete prior to the availability of the Nantucket Sewer System or Siasconset Sewer System Areas, those that received construction approvals on or after December 31, 2017.

CONNECTION TO SEWER – A connection shall exist where any tie-in is made to the Nantucket Sewer System or appurtenance thereof which has the potential to contribute wastewater flow.

DEPARTMENT OF ENVIRONMENTAL PROTECTION – or "DEP" shall mean the Massachusetts Department of Environmental Protection or, where appropriate, the Administrator or other duly authorized official of said agency.

DIRECTOR – shall mean the person appointed by the Nantucket Town Manager as the Director of the Nantucket Sewer Department who is vested with the authority and responsibility for the implementation and enforcement of these rules and regulations or their authorized deputy, agent, or representative.

DWELLING – A structure used or intended to be used by one family or household for living, sleeping, cooking and eating. An existing dwelling is defined in this regulation which as being substantially complete prior to the availability of the Nantucket Sewer System, or Siasconset Sewer System Areas, those that received construction approvals prior to December 31, 2017. A new dwelling is defined in this regulation as not being substantially complete prior to the availability of the Nantucket Sewer System or Siasconset Sewer System Areas, those that received construction approvals on or after December 31, 2017.

DWELLING UNIT – A room or enclosed floor space within a dwelling used by or forming a habitable unit for one family with facilities for living, sleeping, cooking and eating. A dwelling may consist of one or more dwelling units. An existing dwelling unit is defined in this regulation which as being substantially complete prior to the availability of the Nantucket Sewer System or Siasconset Sewer System Areas, those that received construction approvals prior to December 31, 2017. A new dwelling unit is defined in this regulation as not being substantially complete prior to the availability of the Nantucket Sewer System or Siasconset Sewer System Areas, those that received construction approvals on or after December 31, 2017.

ENVIRONMENTAL PROTECTION AGENCY – or "EPA" shall mean the United States Environmental Protection Agency, or, where appropriate, the Administrator or other duly authorized official of said Agency.

FATS, OIL, AND GREASE – or "FOG" are organic polar compounds derived from animal and/or plant sources and accumulate in the sewer system. These are substances that may solidify or become viscous at temperatures above 32 degrees Fahrenheit. These substances are detectable and measurable using analytical procedures established in 40 CFR 136.

GARBAGE – Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

GRINDER PUMP- A wastewater conveyance device. Wastewater and water from water-using household appliances flows through the home's pipes into the grinder pump's exterior holding tank. Once the wastewater inside the tank reaches a specific level, the pump will turn on, grind the waste into a fine slurry, and pump it to the Municipal Sewer System.

LEACHATE – a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

LICENSED UTILITY INSTALLER – or "L.U.I." shall mean a person, who upon submitting a License and Permit Bond, Certificate of Insurance, and pays the Utility Installer's License fee, all of which are approved by the Director, is permitted to perform the installation of sanitary sewers or building sewers.

LOT – Is a tract of land in common ownership, including land under water, not divided by a street, which may include multiple parcels of adjacent land in common ownership.

LOW-PRESSURE SEWER- A pressure pipe that receives wastewater from low-pressure sewer services and conveys it to the Municipal Sewer System.

LOW-PRESSURE SEWER SERVICE - A small diameter pipe that connects an individual grinder pump to a low-pressure sewer or to a gravity sewer. A low-pressure sewer service is privately-owned.

MAY – When used in these regulations, this term is permissive.

MIXED USE DEVELOPMENT - Mixed use properties, such as buildings with separate residential and commercial units.

MULTIPLE DWELLING UNITS – More than one dwelling unit on a single property or common property with each unit having a separate service connection, except for tertiary dwellings that may have a common service connection.

MUNICIPAL SERVICE CONNECTION – The point at which the sewer service lateral connects to the municipal sewer.

MUNICIPAL SEWER - A publicly-owned pipe or conduit used for transporting municipal wastewater.

MUNICIPAL SEWER FORCE MAIN – A pipe that is used to convey wastewater from a Municipal wastewater pumping station to a gravity sewer or directly to a wastewater treatment facility.

MUNICIPAL SEWER SYSTEM – Publicly-owned structures, facilities, and conduits intended for the purpose of collecting and conveying municipal wastewater to a wastewater treatment facility. Lateral sewer lines that connect private sewer systems to the municipal sewer system are considered privately-owned.

MUNICIPAL WASTEWATER - means the wastewater that enters a municipal sewer system from domestic, commercial and industrial sources.

NANTUCKET SEWER SYSTEM – All structures, equipment, and processes required to collect, transport and treat municipal wastewater on Nantucket.

NATURAL OUTLET – Any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

NEEDS AREA- Based on the most recent Comprehensive Wastewater Management Plan (CWMP), a study area where a majority of the developed or developable properties located within the study area will not be able to utilize a conventional Title 5 septic system to effectively dispose of wastewater throughout and beyond the 20-year planning period.

OUTBUILDING –Detached structures such as pool houses, sheds or garages on the same lot as a primary dwelling. Outbuildings with sanitary facilities are treated as bedrooms in these regulations.

PERSON – Any individual, firm, company, association, society, corporation, or group.

pH – The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

POLLUTION – The presence of pollutants or contaminants in quantities or with characteristics that may alter the physical, chemical, or biological properties of receiving waters that:

A. Result or will likely result in harm or detriment of the health, safety, or welfare of humans, animals, birds, or aquatic life;

B. Render or will likely render the waters substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other reasonable uses; or

C. Leave or likely leave the waters in such condition as to violate any state water quality standards.

PREMISE – means any structure or group of structures operated as a single business or enterprise, provided, however, the term "premise" shall not include more than one (1) dwelling.

PRETREATMENT OR TREATMENT–The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, biological processes, or process changes or other means, except through dilution as prohibited by 40 CFR section 403.6(d).

PRETREATMENT COORDINATOR – The person designated by the Director to supervise the operation of the pretreatment program.

PRETREATMENT REQUIREMENTS – Any substantive or procedural requirements related to pretreatment, that are imposed on an industrial user.

PROPERTY – Unless otherwise indicated, the term property means lot.

PUBLICLY OWNED TREATMENT WORKS – or "POTW" means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works.

The term POTW TREATMENT PLANT means that portion of the POTW which is designed to provide treatment (including recycling and reclamation) of municipal sewage and industrial waste.

RIGHT OF ENTRY/ACCESS – For purposes of inspections and service, properties that are connected to the Nantucket Sewer System shall grant, Town of Nantucket personnel in a timely manner access to any structure connected to the Sewer. The Town of Nantucket determines a timely manner as 24 and no longer than 48 hours from request.

SANITARY SEWER – A sewer that carries sewage from residences, commercial buildings, industries, and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

SECONDARY DWELLING - A detached single-family dwelling located on the same lot as a primary dwelling unit.

SEPTAGE – That material removed from any part of an on-site sewage disposal system. [including, but not limited to, the solids, semi-solids, scum, sludge and liquid contents of a septic tank, tight tank, privy, chemical toilet, cesspool, holding tank, or other sewage waste receptacle. It does not include any hazardous substances as defined in 40 CFR § 116.

SEWAGE – A combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments.

SEWAGE EJECTOR PUMP – A high volume, low-pressure submersible solids handling pump used when a bathroom, laundry room or any other type of plumbing fixture is located below the level of the building sewer.

SEWER — A pipe or conduit for carrying sewage.

SEWER COMMISSION – Pursuant to Chapter 396 of the Acts of 2008, the entity that is responsible for the policies, finances, goals, operation and maintenance of the good order of the Nantucket Sewer System. The Nantucket Select Board may serve as the Sewer Commission.

SEWER DISTRICTS – Shall, for the purposes of these regulations, mean areas in Nantucket served by the Municipal Sewer System, and approved by Town Meeting, as enacted in Chapter 396 of the Acts of 2008.

SEWER SERVICE LATERAL – The portion of the privately-owned sewer system that connects the building sewer to the municipal sewer system, otherwise known as a sewer connection. A sewer service lateral is privately-owned.

SHALL – When used in these regulations, this term is mandatory.

SLUG – Any discharge at a flow rate or concentration which could cause a violation of prohibited discharge standards or any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a noncustomary batch discharge.

STORM DRAIN – A conduit or channel which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

SUBSTANTIALLY COMPLETE – A structure shall be defined as substantially complete as of the date of issuance of an occupancy permit.

SUSPENDED SOLIDS – Solids that either float on the surface or, are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

TERTIARY DWELLING – A third dwelling unit under the same ownership as at least one other owner-occupied dwelling unit on the lot.

TREASURER – The Treasurer of the Town of Nantucket.

WASTES – Shall be classified as follows:

A. INDUSTRIAL WASTES – Any water carried or liquid waste resulting from any process of industry, manufacture, trade, or business, or from the development or recovery of any natural resource.

B. INSTITUTIONAL WASTES – Any wastewater generated by schools, places of worship, correctional facilities, nursing homes, group homes and other community facilities

C. COMMERCIAL WASTES – The water carried wastes from nonmanufacturing establishments such as hotels, restaurants, stores, and places of business.

D. RESIDENTIAL WASTES – The water carried wastes from private dwellings.

WASTEWATER – The spent water of the community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

WATERCOURSE – A channel in which a flow of water occurs, either continuously or intermittently.

**§ 336-2. Building sewers and connections.**

A. It shall be unlawful to construct or repair any privy, privy vault septic tank, cesspool or other facility intended or used for the disposal of wastewater on or for the benefit of property to which the Nantucket Sewer System is available.

B. The Nantucket Sewer System will be deemed to be available to every property within a sewered subdivision or which abuts a way served by such sewers and such availability shall be:

(1) For active existing sewers, as of the date of adoption of these regulations and

(2) For new sewers, as of the date on which such new sewer line has had its final inspection of the sewer line by the Town, all easements are in place, and the Select Board has voted to accept the sewer line as a common sewer of the Town for the collection and pumping of wastewater flow.

C. Connection to the Nantucket Sewer System is mandatory per Board of Health Regulation (69.03) within 2 years of sewer being available (unless required sooner due to site specific circumstances) pursuant to the following requirements; the two year period begins on the date that the final inspection of the sewer line by the Town occurs, all easements are in place, and the Select Board has voted to accept the sewer line as a common sewer of the Town;

(1) Connections to the municipal sewer system must be made in accordance with the Town of Nantucket Sewer Standards and Specifications.

(2) No connections to municipal sewer force mains will be allowed.

(3) Low-pressure sewers must be connected to the nearest municipal gravity sewer manhole in accordance with the Town of Nantucket Sewer Standards and Specifications.

(4) Low-pressure sewer systems must be comprised of grinder pump systems meeting the Town of Nantucket Sewer Standards and Specifications. No solids handling pumps will be allowed on any low-pressure sewer systems.

(5) A septic abandonment permit is issued by the Board of Health, or its designee.

D. All costs and expense incident to the installation and connection of the sewer service lateral shall be borne by the property owner, who shall make his own arrangements with a Licensed Utility Installer approved by the Nantucket Sewer Department. The contractor shall do all cutting, patching, excavation, backfill, furnishing and installing pipe and making connection required. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the sewer service lateral.

E. A separate and independent sewer service lateral shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the sewer service lateral from the front building may be extended to the rear building and the whole considered as one building sewer. Approval of the Nantucket Sewer Department and the Plumbing Inspector is required for this exception.

F. Existing sewer service laterals may be used to connect new buildings only when they are found to be in acceptable condition by CCTV examination. A written report must be submitted by Email and approved by the Nantucket Sewer Department prior to any making any new connections. To meet all requirements of this regulation, any existing lateral that is Orangeburg, clay or other than Schedule 40 PVC pipe, must be replaced in its entirety to the main.

G. In all buildings in which any building sewer is too low to permit gravity flow to the municipal sewer, sewage carried by such building sewer shall be lifted by an approved means as listed in 248CMR 10.15 (10) and discharged to the sewer service lateral. These types of pumps are NOT to be used to pump directly into any low-pressure sewer or other types of force mains that have grinder pumps installed.

H. In areas serviced by low-pressure sewers, dwellings must install, operate and maintain an individual grinder pump unit meeting Town of Nantucket Sewer Standards and Specifications, and subject to the approval of the Director. The following policies apply to low-pressure sewer connections:

(1) For lots with multiple sewer service connections for separate dwellings or building units, a separate individual grinder pump unit will be required for each service connection.

(2) Property owners that wish to install multiple grinder pumps (e.g. duplex units) or larger basins or storage tanks will require separate approval for the installation and will be responsible for the full cost associated with these systems. Under no circumstance will the Town of Nantucket approve the purchase and installation of an indoor grinder pump unit.

(3) All property owners will be responsible for proper installation of the grinder pump units and ancillary equipment, including the complete connection to the public sewer per Town of Nantucket sewer standards and specifications and will be responsible for the full cost of such units. All property owners will be responsible for proper operation and maintenance of the grinder pump unit in perpetuity, including repair and replacement of such units.

(4) There shall be no individual grinder pump connections to a municipal force main. All such connections must be to the low-pressure sewer or to a gravity sewer, subject to Nantucket Sewer Department approval.

I. No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building directly or indirectly to the Nantucket Sewer System.

J. No person shall connect a basement sump pump to a municipal sewer either directly or indirectly through the service connection.

K. The connection of the sewer service lateral into the municipal sewer shall conform to the requirements of the Nantucket Sewer Standards and Specifications. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Nantucket Sewer Department before installation.

L. The applicant for the sewer connection permit shall notify the Nantucket Sewer Department when the sewer service lateral is ready for inspection and connection to the municipal sewer. Such notification must be made at least 48 hours prior to the requested inspection. The connection shall be made by the applicant's Licensed Utility Installer under the supervision of the Nantucket Sewer Department. Excavations shall not be closed until inspection is made. The Town reserves the right to inspect the entire service connection from the building sewer to the municipal sewer. The Town reserves the right to require all work to be uncovered if partially or totally backfilled before an inspection has been performed by the Nantucket Sewer Department.

M. All excavations for sewer service lateral installation shall be adequately guarded with barricades, and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of work shall comply with Chapter 127 Article 1 of the Town Code. Street opening permits must be obtained from the Nantucket Department of Public Works and must be signed by all applicable departments and town administration prior to starting any work.

N. Cleanouts shall be provided to allow cleaning in the direction of flow in accordance with The Town of Nantucket Sewer Standards and Specifications. Cleanouts shall be extended to an elevation at or above the finished grade level directly above the place where the cleanout is installed and protected from damage. Blockages on the property owner's side of the property line cleanout are the responsibility of the property owner. For grinder pump discharge lines greater than 100 feet, a flush port must be provided at the grinder pump wet well or chamber.

O. Prior to connection with a municipal sewer or the issuance of sewer connection permits, pursuant to § 336-20, Subsection A, the Director may, on receipt of written application, authorize design review of plans and specifications and inspection of construction for a privately designed and constructed sewer. Any such review and/or inspection undertaken shall not relieve any party from any of the obligations arising under these regulations, as now in force or as may be amended from time to time, or any other obligations under applicable federal or state laws, rules or regulations. Nor shall any such review or inspection constitute any waiver by the Town of its rights and privileges under said regulations, laws or rules.

(1) All costs and expense incident to any design review and/or inspection under Subsection O shall be borne by applicant therefor. Applicant will indemnify and hold harmless the Town and all its agents and employees of and from all costs and expenses incurred incident to such review, inspection and work relating thereto, including any professional, engineering and legal fees incurred. No such inspection or review under said Subsection O shall be undertaken unless the applicant therefor shall deposit with the Treasurer an amount determined by the Director (or other designee named by the Sewer Commission) as sufficient to cover all the costs of engineering, legal or other professional review and/or inspection. The account shall be administered and maintained as provided in Subsection O (2).

(2) With respect to any account established pursuant to Subsection O (1) the Treasurer shall pay invoices pursuant to direction and approval of the Director (or other designee named by the Sewer Commission), who shall not direct any payment unless the Town gives 14 days' notice (including a copy of such invoice) to the applicant. The balance of the account shall at no time until completion, be less than 1/2 of the initial deposit, and applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit upon notice from the Town that the amount on deposit has been decreased by the expenditures described below to an amount at or near 1/2 of the initial deposit. The account shall be closed, and the remaining funds returned to applicant when, in the opinion of the Director, all work required and any subsequently approved modifications including all inspections required, have been completed, and all costs of same have been paid from said account. All notices herein shall be by first class mail.

P. Maintenance of building sewers and sewer service laterals:

(1) Each individual property owner shall be entirely responsible for the construction, maintenance, repair or replacement of the building sewer/sewer service lateral as deemed necessary by the Sewer Director to meet specifications of the town. Owners failing to maintain or repair building sewers/sewer service laterals or who allow stormwater or ground water to enter the municipal sewer may face enforcement action as outlined in § 336-22.

(2) The town may inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with.

(3) The point of division between the sewer service lateral and the municipal service connection shall be at the property line or right-of-way line. The municipal service connection cannot extend onto private property except that minimal distance necessary to cross or be unencumbered by other utility lines.

Q. Sanitary sewer main extensions: Persons desiring sewer main extensions must pay all of the cost of making such extensions after review and approval of the Nantucket Sewer Department.

(1) Sanitary sewer mains shall be designed in accordance with the Nantucket Sewer Standards and Specifications and to accommodate any future flows from areas tributary to the proposed sewer extension. Municipal service connections shall be included at each buildable parcel along the length of the extension.

(2) All such extensions shall be installed either by the town or by Licensed Utility Installers working directly under the supervision of the town in accordance with plans and specifications prepared by an engineer registered with the State of Massachusetts. Upon completion of such extensions and approval by the town, such sewer mains shall become the property of the town.

(3) The overall cost of the sewer extension shall include the installation cost of the required sanitary sewer stubs. Persons paying the cost of constructing such mains shall execute any written instruments requested by the town to provide evidence of the Town's title to such mains.

(4) Acceptance of sewer main extensions: The procedures for acceptance of sewer main extensions by the Town of Nantucket as public sewers, are set out in Article I, Exhibit 1, General Acceptance of Sewers including a requirement that the owner provide letter of credit or escrow funds to be held until the end of the one-year warranty period. In no case will a sewer main extension be accepted by the Town within the one-year warranty period.

(5) In consideration of such mains being transferred to it, the Town shall incorporate said mains as an integral part of the municipal sewer systems and shall furnish sewer service therefrom in accordance with these rules and regulations, subject always to such limitations as may exist because of the size and elevation of the mains, downstream capacity and capacity at any POTW that receives wastewater from the mains.

R. Sewer connections in the Shimmo, Nantucket Harbor and Plus Areas must be made in accordance with the Town’s August 2017 Policy for Sewer Stubs and Reconnections (Article I, Exhibit 2).

S. No sewer extension shall be allowed outside of existing Sewer Districts or Needs Areas as defined in the latest version of the Comprehensive Wastewater Management Plan (CWMP) unless otherwise approved by vote at an Annual or Special Town Meeting.

**§ 336-3. Use of public sewers.**

A. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, non-contact cooling water or condensate to any sanitary sewer.

B. Stormwater and all other unpolluted drainage shall be discharged to storm drains or to a natural outlet approved by the Department of Public Works (DPW). Non-contact cooling water or treated process waters may be discharged, on approval of the DPW, to a storm drain, or natural outlet. Such discharges may also require approval under the National Pollutant Discharge Elimination System (NPDES) Program.

C. Discharges of industrial or commercial wastes into the municipal sewer system that exceed 25,000 gpd will at a minimum, be required to have a holding tank and regulated discharge flowrate. The Town may also require treatment prior to discharge into the municipal sewer system and may establish limitations and requirements for industrial discharges that:

(1) result in additional treatment costs; and

(2) have the potential to harm the POTW or otherwise cause non-compliance.

D. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(1) Any petroleum products including but not limited to gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid, or gas.

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the wastewater treatment facility.

(3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the POTW.

(4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, personal wipes including "flushable wipes," etc., either whole or ground by garbage grinders.

E. No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Director that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving waters, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his opinion as to the acceptability of these wastes, the Director will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the wastewater treatment facility, degree of treatability of, wastes in the wastewater treatment facility, and other pertinent factors. The substances prohibited are:

(1) In no case shall heat, heated liquid or vapor be discharged to the sanitary sewer, in such quantities that the temperature at the POTW exceed 104° (40° C.)

(2) Any water or waste containing fats, wax, grease, or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° F. and 150° F. (0° C. and 65° C.).

(3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horsepower (0.76 hp metric) or greater shall be subject to review and approval of the Director or their authorized deputy, agent, or representative.

(4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.

(5) Any waters or wastes containing iron, chromium, copper, lead, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any

such material received in the composite sewage at the wastewater treatment facility exceeds the limits established by the Director for such materials.

(6) Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Director as necessary, after treatment of the composite sewage to meet the requirements of the State, Federal, or other public agencies or jurisdiction for such discharge to the receiving waters.

(7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Director in compliance with applicable State or Federal regulations.

(8) Any waters or wastes having a pH in excess of 9.5.

(9) Materials which exert or cause:

(a) Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate).

(b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions).

(c) Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the wastewater treatment facility.

(d) Unusual volume of flow or concentration of wastes constituting "slugs" as defined herein.

(10) Water or wastes containing substances which are not amenable to treatment or reduction by the wastewater treatment process employed or are amenable to treatment only to such degree that the wastewater treatment facility effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(11) Basement Sump pumps, outside area drains, Outside Shower Drains or any other external drains that are subject to surface ponding, flooding or rain.

(12) Dewatering from ANY surfaces, basement foundations, crawl spaces, construction sites, swimming pool or hot tub construction activities.

(13) There shall be NO discharge from swimming pools or hot tubs into any public sewer.

(14) Hauled Waste:

(a) Landfill Leachate shall only be accepted at the Surfside Wastewater Treatment Facility in quantities of a maximum of 25,000 gallons per day unless these amounts cause treatment issues identified by the Chief Wastewater Operator who can stop the acceptance of such wastes.

(b) Brewery or other industrial wastes MUST be discharged under supervision or direction of the Chief Wastewater Operator or the Operator on duty. Before any discharge can begin, the driver must ensure the loads are identified and logged by the Chief Wastewater Operator or the Operator on duty.

(c) Cannabis cultivation, production and processing wastewaters – Any wastewaters generated from cannabis cultivation, production or processing (washing, oil extraction, manufacturing of cannabis-based products) may only be discharged into the Surfside WWTF under supervision

or direction of the Chief Wastewater Operator or the Operator on duty. The operator of the cannabis facility must certify in writing that the facility is implementing the best management practices established in Article I, Exhibit 3. Before any discharge can begin the driver must ensure the loads are identified and logged by the Chief Wastewater Operator or Operator on duty.

F. Action in the event of prohibited discharges.

(1) If any waters of wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Subsection E, and which in the judgement of the Director may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Director may:

(a) Reject the wastes,

(b) Require pretreatment to an acceptable condition for discharge to the public sewers,

(c) Require control over the quantities and rate of discharge, and/or

(d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provisions of Subsection K.

(2) If the Director permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Director, and subject to the requirements of all applicable codes, regulations, and laws.

G. Grease, oil, and sand interceptors and/or standard active grease recovery units shall be provided for all multiple unit dwellings, commercial kitchens, food service establishments, and when, in the opinion of the Director or their authorized deputy, agent, or representative, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients. All interceptors shall be of a type and capacity approved by the Director and shall be located as to be readily and easily accessible for cleaning and inspection.

H. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at their expense.

I. When required by the Director, the owner of any property serviced by a sewer service lateral carrying industrial wastes shall install a suitable control manhole together with such necessary meters, and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the Director. The manhole shall be installed and maintained by the owner at owners' expense and shall be safe and accessible at all times.

J. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this regulation shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association. All samples and measurements shall be taken at the control manhole provided. In the event that no control manhole has been provided, samples and measurements shall be collected at the downstream public sewer manhole that is nearest to the point at which the sewer service lateral is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property.

All industries discharging into a public sewer shall perform such monitoring of their discharges as the Director may reasonably require, including installation, use, and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the Director. Such records shall be made available upon request by the Director to other Agencies having jurisdiction over discharges to the receiving waters. All monitoring and sampling costs are the responsibility of the owner.

K. No statement contained in this article shall be construed as preventing any special agreement or Town and County arrangement between the Town of Nantucket and any industrial concern whereby an industrial waste of unusual strength of character may be accepted by the Town and County for treatment, subject to payment therefore by the industrial concern.

**§ 336-4. Protection from damage.**

A. No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the POTW. Any person violating this provision shall be subject to immediate arrest under charge of disorderly conduct and/or vandalism.

**§ 336-5. Powers and authority of inspectors.**

A. Pursuant to 314 CMR 12.03(5) and M.G.L. c. 21, §§ 27(12) and 34, The Director and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this regulation. The Director or his representatives shall have authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment.

B. While performing the necessary work on private properties referred to in Subsection A above, the Director or duly authorized employees of the Town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the Town employees and the Town shall indemnify the company against loss or damage to its property by Town employees and against liability asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in § 336-3I.

C. The Director and other duly authorized employees of the Town bearing proper credentials and identification shall be permitted to enter all private properties through which the Town holds a duly negotiated easement for the measurement, sampling, repair, and maintenance of any portion of the POTW located within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. Measurement and sampling easements shall be 10 feet plus 10 feet working space totaling 20 feet, or 10 feet plus 20 feet working space totaling 30 feet.

**§ 336-6. Validity.**

A. All regulations or parts of regulations in conflict herewith are hereby repealed.

B. The invalidity of any section, clause, sentence, or provision of this regulation shall not affect the validity of any other part of this regulation which can be given effect without such invalid part or parts.

**§ 336-7. Septic tank waste.**

The Director shall determine, assign and maintain a facility for the discharge of septic tank waste to the Surfside WWTF of the Town of Nantucket. Such facility shall be the only point allowed for the discharge of septic tank waste and its use shall be governed by the following:

A. Only carriers licensed by the Board of Health and approved by the Sewer Commission may discharge septage at the treatment facility.

B. Septic tank waste which does not meet the definition of sewage established in the regulations will not be accepted.

C. Discharge of septic tank waste is limited to the hours of normal operations for the Surfside WWTF; Monday through Friday from 7:00 a.m. to 3:30 p.m. unless otherwise arranged with the Chief Operator and approved by the Director or their designee.

D. The pumping, hauling, discharge of septic tank waste shall be in accordance with the Commonwealth of Massachusetts State Environmental Code (310 CMR 15).

E. All septage waste must be tested for pH to determine compliance with existing Sewer Regulations. The Chief Operator must be notified before industrial or commercial loads are discharged.

F. Haulers must provide a manifest of the origin of the septic waste on forms provided by the sewer department.

G. Clean up of the septage receiving area is required after each septage discharge.

H. Failure of the hauler to comply with these regulations, including failure to make payments as required shall be cause for the Sewer Commission to revoke its permit to discharge at the facility.

**§ 336-8. Sewer Easements.**

A. Municipal Sewers shall be constructed within existing public rights of way when applicable to the extent physically and legally possible. If, upon determination by the Sewer Commission, a public sewer must be constructed within a private way or across private property, a permanent easement of no less than twenty-five (25) feet in width, for the construction, maintenance and operation of said public sewer shall be conveyed to the Town by appropriate persons possessing an interest in such private way or property. Sewer easements on private property are subject to the following requirements:

   (1) Owner shall not place or permit to be placed any trees or other deep-rooted landscaping directly over or within twelve and one-half (12.5) foot horizontal distance of the sewer main, pump station, or any other sewer facility. The Town reserves the right to remove any trees or landscaping placed within an easement or right of way.

(2) Owner shall not place or permit to be placed any permanent or temporary structures, mounding, lighting, fencing, signs, retaining/landscaping/entrance walls, irrigation lines, propane tanks etc. directly over or within twelve and one-half (12.5) foot horizontal distance of sewer main, pump station, or any other sewer facility. The Town reserves the right to require the owner to remove or relocate (outside the easement) any of the above listed items that have been placed within an easement or right-of-way.

(3) The Town shall be held harmless for any damage to items listed in numbers 1 and 2 above that are located within easement.

(4) The Town may periodically perform field inspections to verify compliance with the above-mentioned requirements. If a violation exists, then the Town will notify the owner and require appropriate corrective action.

B. If an individual service connection must cross another property, the owner of the property being served by the sewer must obtain a construction and maintenance easement from the owner of the property that is being crossed. A permit will not be issued until the easement has been gained.

C. Persons desiring sewer main extensions must obtain easements from the owners of all the properties abutting the sewer main extension, unless such extension is located on Town property or within the right-of-way of a County or Town way, in which case permission of the Select Board and/or the County Commissioners shall be required.

**§ 336-9. Regulation in force.**

A. This regulation shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

B. Passed and adopted by the Select Board of the Town of Nantucket, State of Massachusetts, on the 5th day of January 2022.

ARTICLE II

## Sewer User Fees

**Purpose.**

The purpose of this regulation is to establish a fair and equitable method of connecting with the Town of Nantucket Sewer System. The fees will be adjusted annually based on the cost of living or other appropriate index.

**§ 336-10. Definitions.**

RESIDENTIAL AND GENERAL COMMERCIAL USERS – All residential and commercial land use activities connected to the Nantucket Sewage System which introduce no more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works.

SPECIAL USERS – All land use activities connected to the Nantucket Sewage System which introduce more than the equivalent of 25,000 gallons per day of domestic sanitary wastes to the treatment works based on a combination of volume, strength and toxic waste factors.

**§ 336-11. Sewer service connection fees**.

The Nantucket Sewer System connection fees shall be as follows:

A. Sewer permit application fees for new residential connections to the Nantucket Sewer System shall be as shown in Article II, Exhibit 1, Sewer Permit Application Fee Schedule and shall be subject to periodic reviews and adjustments as the Sewer Commission deems appropriate. Applications for Sewer Permits are per dwelling or dwelling unit.

   Sewer permit application fees for any existing residential property connecting to the Nantucket Sewer System within the time frame established by the Board of Health shall be as shown in Article II, Exhibit 1 and shall be subject to periodic reviews and adjustments as the Sewer Commission deems appropriate. Applications for sewer permits are per dwelling, dwelling unit or any outbuilding with sanitary facilities.

B. Developers of sewer main extensions shall be required to pay all or a portion of the sewer service connection fees for all abutting properties as described in Article II, Exhibit 1, as determined by the Sewer Commission.

C. For commercial establishments and licensed lodging establishments (hotels, motels, licensed inns and guest houses), the sewer service connection fee shall be as shown in Article II, Exhibit 1 and shall be subject to periodic reviews and adjustments as the Sewer Commission deems appropriate. Applications for sewer permits are per dwelling or dwelling unit.

D. For mixed use developments, the residential connections will be subject to the fees established in subsection A and commercial connections will be subject to the fees established in Article II, Exhibit 1.

E. Where multiple dwellings or dwelling units exist on a single property, a sewer permit fee, as defined herein, shall be assessed per dwelling or dwelling unit.

F. For all residential dwellings, dwelling units, outbuildings with sanitary facilities and commercial establishments currently connected to the existing sewer system, no sewer service connection fee will be assessed; however, these existing connections are subject to the following fees as applicable shown in Article II, Exhibit 1 and shall be subject to periodic reviews and adjustments as the Sewer Commission deems appropriate. Applications for sewer permits are per dwelling or dwelling unit.

**§ 336-12. Other fees and charges.**

A. The Sewer Commission shall enact other fees and charges in accordance with Article II, Exhibit 2.

**§ 336-13. Sewer Capacity Fee.**

The Sewer Capacity Fee (SCF) is established in addition to the Sewer Service Connection Fees and other fees and charges, as follows:

A. Such fee applies to all properties that implement changes which, based on 310 CMR 15.203 [Article II, Exhibit 3], have the potential to increase flows into the Nantucket Sewer System including new developments or new properties connected to the sewer, as well as changes to existing properties connected to the sewer system.

B. The minimum Sewer Capacity Fee for residential and non-residential users is calculated using the using the sewer flows established in 310 CMR 15.203 [Article II, Exhibit 3] and is described in detail in the Sewer Capacity Fee Policy [Article II, Exhibit 4].

C. Payment of the Sewer Capacity Fee is required before issuance of a sewer connection permit. The property owner may pay the fee in full up front. The Town of Nantucket will also allow the fee payment to be apportioned over time on the property owner's tax bill as follows:

(1) The property owner must pay at least 10% of the fee up front and sign a Voluntary Lien Agreement which gets recorded at the Registry of Deeds.

(2) The remaining amount must be paid in annual installments at a rate established by the Sewer Commission, for a period not to exceed twenty years.

C. A schedule of residential SCFs is provided in Article II, Exhibit 5.

**§ 336-14. Bills for sewage services.**

A. Rates for sewage services (base fee plus fee per unit of consumption for metered uses; and base fee plus a bedroom-based per-capita fee pursuant to 310 CMR 15.203 [Article II, Exhibit 3] for well users) shall be established by the Town of Nantucket. The Town will review the cost of providing sewer service periodically and will adjust the rates accordingly.

B. Charges for sewage services shall be billed to each customer in a minimum of semiannual installments to the extent possible, quarterly bills coinciding with the Water Company meter readings may be implemented.

C. Bill is considered delinquent 30 days after mailing date. Delinquent notice sent 15 days thereafter. Sixty days after mailing date a 1.5% interest charge per month on any outstanding balance more than 30 days in arrears will be assessed.

D. Payment in full of any outstanding balance must be made prior to any hearing for an appeal of any sewer fees.

E. Residential property owners over the age of 65 are permitted to make periodic payments of the bill provided that the bill is paid within one year following issuance. There shall be no interest charged or demand notices sent during this period.

F. If a sewer bill shows an obvious accounting or classification error, the Director may allow an adjustment of the bill without prior payment.

G. In accordance with M.G.L c. 83 § 16B, should the Nantucket Sewer Department become aware of a previously unknown sewer connection that has not been billed, the Nantucket Sewer Department has the authority to assess back charges from the previous 6-year period in accordance with the rates and procedures established under this section or the applicable rate(s) during the unbilled period.

**§ 336-15. Utility fees appeal process.**

A. User fees must be paid no later than 30 days from the date of billing; any abatement authorized will later be returned to the applicant. Requests for a reduction in the amount billed must be filed with the Director no later than 30 days from the date of billing.

B. Request for reductions must be submitted on forms provided by the Nantucket Sewer Department. Such requests will be checked for a billing error, either a classification issue (reviewed by the Assessor) or a non-classification issue. If there is an obvious error, the Director or their authorized deputy, agent, or representative can authorize the proper abatement, otherwise, the Director or their authorized deputy, agent, or representative shall send a letter with the reason of disapproval to the applicant, which can then be appealed within 30 days from the date of disapproval to the Sewer Commission.

C. The Sewer Commission may designate sub-committee of its members to hear appeals of utility fee assessments. The Sewer Commission shall make its best efforts to determine if an abatement of the amount billed to the applicant is warranted on the basis of the existence of a hardship. Once the Sewer Commission has received notice that an appeal is requested of the applicant, it shall make its best efforts to notify the applicant within 10 days of the hearing date. The Sewer Commission shall then record the outcome of its vote and send a letter to the applicant to confirm the decision of the Sewer Commission. If the appeal has been denied, the applicant will also be sent a denial notice from the Sewer Commission. A final appeal from the decision of the Sewer Commission may be made in writing within 30 days to the Sewer Commission.

**§ 336-16. Exemptions.**

Commencing Fiscal Year 1995, unless otherwise adopted or amended, sewer user fees will not be assessed to properties that have been determined to be exempt from local taxation pursuant to the Town Assessor's records in accordance with Massachusetts General Laws Chapter 59, section 5, clauses 1 through 15 as of July first of each year.

**§ 336-17. Waivers.**

The Sewer Commission will consider, on a case-by-case basis, waivers of the Town's fees relating to the connection of dwellings in accordance with the Policy for Sewer Fee Waiver Requests [Article II, Exhibit 6].

**§ 336-18. Severability clause.**

If any provision of these regulations or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without such invalid provisions or applications.

**§ 336-19. Regulation in force.**

This regulation shall be in full force and effect from and after its passage, approval, recording and publication as provided by law.

Passed and adopted by the Select Board of the Town of Nantucket, State of Massachusetts, on the 5th day of January 2022.

ARTICLE III

## Permitting and Enforcement

### § 336-20. Permit required.

A. No unauthorized person shall uncover, make any connections with or opening into, use alter, or disturb any municipal sewer or appurtenance thereof without first obtaining a written permit from the Director. Any person proposing a new discharge into the system or a substantial change in the volume or character of pollutants that are being discharged into the system shall notify the Nantucket Sewer Department no less than forty-five days prior to the proposed change or connection; and must engage the services of a Licensed Utility Installer.

B. For properties not previously connected to the sewer, a sewer connection permit, with appropriate fee, must be obtained for the primary residence prior to application for a sewer connection permit for any additional dwellings on the property.

C. An application, on forms prescribed by the Nantucket Sewer Department approved by the Sewer Commission~~,~~ shall be made with respect to each sewer connection required or permitted hereby. Each such application shall be submitted to the Nantucket Sewer Department for review and approval or shall be denied by the Director. Appeals of denials shall be submitted to the Sewer Commission through the town's administration for a scheduled public hearing.

D. Upon the approval of an application for a connection to the Nantucket Sewer System, a connection fee shall, pursuant to Article II of this chapter, be due and payable as set forth.

### § 336-21. Permit issuance, modification and expiration.

A. Action on application. The Director shall examine or cause to be examined all applications for permits and amendments thereto within 30 days after filing. If the application does not conform to applicable sewer regulations and pertinent laws, the Director shall reject such application in writing. Once satisfied that the proposed work conforms to the regulations and pertinent laws applicable thereto, the Director shall issue a permit. If the applicant receives no written answer within such 30 days, the permit shall be deemed denied.

B. Report to building department. The Director shall give to the Building Department of the municipality a copy of each permit issued within 30 days of issuance. Such notice shall state the name of the person to whom the permit was granted and the location of the property (Assessor's map and parcel number).

C. Expiration of permit. Any permit issued shall be deemed abandoned and invalid unless a building permit has been issued for the property within 24 months after its issuance. This permit may be extended for periods not exceeding six months each, but only to the same extent as the related building permit is extended, as may be determined in writing by the Director with a $100.00 renewal fee charged for any such extension of time.

**§ 336-22. Violations and penalties.**

A. Any sewer connection made in violation of these regulations shall be disconnected and/or removed and properly installed, in accordance with these regulations as determined by the Nantucket Sewer Department. All costs incurred by the Town in the enforcement of this regulation, including disconnection and reconnection costs, shall be assessed as an additional fee. No reconnection will be allowed until all applicable fees and/or fines have been paid.

B. Any person making sewer connections without benefit of a sewer connection permit must pay all applicable fees and shall be fined in accordance with Article III, Exhibit 1.

C. Any person failing to maintain or report building sewers or sewer service laterals is subject to the requirements of Subsections D and E, and at the discretion of the Director, discontinuation of service.

D. Any person found to be violating any provision of this regulation except § 336-4 shall be served by the Town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the time period stated in such notice, permanently cease all violations.

E. Any person who shall continue any violation beyond the time limit provided for in Subsection D shall be fined in the amount not exceeding $100 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

F. Any person violating any of the provisions of this regulation shall become liable to the Town for any expense, loss, or damage occasioned to the Town by reason of such violation.

G. For violations other than exceedances of the time limits established in Subsection D, the Board of Health/ Sewer Commission may impose a civil penalty not to exceed $5,000 per day for each violation.

H. Contractors found to be violating any provision of these rules and regulations may be subject to License suspension or revocation and will NOT be able to work within the Towns Rights of ways until the matter is resolved. Contractors with numerous violations that exceed 3 separate violations are subject to having their licenses revoked for life.

I. Any violation of these regulations shall be subject to fines in accordance with MGL c 83, s 10.

**§ 336-23. Exemptions.**

The Sewer Commission may grant exemptions from these regulations.

**§ 336-24. Regulation in force.**

A. This regulation shall be in full force and effect from and after its passage, approval, recording, and publication as provided by law.

B. Passed and adopted by the Select Board of the Town of Nantucket, State of Massachusetts, on the 5th day of January 2022.

ARTICLE IV

## Fats, Oils and Greases

### Purpose

The Town of Nantucket encourages all users of the sanitary sewer system to take voluntary steps to reduce the amount of fats, oils, and grease that is poured, drained, or washed down drains into the sanitary sewer system.

### § 336-25. Definitions.

In the interpretation and application of Article IV of Chapter 336, the following words and phrases shall have the indicated meanings:

BEST MANAGEMENT PRACTICES (BMPs) means actions or schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the requirements of this Regulation.

FATS, OILS, AND GREASE (FOG). Organic polar compounds derived from animal and/or plant sources and accumulate in the sewer system. These are substances that may solidify or become viscous at temperatures above 32 degrees Fahrenheit. These substances are detectable and measurable using analytical procedures established in 40 CFR 136.

FOOD SERVICE ESTABLISHMENT (FSE). Any establishment, business or facility engaged in preparing, serving, or making food available for consumption. Single family residences are not a FSE, however, multi-residential facilities may be considered a FSE at the discretion of the Nantucket Board of Health (BOH). FSEs are classified as follows:

> CLASS 1: Deli- engaged in the sale of cold-cut and microwaved sandwiches/subs with no frying or grilling on site, ice cream shops and beverage bars as defined by North American Industrial Classification System (NAICS) 722515 or mobile food vendors as defined by NACIS 722330. Bed and breakfast establishments as defined by NACIS 72119.
>
> CLASS 2: Limited-service restaurants (a.k.a. fast-food facilities) as defined by NACIS 722513 except fast food with a food line that is heavily fried and a history of FOG discharges that interfere with the sanitary sewer system and catering as defined by NACIS 722320.
>
> CLASS 3: Full-service restaurants as defined by NACIS 722110.
>
> CLASS 4: Buffet and cafeteria facilities as defined by NACIS 72212.
>
> CLASS 5: Institutions (schools, hospitals, prisons, etc.) as defined by NACIS 722310 but not to exclude self-run operations.

GREASE, BROWN. Fats, oils, and grease that are discharged to the grease control equipment.

GREASE, YELLOW. Fats, oils, and grease that have not been in contact with or contaminated from other sources such as water, wastewater, solid waste and can be readily recycled.

GREASE CONTROL EQUIPMENT (GCE). A device for separating and retaining wastewater FOG prior to the wastewater exiting the FSE property and entering the sanitary sewer system. GCE includes grease traps and grease interceptors, or other devices approved by the Nantucket BOH.

GREASE INTERCEPTOR. An interceptor whose rated flow exceeds 50 gallons per minute (g.p.m.) and is located outside the building.

GREASE TRAP. An interceptor whose rated flow is 50 g.p.m. or less and is typically located inside the building.

GREASE RECYCLE CONTAINER. A container used for the storage of yellow grease for recycling.

INTERCEPTOR. A device designed and installed to separate and retain for removal, by automatic or manual means, deleterious, hazardous or undesirable matter from normal wastes, while permitting normal sewage or waste to discharge into the drainage system by gravity flow.

INTERFERENCE. A discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the sanitary sewer collection operation, the treatment processes or operations, or the sludge processes, use or disposal, or exceeds the design capacity of the treatment works or collection system.

TEE (influent & effluent). A T-shaped pipe attached to the horizontal influent and effluent pipes of a grease interceptor and extending downward into the trap to depths specified by design which on the influent side forces influent flow into the center of the trap and prevents floating FOG from escaping the effluent pipe.

BLACK WATER. Wastewater containing human waste from sanitary fixtures such as toilets and urinals.

GRAY WATER. Refers to all other wastewater other than black water.

**§ 336-26. Discharge of FOG.**

A. Town of Nantucket Sewer Regulation 336-3 E. (2) prohibits the discharge of "fats, wax, grease, or oils that may solidify or become viscous at temperatures between 32° F and 150° F." Additionally, Regulation 336-22 sets out penalties for violation the Sewer Regulations.

B. Uniform State Plumbing Code (248 CMR 10.00). *"Grease traps and interceptors shall be installed in the following establishments to prevent the discharge of fats, oils, and grease into the drainage system: 1. restaurants; 2. cafeterias; 3. hotels; 4. hospitals; 5. institutional facilities; 6. factories; 7. clubs; 8. bars where food is prepared and served; and 9. all commercial kitchens; food and meat packing and processing establishments; super markets, bakeries, and other establishments where fats, oils and grease may be introduced into the building sanitary drainage system in quantities that can cause waste line obstruction or hinder sewage disposal… Grease traps and interceptors may be installed on individual fixture waste branches."*

**§ 336-27. Interference with the sanitary sewer system operations.**

A. Any user who discharges animal and vegetable fat, oil, and grease in the volume or form which interferes with the operation of the sanitary sewer system may be subject to enforcement actions as specified in § 336-22. Violations and penalties of the Nantucket Sewer Regulations and may be billed for cleanup charges incurred by the Nantucket Sewer Department when that user's discharge causes

operation and maintenance problems in the sanitary sewer system such as blockages, backups, overflows, interruption of service, excessive FOG accumulation in lift stations and pipes, and other FOG related problems that are tracked to that user's discharge. A schedule of fees can be found in Article II, Exhibit 2, specifically the tables titled "Service Request (Non-Town Issue) During Normal Business Hours Monday Thru Friday 7-3:30" and "Service Request (Non-Town Issue) After Normal Business Hours, Holidays and Weekends."

**§ 336-28. Control of FOG.**

A. All existing and new FSEs shall effectively control the discharge of FOG into the sanitary sewer system. A Class 1 FSE may do this through the use of Restaurant Industry best management practices such as those published by the National Restaurant Association. See: http://www.foodserviceresource.com/FORMS%20&%20PDFS/FOG_ToolKit.pdf. If best management practices fail to prevent sanitary sewer system interferences Class 1 FSEs shall install grease control equipment (GCE) as specified in § 336-29, or by the Nantucket BOH.

B. All new Class 2-5 FSEs shall install grease control equipment in sizes specified in § 336-29 or by the Nantucket BOH and properly maintain that equipment in such a way to prevent interference with the sanitary sewer system.

C. Existing FSEs that do not meet these minimum sizes may continue to use existing GCE and/or best management practices if the discharge from the FSE is not interfering with the sanitary sewer system and the Nantucket BOH gives written permission stating that that the current GCE and practices are preventing interference with the sanitary sewer system. Upon written notice from the Nantucket BOH that the existing GCE or BMPs are inadequate to protect the sanitary sewer system from interference, the FSE shall comply in accordance with § 336-22. Violations and penalties of the Nantucket Sewer Regulations.

D. All FSEs with GCE shall maintain records of cleaning and maintenance of that equipment. Records include at a minimum the date of cleaning or maintenance, company or person conducting the cleaning or maintenance, and the amount of grease and water removed from the equipment. A grease waste hauler completed manifest will meet this requirement.

E. Yellow grease such as fryer oil, shall not be discharged into the GCE or into stormwater conveyances. The use of yellow grease recycling containers is encouraged.

F. Owners of commercial property will be held responsible for wastewater discharges from FSE leaseholders on their property.

G. All FSEs shall provide access to Town utility personnel (after proper identification) for the purpose of inspection of GCE, kitchen equipment and practices, and any cleaning and drain remediation products which relate to the wastewater and FOG discharge.

**§ 336-29. Grease Control Equipment (GCE).**

A. Any FSE either new or existing that is found by the Nantucket BOH of Nantucket Sewer Department to be interfering with the sanitary sewer system may be asked to install GCE that is larger than the minimum size and take other steps to stop that interference.

B. Existing FSEs that do not meet these minimum sizes may continue to use existing GCE and/or best management practices if the discharge from the FSE is not interfering with the

sanitary sewer system and the Nantucket BOH gives written permission stating that that the current GCE and practices are preventing interference with the sanitary sewer system. Upon written notice from the Nantucket BOH that the existing GCE or BMPs are inadequate to protect the sanitary sewer system from interference, the FSE's violations shall be penalized in accordance with § 336-22. Violations and penalties of the Nantucket Sewer Regulations.

C. Additionally, FSEs that discharge the water from dishwashing machines through a grease interceptor shall install a GCE which is larger than the minimum to allow for cooling of the discharge and thereby prevent discharge of FOG into the sanitary sewer system.

D. Grease Traps. These small, under-the-counter units shall be installed according to drawings provided by the Nantucket BOH and shall include vented flow restrictor prior to the trap. Dishwashing machines shall not be installed onto these units. Failure to follow this requirement will render the trap ineffective and the FSE shall be instructed to install a large external grease interceptor.

**§ 336-30. Additives.**

A. Additives include but are not limited to products that contain solvents, emulsifiers, surfactants, caustics, acids, enzymes, and bacteria. They may be inorganic or organic in origin.
B. The use of additives is prohibited with the following exceptions:

(1) Additives may be used to clean FSE drain lines but only in such quantities that will not cause FOG to be discharged from the GCE to the sanitary sewer or cause temporary breakdown of the FOG that will later re-congeal in the downstream sewer pipes.

(2) If a product used can be proven to contain 100% live bacteria, with no other additives, a request for permission to use the product shall be made to the Nantucket BOH. The request must be submitted in writing with a full disclosure Material Safety Data Sheet and a certified statement from the manufacture.

**§ 336-31. Implementation.**

A. This Regulation empowers the Nantucket BOH and the Nantucket Sewer Department to jointly develop and adopt reasonable operating policies to facilitate the implementation of this Regulation. These policies may include but are not limited to: FSE inspections, GCE sizing and maintenance, FSE wastewater discharge testing and monitoring, approval, or disapproval of GCE servicing vendors (Grease Waste Haulers), permitting of FSE's, and other operating policies needed to protect the sanitary sewer system from interference from FOG.

**§ 336-32. Fees.**

A. This Regulation authorizes the Sewer Commission to establish fees (in accordance with § 336-12. Other fees and charges.) to offset costs associated with the implementation of this Regulation. Possible fees include: inspection fees, permitting fees, surcharge fees for high strength discharges, cleanup fees associated with FOG cleanup within the sanitary sewer system, and other fees necessary for implementation of this Regulation.

**§ 336-33. Permitting**.

B. The Nantucket BOH may use FSE permits as a way of implementing this Regulation and may further require the permitting or certification of GCE service and pumping vendors.

**§ 336-34. Enforcement.**

A. Violators of this Regulation may be issued FSE permits, subject to penalties pursuant to § 336-22. Violations and penalties. Violators may face fines, have water and/or sewer service terminated, and the Town may seek further remedies as needed to protect the collection system, treatment plant, receiving stream and public health. Repeated or continuous violation of this Regulation is declared to be a public nuisance and may result in legal action against the property owner and/or user, and the service line may be disconnected from sewer main. Upon notice by the Nantucket BOH that a violation has or is occurring, the user shall immediately take steps to stop or correct the violation. The Town may take any or all of the following remedies:

(1) In an emergency situation where the Nantucket BOH has determined that immediate action is needed to protect the public health, safety or welfare, a public water supply or the facilities of the sewerage system, the Nantucket BOH may discontinue water service or disconnect sewer service.

(2) Commenced a civil action in Superior Court or any other court of competent jurisdiction seeking damages and/or civil penalties against the user, and further seeking an injunction prohibiting further violations by user.

(3) Seek further remedies as needed to protect the public health, safety or welfare, the public water supply or the facilities of the sewerage system.

**§ 336-35. Severability.**

A. If any section, phrase, sentence or portion of this Regulation is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision; and such holding shall not affect the validity of remaining portions thereof.

**§ 336-36. Date of effect.**

A. This Regulation shall take effect from and after its passage, the welfare of the Town requiring it.

**Article I**
**EXHIBIT 1**

GENERAL ACCEPTANCE OF SEWERS

A. The Owner or the Owner's representative seeking to extend sewers to service a particular area must notify the Sewer Department, in writing and provide a detailed set of plans and specifications prepared by a Professional Engineer for approval before installation and for scheduling inspection. Once the project is complete, a punch list and inspection are scheduled for deficient items. Once the deficient items are repaired and/or replaced to meet Town of Nantucket standards and specifications, the Developer/representative shall submit the following items to the Town of Nantucket Sewer Department:

(1) A Professional Engineer's certified statement of the cost of the public utilities installed;

(2) A Professional Engineer's certified statement indicating that the Work has been built in accordance with the approved set of construction plans;

(3) A release of liens statement from the Owner/Developer stating that all materials and workmanship associated with the sewer main has been paid in full;

(4) Certified surveyed Record Plans and Profiles shall be furnished by the Engineer upon completion and acceptance by the Town of Nantucket as stated above;

(5) A statement from the Developer ensuring a one-year written warranty to the Town of Nantucket prior to issuance of the letter of acceptance;

(6) A recorded map to the Town of Nantucket showing all public rights-of- way and easements;

(7) The Engineer shall keep a copy of the Record Plans on file indefinitely.

(8) Executed sewer dedication agreement in a form approved by the Sewer Commission and includes the provisions set forth in Subsection B below.

A. The Owner must also provide a letter of credit equal to 110% of the Professional Engineer's statement of cost. The letter of credit must be held until the one-year warranty period expires.

B. Sewer Dedication Agreements

(1) Dedication of Sewer Lines. The Owner(s) shall transfer all of its right, title and ownership of the Sewer Facilities and the Town shall accept the Sewer Facilities upon the satisfaction of the following conditions:

(i) Within thirty (30) days of the execution of this Agreement, Parties shall deliver to the Town all of the required easements for the purposes of construction, installation, excavation, operation, maintenance, inspection, repair replacement, alteration, relocation, extension or removal of one or more of the sewer lines or pipes or the appurtenances related thereto by the Town or the Town's assignees in a form mutually acceptable to the Town and the Owner(s) fully executed and acceptable for registration with the Nantucket Registry District of the Land Court; and

(ii) The Sewer Commission, at a meeting duly held shall have voted to accept the Sewer Facilities and all necessary easements for the land in which the Sewer Lines run. Should it be necessary for the Sewer Department to inspect and/or repair the Sewer Lines prior to the recording of any necessary easements, the Owner(s) shall grant the Town a license to enter upon the private

roads adjacent to the Owners' Land for such limited purpose and only for as long as is necessary for the Sewer Department to perform such inspections or repairs. Furthermore, in the event that any new construction on any such land results in a need to request permission to connect to the Sewer Lines, the property owner [of the new construction] shall be required to obtain the necessary sewer connection permit issued by the Nantucket Sewer Department and shall be required to complete the connection in accordance with Town standards, in compliance with the Town's Sewer Regulations in Chapter 336 of the Town of Nantucket Code subject to the payment of all Sewer Capacity fees and Sewer Permit fees which are customarily paid to the Town's Sewer Department during the application and review process for a Sanitary Sewer Permit for connection to the Town System in accordance with the Use of Common Sewers Regulations and subject to the Nantucket Sewer Department final inspections.

**Article I**
**EXHIBIT 2**

*08/01/17*

# TOWN OF NANTUCKET, MASSACHUSETTS
# POLICY FOR SEWER STUBS AND RECONNECTION

Effective August 2017

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This policy was developed specifically for the Nantucket Harbor Shimmo & Plus Areas Sewer Project.

1. Each developed lot fronted by a municipal sewer will be provided with one sewer connection stub (unless otherwise indicated herein). Connection stubs will be located, as much as practicable, in coordination with property owner's requests. Lacking a request for other location, connections will be provided at the driveway to the dwelling.
2. Vacant developable lots fronted by the municipal sewer will be provided with one sewer connection stub (unless otherwise indicated herein). Connection stubs will be located, as much as practicable, in coordination with property owner's requests.
3. Vacant lots identified by the Town of Nantucket as undevelopable will <u>not</u> be provided with a sewer connection stub.
4. Each developed or vacant developable lot with sufficient land area and road frontage to subdivide the property may be provided with a second building connection stub, at the request of the property owner, and as approved by the Town.
5. Developed properties with two existing dwelling units (or multiple permitted sewer connections) will be left one service connection stub for each dwelling unit or permitted sewer connection, unless otherwise approved by the Town.
6. Mixed use properties, such as buildings with separate residential and business uses, will be considered as separate units, and each unit will require a separate service connection, unless otherwise approved by the Town.
7. All permitted sewer connections will be subject to the applicable sewer connection fee and privilege fee. Existing dwellings sewered directly by the Nantucket Harbor Shimmo & Plus Areas Sewer Project will not be subject to a Capacity Utilization Fee (CUF). Existing dwellings will be those dwellings that have received all approvals for construction prior to December 31, 2017, for the Nantucket Harbor Shimmo & Plus Areas Sewer Project, which date shall be formally identified and posted by the Town through the Nantucket Sewer Department.
8. In accordance with Nantucket Board of Health regulations, all properties must complete connection to the sewers within two years from the time of notification that the sewer line is approved for use. Properties located within environmentally sensitive areas must have filed a complete sewer service application for connection within six months from the time of notification that the sewer line is approved for use, unless an extension is granted to that property by the Nantucket Board of Health.
9. Dwellings previously connected to sewer (excluding dwellings connected prior to 2004) and fronted by a new municipal sewer extension will be subject to the connection and privilege fee if these fees were not previously paid. Requirement to reconnect to the new sewer and abandon the existing connection will be at the Town's discretion. In general, properties previously connected and provided with the ability to connect to the new sewer will <u>not</u> be required to reconnect, unless it is deemed in the best interest of the Town and/or the property owner.

**Article I**
**EXHIBIT 2**

10. In areas serviced by low-pressure sewers, dwellings must install, operate and maintain an individual grinder pump unit meeting specifications established by the Town, and subject to the approval of the Town. The following policies apply to low-pressure sewer connections:

    a. For lots with multiple sewer service connections for separate dwellings or building units, a separate individual grinder pump unit will be required for each service connection.

    b. Permitted sewer connections serviced directly by the Nantucket Harbor Shimmo & Plus Areas Sewer Project will be eligible for purchase of individual grinder pump units at a reduced price based on a Town managed procurement program. The Town will procure individual grinder pump units of simplex (single pump) design residential type, along with ancillary control panel, and will contract for these units to be provided to eligible (existing dwellings) properties by an approved manufacturer and supplier. The Town will offer to the owners of eligible dwellings the option to purchase a grinder pump unit and associated electrical control panel unit from the Town for a discounted cost of $1,500. For dwellings that have installed an innovative/alternative (I/A) Title 5 system approved by the Nantucket Health Department, the discounted cost for the grinder pump unit will be reduced to $500. Properties with two permitted sewer service connections, and that have paid two sewer connection fees and two privilege fees shall be eligible to purchase two grinder pump units at the reduced price. The Town will prepare and distribute documentation for the property owner to either accept or reject the reduced price offer. Acceptance of the offer by a property owner must be completed within 60 days of the mailing of said documentation. Failure by the homeowner to respond within 60 days shall constitute a rejection of the Town's offer. Property owners accepting the offer have two years from the time of notification that the sewer line is approved for use to have the grinder pump installed and the building connection to the public sewer completed. The Town will release the grinder pump to be picked up by an authorized drainlayer licensed by the Town of Nantucket upon approval of the sewer connection permit and payment of all municipal sewer connection fees.

    c. Properties developed or dwellings that are constructed after the date of December 31, 2017 for the Nantucket Harbor Shimmo & Plus Areas Sewer Project will not be eligible to purchase grinder pump units through the Town at the reduced prices.

    d. Properties that wish to install multiple grinder pumps (e.g. duplex units) or larger basins or storage tanks will require separate approval for the installation and will be responsible for the full cost associated with these systems. Under no circumstance will the Town of Nantucket approve the purchase and installation of an indoor grinder pump unit.

    e. All property owners will be responsible for proper installation of the grinder pump units and ancillary equipment, including the complete connection to the public sewer per Town of Nantucket standards. All property owners will be responsible for proper operation and maintenance of the grinder pump unit in perpetuity, including repair and replacement of such units.

**Article I**
**EXHIBIT 3**

# BEST MANAGEMENT PRACTICES FOR CANNABIS FACILITIES

Indoor cannabis cultivation and processing activities will generate wastewater such as hydroponic solutions, irrigation tail water, sanitation activities, high strength waste similar to food processing activities. The wastewater may contain elevated concentrations of nutrients; biochemical oxygen demand; salinity; metals; or sanitation chemicals containing biocides, bleach mixtures, or other chemical waste streams.

In addition to compliance with the Massachusetts Regulation and Taxation of Marijuana Act cannabis operations must employ the following are a list of best management practices:

## CHEMICAL STORAGE, HANDLING AND DISPOSAL

- All chemicals must be stored in a manner, method, and location that ensure that there is no threat of discharge to the community sewer, which includes providing adequate secondary containment:
- Seal all floor drains in chemical storage areas to prevent contaminated wastewater from discharging to the community sewer. Make sure to check with your landlord and local fire and building departments prior to sealing the drain.
- If floor drains cannot be sealed, all chemicals must be stored in secondary containment.
- Ensure that employees do not pour toxic, corrosive, or flammable chemicals down sinks, toilets, or floor drains. Signage provided by the Nantucket Sewer Department must be posted to remind employees not to dispose these substances to the community sewer. For example:
- Solvents used in cannabinoid extraction like hexane are highly flammable and present a hazard when disposed to the community sewer.
- Always ensure safe disposal of fertilizers, insecticides, plant growth regulators, and other chemicals. Do not dispose of these materials to the community sewer.
- Hire a certified waste hauler to properly dispose of spent wastes.
- Ensure all chemicals are properly labeled and immediately replace any damaged or otherwise illegible labels.
- Have a written spill procedure posted in areas where spills may occur. Train your employees on how to respond to a spill.
- Employ closed loop cannabinoid extraction systems. Closed-loop extraction systems keep chemicals from being discharged into the community sewer.

## FERTILIZERS

- Evaluate irrigation water, soils, growth media, and plant tissue to optimize plant growth and avoid over-fertilization.
- Fertilizers must be applied at rates no greater than listed on the product label.

## PESTICIDES AND PEST MANAGEMENT

- • Before using any pesticide, always read and follow the pesticide label. The label is the law.

**Article I**
**EXHIBIT 3**

- 
- Indoor cultivation operations must comply with the pesticide manufacture's re-entry interval time periods when applying pesticides.
- Implement an integrated pest management program which includes monitoring for pests and developing treatment protocols utilizing the least toxic strategies.
- Refer to the guidance such as the that provided by the California Department of Pesticide Regulation when considering pesticides for your cannabis cultivation operations - http://cdpr.ca.gov/docs/cannabis/index.htm.

FATS, OILS AND GREASE (FOG)

- Use a FOG scraper for removing and properly disposing of FOG from cookware before washing.
- A FOG removal device (grease trap/grease interceptor) must be installed and maintained to prevent fats from clogging the community sewer or causing sewage to back-up.
- Establish and maintain contract with a licensed FOG waste hauler to routinely clean and maintain grease removal devices.

WATER SUPPLY AND WATER EFFICIENCY

- Water system must be equipped with backflow prevention devices and shutoff valves to prevent cross- contamination of the drinking water supply
- If the irrigation is not on a separate irrigation meter, consider installing a sub-meter to better understand the irrigation use and quickly detect costly leaks.
- Irrigating by hose has a potential to be wasteful. Frequent staff education on best practices and the establishment of standard operating procedures is recommended.
- Implement water recycling and reuse practices where feasible to irrigate crops efficiently.

**Article II**
**EXHIBIT 1**

## SEWER PERMIT APPLICATION FEE SCHEDULE

| SEWER PERMIT FEES | |
|---|---|
| **TYPE** | **AMOUNT** |
| Residential Sewer Permit* | **$4,000.00** |
| Residential Disconnect Permit | **$300.00** |
| Residential Re-Connect Permit | **$300.00** |
| Residential Sewer Repair | **$300.00** |
| Residential Validation Permit (complex) | **$300.00** |
| Commercial Sewer Permit (NEW) | **$1.00 per Sq Ft of building area; Min $4,000.00** |
| Commercial Disconnect Permit | **$300.00** |
| Commercial Re-connect Permit | **$300.00** |
| | |

* Developers of sewer main extensions shall be required to pay all or a portion of the sewer service connection fees for all abutting properties, as determined by the Sewer Commission.

**Article II**
**EXHIBIT 2**

OTHER FEES AND CHARGES

A. Special charges for "Special Users" including high strength industrial wastes, special difficult to handle wastes, septage tank pumpings, and other special wastes that reflect the added O&M cost of handling these materials are as follows:

| SEPTAGE RECEIVING WASTE TYPES | Rate Per 1000/Gallon |
|---|---|
| Type 1 Septage Billable | $150.00 |
| Type 2 Septage Non- Billable | $0.00 |
| Type 3 Waste Type 3 Industrial Wastes | $110.00 |
| Type 4 Waste Type 4 Residential Tight Tanks | $60.00 |
| Type 5 Waste Type 5 Grease Traps/Interceptor Tanks | $0.00 |
| Type 6 Waste Type 6 Plant uses | $0.00 |
| Type 7 Animal Grooming Trucks | $50.00 |
| Type 8 Carpet Cleaner Wastes 120 Gallons or less | $50.00 |
| Type 9 Mobile Food Truck waste | $50.00 |
| Type 10 Carpet Cleaner Wastes 120 Gallons or More | $10.00 |
| | |

**Article II**
**EXHIBIT 2**

SCHEDULE OF FEES FOR SERVICE REQUESTS

| SERVICE REQUEST (NON-TOWN ISSUE) DURING NORMAL BUSINESS HOURS MONDAY THRU FRIDAY 7-3:30 | | | SERVICE FEE | EQUIPMENT/ MATERIALS CHARGES |
|---|---|---|---|---|
| 7801-1 | Sewer Backup Response | Pickup Truck | $0 | $250.00 |
| 7801-2 | Sewer Backup Response | Rodder Truck | $0 | $350.00 |
| 7801-3 | Sewer Backup Response | Vac/Jet Truck | $0 | $350.00 |
| 7801-4 | Sewer Backup Response | Jet Truck | $0 | $350.00 |
| | | | | |

| SERVICE REQUEST (NON-TOWN ISSUE) AFTER NORMAL BUSINESS HOURS, HOLIDAYS AND WEEKENDS | | SERVICE FEE | EQUIPMENT/ MATERIALS CHARGES |
|---|---|---|---|
| 7802-1 | Sewer Backup Response (MIN + OT min 2 hrs.) Rodder Truck | $220.00 | $250.00 |
| 7802-2 | Sewer Backup Response (MIN + OT min 2 hrs.) Vac/Jet Truck | $220.00 | $450.00 |
| 7802-3 | Sewer Backup Response (MIN + OT min 2 hrs.) Jet Truck | $220.00 | $350.00 |
| 7802-4 | Sewer Backup Response (MIN + OT min 2 hrs.) Pickup Truck | $220.00 | $100.00 |
| 7802-5 | Sewer Backup Response (MIN + OT min 2 hrs.) disinfection with bleach | $220.00 | $45.00 per gallon |
| 7802-6 | Sewer Backup Response disinfection with lime | $220.00 | $8.00 per bag |
| 7802-7 | Sewer Backup Response (MIN + OT min 2 hrs.) CCTV Truck | $220.00 | $400.00 |
| | | | |

**Article II**
**EXHIBIT 2**

| SERVICE REQUEST (NON-TOWN ISSUE) DURING NORMAL BUSINESS HOURS MONDAY THRU FRIDAY 7-3:30 | | SERVICE FEE | EQUIPMENT/ MATERIALS CHARGES |
|---|---|---|---|
| 7803-1 | Sewer Dept. Response Private lateral blockage Rodder Truck from cleanout to main | $0 | $250.00 |
| 7803-2 | Sewer Dept. Response Private lateral blockage Jet Truck from cleanout to main | $0 | $350.00 |
| 7803-3 | Sewer Dept. Response Private lateral blockage CCTV truck from cleanout to main | $0 | $450.00 |
| 7803-4 | Sewer Dept. Response Private lateral repair within right of way Flat Rate ****Less than 50 feet | $1,500.00 | Cost plus |
| 7803-5 | Sewer Dept. Response Private lateral repair within right of way Flat Rate ****More than 50 feet | $2,500.00 | Cost plus |
| 7803-6 | Sewer Dept. Response Private Force Main repair within right of way Flat Rate ****Less than 50 feet | $2,000.00 | Cost plus |
| 7803-7 | Sewer Dept. Response Private lateral repair within right of way Flat Rate ****Less than 50 feet | $1,500.00 | Cost plus |
| 7803-8 | Sewer Dept. Response Private lateral repair within right of way Flat Rate ****More than 50 feet | $2,500.00 | Cost plus |
| 7803-9 | Sewer Dept. Response Private Force Main repair within right of way Flat Rate****More than 50 feet | $3,000.00 | Cost plus |
| | | | |

**Article II**
**EXHIBIT 2**

| SERVICE REQUEST (NON-TOWN ISSUE) AFTER NORMAL BUSINESS HOURS, HOLIDAYS AND WEEKENDS | SERVICE FEE | EQUIPMENT/ MATERIALS CHARGES |
|---|---|---|
| 7804-1 Sewer Dept. Response Private lateral repair within right of way Flat Rate ****Less than 50 feet | **$2,500.00** | |
| 7804-2 Sewer Dept. Response Private lateral repair within right of way Flat Rate****More than 50 feet | **$3,500.00** | |
| 7804-3 Sewer Dept. Response Private Force Main repair within right of way Flat Rate ****Less than 50 feet | **$3,000.00** | **Cost Plus** |
| 7804-5 Sewer Dept. Response Private Force Main repair within right of way ****More than 50 feet | **$4,000.00** | **Cost Plus** |
| 7804-6 Sewer Dept. Response 10-wheel Dump Truck | **$0** | **$76.00 per hour** |
| 7804-7 Sewer Dept. Response Small Roll Off Truck | **$0** | **$76.00 per hour** |
| 7804-8 Sewer Dept. Response Large Roll Off Truck | **$0** | **$96.00 per hour** |
| 7804-9 Sewer Dept. Response Rodding truck with 2 operators | **$0** | **$133.00 per hour** |
| 7804-10 Sewer Dept. Response Jetter truck with 2 operators | **$0** | **$133.00 per hour** |
| 7804-11 Sewer Dept. Response Vac-Jet combo truck with 2 operators | **$0** | **$133.00 per hour** |
| 7804-12 Sewer Dept. Response Small Roll Off Truck container daily rate | **$0** | **$100.00 per day** |
| 7804-13 Sewer Dept. Response Large Roll Off Truck container daily rate | **$0** | **$200.00 per day** |
| 7804-14 Sewer Dept. Response Mini excavator with 1 operator | **$0** | **$165.00 per hour** |
| 7804-15 Sewer Dept. Response track machine with 1 operator | **$0** | **$165.00 per hour** |
| 7804-16 Sewer Dept. Response equipment trailer daily rate | **$0** | **$100.00 per day** |
| 7804-17 Sewer Dept. Response Gas powered cut off saw flat fee daily | **$0** | **$55.00 per day** |
| 7804-18 Sewer Dept. Response other specialized equipment IE: smoker | **$0** | **$45.00 per hour** |
| | | |

**Article II**
**EXHIBIT 2**

| LINE CLEANING- CCTV INSPECTIONS | EQUIPMENT | Per Hour Rate | Linear Foot Rate |
|---|---|---|---|
| | | | |
| 4"-6" Sewer Pipe CCTV Inspection Per HR+LF | **CCTV Truck** | **$350.00** | **$1.50** |
| 4"-6" Sewer Pipe Light Cleaning Per HR+LF | **Jetter Truck** | **$450.00** | **$2.50** |
| 4"-6" Sewer Pipe Light Cleaning Per HR+LF | **Rod Truck** | **$400.00** | **$2.00** |
| 4"-6" Sewer Pipe Heavy Cleaning Per HR+LF | **Jetter Truck** | **$450.00** | **$4.50** |
| 8"-15" Sewer Pipe CCTV Inspection Per HR+LF | **CCTV Truck** | **$350.00** | **$2.50** |
| 8"-15" Sewer Pipe Light Cleaning Per HR+LF | **Jetter Truck** | **$450.00** | **$3.50** |
| 8"-15" Sewer Pipe Heavy Cleaning Per HR+LF | **Jetter Truck** | **$450.00** | **$5.50** |
| 8"-15" Sewer Pipe Heavy Cleaning Per HR+LF | **Rod Truck** | **$400.00** | **$2.00** |
| | | | |

| INSPECTION SERVICES | FEES |
|---|---|
| Dye test to confirm connection | **$300.00** |
| Lateral CCTV inspection | **$400.00** |
| Mainline CCTV to locate Laterals | **$500.00** |
| Re-inspection fee | **$150.00** |
| | |

| SHIMMO GRINDER PUMPS | |
|---|---|
| **TYPE** | **PURCHASE PRICE** |
| No prior innovative and alternative system | $1,500.00 |
| With prior innovated and alternative system | $500.00 |

**Article II**
**EXHIBIT 3**

## 310 CMR 15.203

| TYPE OF ESTABLISHMENT | UNIT | GALLONS PER DAY | MINIMUM ALLOWABLE GPD FOR SYSTEM DESIGN |
|---|---|---|---|
| (2) RESIDENTIAL | | | |
| Bed & Breakfast | per bedroom | 110 | 440 |
| Bed & Breakfast | per bedroom | 110 | |
| with restaurant open to public add | per seat | 35 | 1000 |
| Camp, resident, mess hall, washroom and toilets | per person* | 35 | |
| Camp, day, washroom and toilets | per person | 10 | |
| Camp, day, mess hall, washroom and toilets | per person | 13 | |
| Campground, showers and toilets | per site | 90 | |
| Family Dwelling, Single | per bedroom | 110 | 330** |
| including, but not limited to, single family condominiums & cooperatives | | | |
| Family Dwelling, Multiple | per bedroom | 110 | *** |
| Family Mobile Home Park | per mobile home | 300 | |
| Motel, Hotel, Boarding House | per bedroom | 110 | |
| Retirement Mobile Home Park | per site | 150 | |
| Housing for the Elderly | per two bedroom unit | 150**** | |
| Work or Construction Camp | per person | 50 | |

* Person in the context of 310 CMR 15.203 means an individual.

** A system may be designed for flows of not less than 220 gpd, if a deed restriction essentially identical to the model Grant of Title 5 Bedroom Count Deed Restriction developed by the Department, is provided that limits the dwelling to two bed rooms as the term "bedroom" is defined in 310 CMR 15.002. A home office or home retail business whose only employees reside in the home, where no additional wastewater is generated other than toilet and hand washing waste, is not considered a change in the type of establishment and does not require the addition of flow for the purpose of designing the system.

*** The number of bedrooms in a condominium shall be as specified in the Master Deed. Establishment of bedrooms in excess of the specified number shall be considered an increase in design flow. A home office or home retail business whose only employees reside in the home, where no additional wastewater is generated other than toilet and hand washing waste, is not considered a change in the type of establishment and does not require the addition of flow for the purpose of designing the system.

**** One bedroom unit Housing for the Elderly, and units with more than two bedrooms shall be designed based on 110 gallons per day per bedroom.

| | | | |
|---|---|---|---|
| (3) COMMERCIAL | | | |
| Airport | per passenger | 5 | 150 |
| Barber Shop/Beauty Salon | per chair | 100 | |
| Bowling Alley | per alley | 100 | |
| Country Club, dining room | per seat | 10 | |
| Country Club, snack bar or lunch room | per seat | 10 | |
| Country Club, lockers and showers | per locker | 20 | |
| Doctor Office | per doctor | 250 | |
| Dentist Office | per dentist | 200 | |

**Article II**
**EXHIBIT 3**

**310 CMR 15.203**

| TYPE OF ESTABLISHMENT | UNIT | GALLONS PER DAY | MINIMUM ALLOWABLE GPD FOR SYSTEM DESIGN |
|---|---|---|---|
| (3) COMMERCIAL (continued) | | | |
| Factory, Industrial Plant, Warehouse or Dry Storage Space without cafeteria | per person | 15 | |
| Factory, Industrial Plant, Warehouse or Dry Storage Space with cafeteria | per person | 20 | |
| Gasoline Station | per island***** | 75 | 300 |
| with service bays | per bay | 125 | |
| ***** Plus flows for bays, if any | | | |
| Kennel/Veterinary Office | per kennel | 50 | |
| Lounge, Tavern | per seat | 20 | |
| Marina | per slip | 10 | 500 |
| Movie Theater | per seat | 5 | |
| Non-single family/ automatic clothes washer | per washing machine | 400 | |
| Office building | per 1000 sq.ft. | 75 | 200 |
| Retail Store (except supermarkets) | per 1000 sq.ft. | 50 | 200 |
| Restaurant | per seat | 35 | 1000 |
| Restaurant, thruway service area | per seat | 150 | 1000 |
| Restaurant, Fast Food | per seat | 20 | 1000 |
| Restaurant, kitchen flow [for sizing of grease trap only] | per seat | 15 | |
| Service Station [no gas] | per bay | 150 | 450 |
| Skating Rink | per seat | 5 | 3000 |
| Supermarkets | per 1000 sq.ft. | 97 | |
| Swimming Pool | per person | 10 | |
| Tennis Club | per court | 250 | |
| Theater, Auditorium | per seat | 3 | |
| Trailer, dump station | per trailer | 75 | |
| (4) INSTITUTIONAL | | | |
| Place of worship without kitchen | per seat | 3 | |
| with kitchen | per seat | 6 | |
| Correctional Facility | per bed | 200 | |
| Function Hall | per seat | 15 | |
| Gymnasium | per participant | 25 | |
| Gymnasium | per spectator | 3 | |
| Hospital | per bed | 200 | |
| Nursing Home/Rest Home | per bed | 150 | |
| Assisted Living Facilities | per bed | 150 | |
| Public Park, toilet waste only | per person | 5 | |

**Article II**
**EXHIBIT 3**

**310 CMR 15.203**

| TYPE OF ESTABLISHMENT | GALLONS UNIT | MINIMUM ALLOWABLE GPD FOR SYSTEM PER DAY | DESIGN |
|---|---|---|---|
| (4) INSTITUTIONAL (continued) | | | |
| Public Park, bathhouse, showers and flush toilets | per person | 10 | |
| Day Care Facility | per person | 10 | |
| (5) SCHOOLS****** | | | |
| Elementary School, without cafeteria, gymnasium or showers | per person | 5 | |
| Elementary School, with cafeteria but no gymnasium with showers | per person | 8 | |
| Elementary School, with cafeteria, gymnasium and showers | per person | 10 | |
| Secondary/Middle School, without cafeteria, gymnasium or showers | per person | 10 | |
| Secondary/Middle School, with cafeteria but no gymnasium or showers | per person | 15 | |
| Secondary/Middle School, with cafeteria, gymnasium and showers | per person | 20 | |
| Boarding Schools, Colleges | per person | 65 | |

****** All schools to be served by an alternative technology approved pursuant to 310 CMR 15.280 through 15.288 shall have an equalization basin as part of the system design and have it installed prior to the treatment device.

**Article II**
**EXHIBIT 4**

## *Sewer Capacity Fee Policy*

### I. Purpose and Authority

a. The purpose of this policy is to formalize and clarify the use of a revised policy for charges to properties connecting to the Nantucket sewer system which are part of a designated and approved Sewer District. Connecting properties are responsible for a portion of the project cost of wastewater facilities construction based on Town Meeting votes. Properties served by private sewer extensions shall be responsible for a proportionate share of the expended cost of all wastewater facilities and facilities needed to serve the proposed property or properties. It is intended that the "new" sewer capacity fee shall be established for the Town to assess and collect a portion of the wastewater collection and treatment system capital cost, based on commonly used and generally accepted criteria (e.g., 310 CMR 15.203 of Title 5); acknowledging that existing similar fees that have been established by the Town but may not have been consistently applied to all properties connected to the public sewer system.

b. Authority
This policy is adopted in accordance with Chapters 80 and 83 of the Massachusetts General Laws (MGLs), and relevant Session Acts approved by the General Court, including:

- Chapter 169 of the Acts of 1965; Act Authorizing the Town of Nantucket to establish a Board of Public Works Exercising the Powers of Certain Other Boards, Commissions, Departments, and Town Offices.
- Chapter 396 of the Acts of 2008; An Act Authorizing the Establishment of the Nantucket Sewer Commission and Sewer Districts in the Town of Nantucket.

Further, pertinent sections of the Town Charter apply, including:

- Chapter 41 - Board of Sewer Commissioners
- Chapter 120 - Sewers and Wastewater Facilities

Chapter 41 references include numerous subsequent amendments to Chapter 41 as approved by Town Meeting votes to expand the Sewer District, and thereby include additional properties.

c. Responsibility for Administration

The Select Board, acting as Sewer Commissioners, are responsible for the administration of this policy. The authority for that policy is reflected in Chapter 169 of the Acts of 1965 and Chapter 396 of the Acts of 2008, as well as Chapters 41 and 120 of the Nantucket Town Charter.

## II. Definitions

"Capacity Utilization Fee"- Shall mean a one-time charge for a property that has access to a public sewer by virtue of its location within a designated Sewer District. This fee shall be similar to a sewer betterment assessment, special assessment or sewer privilege fee as described in Section 7 of Chapter 396 of the Acts of 2008. While this fee serves a similar purpose as a Sewer Privilege Fee, it is separate and distinct from a Sewer Privilege Fee, as was established and described in Section 120-6 of the Town Charter. The Nantucket Capacity Utilization Fee basis differs from the Sewer Privilege Fee in that the assessment is based on design flow and does not use assessments based on the uniform unit method as described in Chapter 120-2 of the Town Charter.

"Sewer Capacity Fee"- Similar to the existing Sewer Privilege Fee and Capacity Utilization Fee, and authorized by the same Special Acts, Town Charter Sections and Town Meeting Votes; this "new" fee will be used in place of the two existing capacity-related fees more recently established in 2004 and 2008. This fee shall closely mirror the requirements of the Capacity Utilization Fee as established more recently in 2008, by using a cost per gallon per day assessment basis. As provided in Section 14 of Chapter 83, this fee (or assessment) shall be a proportional part of the cost of collection and treatment facilities construction, and of the costs, not already assessed, of making and repairing other common sewers and facilities.

"Sewer Connection Fee"- Shall mean a one-time cost paid at the time of issuance of a sewer connection permit, to reimburse the Town for costs associated with administering the Sewer Connection program including processing permit applications, sewer capacity fee, connection fee, and user charge billing, inspection of the sewer connection construction, record-keeping and related Sewer Department coordination efforts. The standard fee may be adjusted to account for added or increased Town costs of the services included.

"Sewer Connection Permit"- Shall mean approval from the Town, issued by the Director of the Nantucket Sewer Department, for the installation of a new sewer service or the modification of an existing sewer service, with application being made on specific form(s) as provided by the Town.

"Sewer District"- As defined in Section 336-1, the Nantucket Sewer Regulations, and meaning the areas and designated properties within those areas of Nantucket that abut public or private ways and that can be served by public sewers. Such districts may be expanded from time to time as designated and established by Town Meeting vote, in accordance with Chapter 396 of the Acts of 2008.

"Sewer Privilege Fee"- Shall mean a one-time fee assessed to a property that is served by, and connects to, a public sewer as provided in MGL Chapter 83, Sections 15 and 17; and Chapters 120-1 and 120-6 of the Nantucket Town Charter, originally approved in 1999 and amended in 2004.

## III. Basis for Sewer Capacity Fee

a. General

The Sewer Capacity Fee shall be assessed to all properties that have connected and/or will connect to the public sewer system that have yet to pay either the Sewer Privilege Fee or the Capacity Utilization Fee.

The Capacity Fee will initially be set using the most recently determined Capacity Utilization Fee rate of $20.32 per gallons per day of capacity. Future fee calculations will be completed by or on behalf of the Board of Sewer Commissioners.

b. Flow Basis

Design flows for each property for the purpose of calculating the Sewer Capacity Fee shall be maximum daily flows reflected in 310 CMR 15.203 (Title 5 of the MA Environmental Code), as reflected in the Town's Sewer Rules and Regulations, Section 336-13, and Article II, Exhibit 3. That design flow basis shall be used for calculating sewer capacity fees for all existing and proposed properties. No multiplier of actual water use/metered flow shall be used in determining the flow basis for the calculation of the Sewer Capacity Fee.

In cases where a dwelling, building or connected property has bathrooms in excess of the number of bedrooms, or water using fixtures not associated with a kitchen or bathroom, the following design flows apply in addition to those found in 310 CMR 15.203:

1. 55 gallons per day for each bathroom or half bathroom that exceeds the total

number of bedrooms.

2. 55 gallons per day for each water using fixture connected to the sewer system, which is not associated with a kitchen or a bathroom.

c. For all new construction, there shall be a minimum Sewer Capacity Fee, equivalent to the connection of a 3-bedroom residence and a design flow rate of 110 gpd per bedroom. Using the current capacity utilization fee rate of $20.32 per gpd, that minimum charge is calculated at $6,705.60 ($20.32 x 3 bedrooms x 110 gpd/bedroom). This minimum applies to residential as well as any mixed use, commercial, business or other non-residential uses. This minimum charge shall not apply to a Sewer Capacity Fee assessed for a change in use.

d. Changes in Use and Renovation/Improvements to Properties
A Sewer Capacity Fee shall also be assessed for any changes in use or improvements/renovations of a sewered property, including for any property that has already been assessed a Sewer Capacity Fee or its similar predecessor sewer fees. A change in use shall be defined as any building addition, modification, improvement or replacement that could reflect an increased design wastewater flow based on 310 CMR 15.203 Design Criteria. Sewer Capacity Fees assessed based on a change in use shall not be apportioned over time and shall be assessed and paid in advance of the start of the construction that is the basis of that change in use.

e. Apportionment
Payment of the Sewer Capacity Fee shall be paid up-front, in advance of the actual physical connection to the public sewer. However, at the discretion of the Board of Sewer Commissioners, the Sewer Capacity Fee may be paid over a number of years, not exceeding 20, at an interest rate to be determined by the Board, with input from the Town Assessor's office, in accordance with Section 120-5 of the Town Charter. Apportionment procedures shall include provisions for the interest rate assessed, and the lien and taxing processes. With regard to the lien process, because the Sewer Capacity Fee is not equivalent to a Sewer Betterment under MGL Chapter 80, the property Owner of Record must execute a Voluntary Lien Agreement, that runs with and is attached to the property, such legal document to be recorded at the Registry of Deeds.

The current interest rate that shall be applied to all apportioned Sewer Capacity Fees shall be set at 4.414%, unless and until that interest rate is modified by a vote of the Board.

The methodology used in calculating annual principal and interest payments shall be at the discretion of the Board, in accordance with Paragraph 2 of MGL Chapter 80, Section 13, effective as of November 7, 2016.

f. Exemptions/Deferrals/Waiver

No exemptions or exclusions from this policy shall be issued by the Board, with the exception of properties that qualify, apply and are approved for a sewer fee waiver in accordance with the Policy for Sewer Fee Waiver Requests, as adopted by the Town of Nantucket on October 24, 2018. Waivers of the Sewer Capacity Fee shall be allowed under the Authority of the Board of Sewer Commissioners, in accordance with Chapter 396 of the Acts of 2008 and relevant Town Charter Articles. Procedures for Waiver requests shall be as approved by the Board of Sewer Commissioner in a separate policy to be developed and adopted by the Board and shall only be allowed upon a determination that the public interest so requires.

However, property owners eligible to receive an exemption from property taxes under clause 41A of Section 5 of Chapter 59 of the MGL's with respect to their property, shall upon application, be allowed to defer the Sewer Capacity Fee. The eligible property owner whose fee is deferred shall be required to enter into a deferral and recovery agreement with the Town of Nantucket.

## IV. Adoption of Sewer Capacity Fee

Notwithstanding other provisions of these regulations, the Sewer Capacity Fee shall be in force as of the date of acceptance of these regulations by the Nantucket Select Board. As of that date, the Sewer Capacity Fee formally replaces the application of the town's Sewer Privilege Fee and Capacity Utilization Fee.

## Article II
## EXHIBIT 6

### RESIDENTIAL SEWER CAPACITY FEE SCHEDULE
**(FEE'S SUBJECT TO CPI INCREASES ANNUALLY)**

| | | | | |
|---|---|---|---|---|
| **Single Family Residential** | 6 bedrooms $13,411.20 | 5 bedrooms $11,176.00 | 4 Bedrooms $8,940.80 | ≤ 3 Bedrooms $6,705.60 |
| **Multi – Family residential** | | 5 Bedrooms Per Unit $11,176.00 | 4 Bedrooms Per Unit $8,940.80 | ≤ 3 Bedrooms Per Unit $6,705.60 |
| **Existing structure Bedroom Additions Alterations** | Ea. additional bedroom above 3 will be charged $20.32 per gpd | Ea. additional bedroom above 3 will be charged $20.32 per gpd | Ea. additional bedroom above 3 will be charged $20.32 per gpd | Ea. additional bedroom above 3 will be charged $20.32 per gpd |

Per 310 CMR 15.203, the minimum allowable volume for system design is 330 gallons per day. The volume allowed for each additional bedroom is 110 gallons per day. Outbuildings with sanitary facilities are counted as bedrooms for the purpose of the sewer capacity fee.

**Article II**
**EXHIBIT 6**

TOWN & COUNTY OF NANTUCKET
*SELECT BOARD*
POLICY FOR SEWER FEE WAIVER REQUESTS
*Adopted: 07/20/2016; Revised 10/24/2018, 12/03/2020*

*I. Policy.*

The Select Board, acting as the Nantucket Sewer Commission pursuant to Chapter 396 of the Acts of 2008, and in accordance with Chapter 38, Article III, section 38-3B of the Code of the Town of Nantucket, has the authority to waive any town fee or charge, upon a determination that the public interest so requires.

The Select Board hereby determines that it is in the public interest to encourage the production of affordable housing, including workforce housing units for the Island's working population. Therefore, the Select Board will consider, on a case-by-case basis, waivers of one or both of the Town's fees relating to the connection of dwelling units that are located in an existing Sewer District as established under Chapter 396 of the Acts of 2008.

*II. Sewer Connection and Sewer Capacity Fee Waivers.*

The Select Board may, at its discretion, waive the sewer connection fee or the Sewer Capacity Fee upon the request of a property owner, developer, or public entity seeking to connect one or more dwelling units to the Town's sewer system if such unit or units are bound by a permanent affordable housing deed restriction in a form acceptable to the Town and enforceable by the Town, and provided that the dwelling unit or units are part of a project where a minimum of 25% of the units are eligible for inclusion on the Town's Subsidized Housing Inventory ("SHI") as maintained by DHCD or any successor agency and provided that the developer and/or unit owner shall cooperate fully with the Town in obtaining SHI status for the eligible unit or units by timely providing all required documentation and notifying the Town Manager when a building permit issues and when an occupancy permit issues.

In the case where less than all of the units in the project are income-restricted, the Select Board may waive up to 100% of both sewer fees where the unit is restricted at 80% AMI or less, up to 75% of both fees where the unit is restricted between 81% and 100% AMI, and up to 50% of both fees where the unit is restricted between 101% AMI and 150% AMI. In the case where all of the units in a project are income-restricted, 100% of both sewer fees may be waived as long as a minimum of 25% of the total number of units are SHI-eligible. In exercising its discretion, in applying the policy, the Select Board may consider the total value of Town subsidies for the project, including closing cost assistance, direct grants, land contribution by the Town, other fee waivers, and market rate sales in the project.

**Article II**
**EXHIBIT 6**

In the case of dwelling units that are subject to a permanent affordable housing covenant meeting the requirements of Chapter 301 of the Acts of 2002, and Chapter 100 of the Code of Nantucket, the Select Board may, in its discretion, waive all or a portion of the sewer connection fee.

**Article III**
**EXHIBIT 1**

**SCHEDULE OF FINES**

| VIOLATION | FINE |
|---|---|
| | |
| Sewer installation without permit | **$300 and/or civil penalty up to 5000.00** |
| Sewer Repair without permit including 2x the permit fee | **$300.00 and/or civil penalty up to $ $600** |
| Work covered before inspection All work to be uncovered for inspection | **$150.00** |
| Failure to schedule Inspectional Services Each Offense | **$150.00** |
| Failure to perform work according to approved plan | **$250.00** |

# Chapter 340

# SIGNS


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**General Provisions; Enforcement**

**§ 340-1. Findings; bylaw violations and penalties.**
**§ 340-2. Bylaw effective date.**
**§ 340-3. Scope and intent.**
**§ 340-4. General restrictions.**

ARTICLE II
**Procedures**

**§ 340-5. Approval required.**
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ARTICLE III
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**§ 340-9. Colors.**
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**Specific Sign Types**

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**§ 340-24. Menu boxes.**
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**§ 340-27. Quarterboards.**
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**Commercial Buildings and Master Sign Plans**

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ARTICLE VI
**Preexisting Nonconforming Signs**

**§ 340-43. Continuity.**

**Appendix A, Glossary**

**Appendix B, Violation Procedure**

**Appendix C, Historical Notes**

**Appendix D, Sign Advisory Council**

**Sample Application for Certificate of Appropriateness**

**Appendix E, Bibliography**

**Sample Sign Master Plan**

**[HISTORY: Adopted by the Historic District Commission of the Town of Nantucket effective 11-27-1990, as amended 2-2005. Subsequent amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Display of merchandise and wares — See Ch. 97.**
**Signs in historic districts — See Ch. 124, Art. I.**
**Zoning — See Ch. 139.**

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ARTICLE I

## General Provisions; Enforcement

### § 340-1. Findings; bylaw violations and penalties.

A. Sign regulation has existed in the historic districts of Nantucket and Siasconset since 1956 and throughout the Island since 1972. In 1981, the Historic District Commission (HDC) of Nantucket adopted its first comprehensive set of regulations governing the design and use of signage across the Island. The Historic District Commission created a committee, the Sign Advisory Council (SAC), to assist in the review of all certificate of appropriateness (COA) applications involving signage. These sign regulations are supplementary to the architectural regulations and have been amended from time to time since the early 1970s.

B. Sign regulation has existed since the passing of Special Acts of the Massachusetts General Legislature, Chapter 601 in 1955. Section 6 states that

"The erection or display of an occupational or other sign exceeding two feet in length and six inches in width or the erection or display of more than one such sign, irrespective of size, on any lot, building or structure located within the Old and Historic Nantucket District or the Old and Historic Siasconset District [changed in 1972 to the "Historic Nantucket District"] must be approved in advance by the Historic District Commission. Evidence of such approval shall be a certificate of appropriateness issued by said Commission."

C. Excerpts from Chapter 124, Article I, Signs in Historic Districts, of the Code of the Town of Nantucket, § 124-2 and § 124-3:

"Any person who violates any of the provisions... of this chapter shall be fined as follows: the penalty shall be $10 for the first offense, $50 for the second offense, and $300 for the third or subsequent offenses. Each day that a violation continues to exist shall constitute a separate offense... Enforcement shall be through the process of noncriminal disposition under MGL c. 40, § 21D and Article II of Chapter 1 of the Code of the Town of Nantucket. Enforcement shall be by any police officer or by an enforcing agent designated by the Historic District Commission."

### § 340-2. Bylaw effective date.

The effective date for the bylaw found in Chapter 124, Article I, of the Code of the Town of Nantucket was November 27, 1990.

### § 340-3. Scope and intent.

Generally, a sign includes any structure, device, letter, word, model, banner, pennant, insignia, trade flag, or representation used as, or which is in the nature of, an advertisement, announcement, or direction. Ideally, signs enhance the architectural features and proportions of a building and its neighborhood. The HDC guidelines seek to promote harmonious, respectful, functional, and varied signs. Signs should express the special character of the associated business and be of a size that is in scale with the building and surrounding streetscape.

### § 340-4. General restrictions.

While not restricting content, signage on Nantucket generally should not be used to advertise the business or to list specific products or services. Businesses should advertise and market utilizing other media, such as websites, newspapers, tourist publications, radio, and television.

## ARTICLE II
## Procedures

### § 340-5. Approval required.

Any residential, commercial, or municipal property owner or tenant wishing to display a sign exceeding two feet by six inches in width or a second sign of any size on any lot, building, or structure must apply. Signs that are displayed on a building or a window and are visible from a traveled way (including temporary signs or the relocation or alteration of existing signs) must receive approval from the Historic District Commission. If more than one sign is desired, each sign shall require an application. Master sign plans may be required for large projects involving many signs. Signs which do not require an application (under two feet by six inches) nevertheless must conform to general design guidelines (See Article III.).

### § 340-6. Review process and procedures. [Amended during codification]

The following review process and procedures must be followed:

A. Obtain a sign application and a copy of the sign guidelines at the office of the Historic District Commission, Town Annex Building, 37 Washington Street, 2nd floor.

B. Address questions about the regulations or application to the HDC staff or to members of the SAC at one of its meetings at 9:00 a.m. on Tuesdays at the HDC office. Applicants are encouraged to meet with the SAC for a discussion of preliminary design ideas prior to a formal application.

C. When designing a sign, give careful consideration to the material, location, and mounting of the sign. Do not have the sign constructed until it has received HDC approval.

D. Submit the completed application form, photographs, drawings, and color samples to the staff at the HDC office the Monday prior to the SAC meeting.

E. Prior to review by the HDC, the SAC will meet and review the application and provide the HDC with a written recommendation. See Appendix D for more information on the SAC.[1] Applicants are encouraged to attend the SAC meeting as revisions and/or additional information may be requested.

F. The HDC must act within 60 days of the date a complete application was submitted, except where mutual agreement has been reached for an extension of the time limit.

G. Signs must be built according to the specifications in the approved application; any changes require a new application. Changes made without prior approval will be deemed a violation, and the business or property owner displaying such sign may be subject to a fine of up to $300 per day.

### § 340-7. Owner/Tenant responsibility.

The term "applicant" is used throughout this regulation and refers specifically to the building owner, who ultimately is responsible for any changes to the exterior of the structure. The building owner also is responsible for providing information on signs to current and prospective tenants. The SAC and the HDC urge building owners to have restrictions regarding signs outlined in the lease agreement. However, the SAC and HDC also recognize that the tenant usually makes the application and represents the owner throughout the process. Responsibility falls to the tenant to work out violations with the owner and the HDC.

## ARTICLE III
## General Guidelines

### § 340-8. General considerations.

A. Sign design begins with the building. Is there an obvious space on the building where the sign would look appropriate? Many of Nantucket's Nineteenth Century commercial buildings were designed with a horizontal lintel "sign space" across the top of the storefront. A building's proportions, as well as the street character and neighboring buildings, will determine the appropriate size of the sign.

B. Where no "sign space" exists on a building, a wall sign with a vertical format or a projecting sign may be appropriate. Signs should be located at or near the public entrance and should not cover, obscure, or become inharmonious with existing architectural features and proportions. Any sign that is moved to another location, either on the same structure or to another, shall be considered a new sign and a new permit

1. **Editor's Note: Appendix D is included as an attachment to this chapter.**

shall be required. Signs on Town property shall conform to the Sign Code and shall be submitted to the Commission for approval.

C. Sign detail requires careful attention, often involving input from a designer or sign builder. A scaled drawing of the proposed sign must be produced and must include the lettering type, layout, artwork, and colors. A scaled drawing or photograph should depict the sign's location on the building.

D. All signs and parts thereof, including but not limited to framework, supports, background, anchors, and wiring system, shall be constructed and maintained in compliance with applicable building, electrical, and fire prevention codes.

### § 340-9. Colors.

The use of subdued colors is encouraged. In order to allow for creative artwork there is no specific limitation on the number of colors used. A darker background with lighter lettering and graphics is encouraged as a traditional and aesthetically pleasing presentation.

### § 340-10. Content.

A. A sign may provide the name of a business or facility, the nature of the business or service conducted on the premises, the street number of the premises, and the year the business was established.

B. No sign shall include the telephone number, e-mail, or web address of a business, rates, other business locations on or off the Island, or list more than one specific product or service.

C. A sign designed with a registered trademark of a specific commodity that uses a nonhistorical font style may be used, provided that the trademark occupies no more than 15% of the total area of the sign.

### § 340-11. Sign support.

Sign brackets and standards traditionally are made of wrought iron or wood. A sign bracket shall extend the full length of the sign.

### § 340-12. Lettering.

Lettering which is traditional in appearance and style and has an historic precedent is preferred. Lettering that is too bold, too harsh in its simplicity, or "trendy" is discouraged and rarely approved. The application of § 340-10C is relevant to the design of lettering on signs.

### § 340-13. Lighting.

A sign may be illuminated for a business operating after sunset, provided that the wattage used does not exceed 450 lumens (under a thirty-watt incandescent bulb), is not fluorescent in

style, and that the source of illumination shall be shielded and directed downward at the sign. Lighting options can be further discussed with the office.

**§ 340-14. Materials.**

Signs shall be made of wood except as required by state or federal law. No particleboard, plastic, or baked enamel on metal shall be used. "Medium density overlay" plywood or marine plywood may be used, but it must be edge-banded. Solid wood is recommended over plywood since plywood tends to delaminate with age. Other materials will be considered on a case-by-case basis.

**§ 340-15. Paint.**

All surfaces must be painted. No vinyl lettering is permitted. If gold lettering or ornamentation is desired, 23K gold leaf should be considered. Gold paint will tarnish in a very short period of time. If necessary, tan paint is preferable to gold paint.

**§ 340-16. Placement.**

A. No sign shall be positioned on a structure so that it obscures any architectural feature, including but not limited to the cornice, window trim, door trim, or porch railings. Temporary signage exceptions are considered on a case-by-case basis.

B. A sign shall not interfere with or obstruct any official traffic sign, signal, or marking for any reason.

**§ 340-17. Prohibited signs.**

The following signs shall not be permitted, constructed, erected, or maintained:

A. Signs with flashing, moving, or intermittent lighting of any kind; for example, such signs displaying time and temperature. This includes signs that are backlit and signs that are electric or neon.

B. Portable signs, including any sign mounted on wheels.

C. Signs that are erected in such a way as to obstruct a door, window, or fire escape of the building to which the sign is affixed.

D. Signs that are tacked, posted, or painted to poles, benches, barrels, buildings, posts, trees, sidewalks, curbs, rocks, or any structure.

E. Off-premises signs which advertise commercial activities taking place or businesses located on another lot.

F. Signs that are placed on the public sidewalks or public property, e.g. sandwich boards, menu boards, and chalkboards, except for signs erected by the Town.

G. Vending machine signs. (See § 340-34.)

H. Roof signs.

I. Signs that name a complex of buildings or businesses.

J. Freestanding signs, except for those that are grandfathered (See Appendix C.[2]).

K. Vehicle signs. (See § 340-33.)

L. Attachment signs.

M. Real estate signs.

N. Subdivision signs.

## ARTICLE IV
## Specific Sign Types

### § 340-18. Awning signs.

A. Definition. As used in this section, the following terms shall have the meanings indicated:

AWNING SIGN — A sign painted on or sewn directly to a roof-like covering of canvas that often is adjustable.

B. Size. No awning sign shall extend beyond the edges of the awning or have a total area in excess of 1/2 square foot for each linear foot of the front of the awning.

C. Placement.

(1) The lowest portion of any awning bearing an awning sign shall not be less than seven feet, six inches above the level of a sidewalk or public way.

(2) An awning sign for each of two awnings shall be permitted for each business on the first floor.

D. Combinations. An awning sign may be combined with a menu box, wall sign, or window sign.

E. Regulations.

(1) Awnings require separate or previous approval from the HDC. The HDC will not approve umbrella-style, bubble, ellipse and ribbed awnings. The HDC recommends that awning colors and materials should follow traditional examples. Furthermore, awnings should not extend above the portion of the structure to which they are attached, and should extend from the structure in a manner that maintains the aesthetic lines of the building.

(2) Attaching to an existing awning a patch of fabric that has the sign painted or sewn onto it is not permitted.

2. **Editor's Note: Appendix C is included as an attachment to this chapter.**

(3) The business name and/or nature of the business may be painted on the vertical portion of the apron, which is parallel to the building front.

(4) Awnings shall be nonilluminated and nonelectric.

**§ 340-19. Construction and site signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

CONSTRUCTION SIGNS — Temporary signs erected on the premises on which construction is taking place, during the time period of such construction, indicating the name of the architect, engineer, landscape architect, contractor, or similar artisans involved in the project. (See also § 340-31.)

B. Size. Construction signs shall not exceed one square foot.

C. Placement. Construction signs shall be attached or affixed to a structure or building and shall not be freestanding.

D. Regulations.

(1) Only one construction sign is permitted per lot.

(2) Construction signs must be removed within 30 days of the substantial completion of work on site.

**§ 340-20. Directory signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

DIRECTORY SIGN — Contains listings of two or more commercial establishments that share a common entrance.

B. Size and placement.

(1) One directory sign will be permitted at the entrance of a building with multiple commercial establishments and one common entrance.

(2) A directory sign for two businesses may be either a projecting sign or a wall sign mounted near the common entrance, which does not exceed four square feet. (See §§ 340-25 and 340-35.) A directory sign for three or more businesses shall be a wall sign mounted near the common entrance that does not exceed six square feet.

(3) When two tenants occupy a symmetrically designed building with adequate and appropriate space for the display of two separate signs, two signs symmetrically placed on the building may be permitted in lieu of a directory sign. These signs may be either wall signs or projecting signs and shall not exceed four square feet each.

C. Combinations. No combinations of any signs are permitted for any business utilizing a directory sign.

**§ 340-21. Fence signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

FENCE SIGN — Any sign attached to a fence. Fence design is determined by the Historic District Commission.

B. Size.

(1) A sign on a picket fence shall be three square feet or less.

(2) A sign on a fence of five feet or more in height shall be four square feet or less.

(3) A sign on a split rail fence shall be less than three square feet.

C. Placement. A fence sign shall be placed against the surface of the fence and shall not project above the top of the fence or off the side of the fence.

D. Combinations. A fence sign may be combined with one of the following: menu box or wall sign not exceeding one square foot in area and located at the business entrance or one projecting sign not exceeding two square feet and located at the business entrance.

E. Regulations.

(1) Prior approval of the fence from the HDC is required.

(2) One fence sign will be permitted per building lot.

(3) A sign on a split rail fence must maintain the rural characteristics inherent in the fence.

**§ 340-22. Flag signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

FLAG SIGN — Any sign constructed of fabric bearing information relating to or identifying a business, with the exception of a national or state flag.

B. Size. Flag signs shall be of such a size that will not obscure any architectural features.

C. Placement. The lowest point of a flag sign shall be not less than seven feet, six inches above the sidewalk.

D. Combinations. A flag sign may be used in combination with one of the following: menu box, wall sign, or window sign.

E. Regulations.

(1) One flag sign is permitted for each public entrance of a building, with a maximum of one flag sign per business.

(2) Flag signs should be designed to have similar character, color, and style as other signs of the business and must conform to general guidelines regarding context.

(3) "Open/Closed" and "Sale" flags must receive prior approval from the HDC and are generally discouraged. **[Amended during codification]**

**§ 340-23. Historical markers.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

HISTORICAL MARKER — A sign indicating historical information (i.e., date of construction, early owners and builders, etc.) located on residential and commercial buildings.

B. Size. Historical markers shall be no larger than two square feet. Signs shall be of a rectangular shape, or other shape approved by the HDC that is architecturally appropriate to the structure on which the sign is being placed.

C. Construction. Historical markers shall be constructed of wood with painted lettering. Bronze or other metal markers may be permitted with embossed lettering. Lettering and colors should be of a muted tone to respect the architecture of the buildings.

D. Placement. Historical markers shall be placed in such a way as to not obscure architectural features. Consideration should be made for the overall design of the structure and where a historical marker might best fit. Nantucket's simple design encourages discreet locations of these signs. The HDC recommends locations away from the main entrance and that the sign not be placed high on the facade. Further consultation with staff or the Sign Advisory Council on this issue is encouraged.

E. Combinations. Historical markers may be, with permission of the HDC, combined with one other historical marker on residential properties. Commercial properties may have the allowable combinations of other signs, plus one historical marker. As noted in § 340-5, property owners/tenants must apply in advance to the HDC for all signs over two feet by six inches, or for use of more than one sign. **[Amended during codification]**

F. Off-premises business identification. If, in addition to presenting historical information, a historical marker identifies a business entity (other than the business tenant of the building) or is shaped in a "logo" of a business entity, approval must be secured to overcome the off-premises sign prohibition contained in § 340-17.

**§ 340-24. Menu boxes.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

MENU BOX — A weathertight box constructed of wood with a glass or plexiglass front which is used to display menus, signs, bulletins, photographs, or other information.

B. Size. The menu box shall be no larger than five square feet.

C. Construction. A menu box shall be constructed of wood, which may be painted or left natural. The front of the box shall use safety glass or plexiglass. Interior lighting should be no brighter than 450 lumens (30 watts) of incandescent light.

D. Placement. A menu box shall be placed on a structure and may not be freestanding. (See Appendix C, Subsection 1.[3])

E. Combinations. A menu box may be used in combination with one of the following: awning sign, fence sign, flag sign, projecting sign, symbol sign, wall sign, or window sign.

F. Illumination. A description of proposed illumination must be included with the application.

**§ 340-25. Projecting signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

PROJECTING SIGN — Any sign projecting outward from a building wall.

B. Size.

(1) The maximum total area of a projecting sign on a one-story building shall be no more than four square feet per sign face.

(2) The maximum total area of a projecting sign on a building with a street front exceeding one story shall be no more than five square feet per sign face.

C. Placement.

(1) A projecting sign must be located at or near the public entrance.

(2) The lowest point of a projecting sign shall not be less than seven feet, six inches above the sidewalk.

(3) A projecting sign shall be separated from the building face from which it projects by no less than three inches and shall project not more than four feet from that face or 2/3 of the width of the sidewalk, whichever is less.

(4) The highest point of a projecting sign and its supporting frame shall be no higher than the top of the second-story window sills of the building from which the sign projects.

**3. Editor's Note: Appendix C is included as an attachment to this chapter.**

(5) All projecting signs over a public way, such as a sidewalk, come under the jurisdiction of the Select Board of the Town of Nantucket and may at any time be reviewed by that Board for compliance with Town regulations.

D. Sign support.

(1) A projecting sign or its supporting bracket shall not extend above the top cornice line of the building from which the sign projects.

(2) No sign shall project beyond the bracket on which it is hung.

E. Combinations.

(1) A projecting sign may be combined with a window sign or a menu box.

(2) A projecting sign that does not exceed two square feet may be used in combination with a wall sign except in residential neighborhoods.

(3) A projecting sign may incorporate a symbol sign. See § 340-30.

F. Number permitted. A projecting sign shall be allowed for each entrance door or set of entrances of a building, with a maximum of one projecting sign per business.

**§ 340-26. Public information signs.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

PUBLIC INFORMATION SIGN — A sign that is used by religious organizations and municipal or public services.

B. Size. Public information signs may not exceed six square feet.

C. Placement. A public information sign may be supported by two posts as a completely self-supporting structure or in an approvable location on a buildings or fence. (See §§ 340-21 and 340-35.) The top of the sign shall be no more than four feet above the ground.

D. Combinations. No combinations are permitted.

E. Number permitted. No more than one public information sign will be permitted on any lot.

**§ 340-27. Quarterboards.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

QUARTERBOARD — A narrow rectangular board attached on the quarters of a vessel and used to designate the vessel's name, which was carved into the thickness of the board. More commonly, quarterboards are used on residential structures to name the building. The ends of a quarterboard are typically decorated with carved motifs.

B. Regulations.

(1) Quarterboards for residential structures do not need formal approval.

(2) Quarterboards, as narrowly defined, may be used only to provide the name of a residence.

(3) When designed for commercial purposes, quarterboards must comply with wall sign guidelines (see § 340-35).

**§ 340-28. Street name signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

STREET NAME SIGN — A sign, usually supplied by the Department of Public Works (DPW), located at the intersection of two streets, displaying the name of a street.

B. Size. Street name signs must be no more than 5 1/2 inches in height.

C. Placement. Street name signs shall be placed at the intersection of the main road and the new street and may be attached to a fence, the wall of a building, or on a four-inch-by-four-inch wolmanized freestanding post with beveled top, seven feet, six inches above grade.

D. Paint colors. Background should be cream. Lettering and posts should be gray. There also should be a 1/2-inch gray border around the edge of the sign.

E. Lettering type. Lettering shall be three inches in height. The lettering may be sans-serifed if it is in all caps and block-lettered.

F. Alternative street name signs. Outside the Residential Old Historic (ROH) District, the following alternative street name sign types are permitted:

(1) Recommended for rural areas (such as those zoned LUG-2 or LUG-3) that have low-lying vegetation: two four-inch-by-four-inch posts. Secure sign with four carriage bolts. The height shall not exceed 30 inches. The sign face shall not exceed 12 inches in height and 42 inches in length.

(2) Four-foot-high post set 12 inches below grade with street names painted directly on a vertical layout or wood plates mounted with expansion bolts bearing street names.

(3) Four-inch-by-four-inch wolmanized post set into concrete base with street signs set through the post and secured with wood dowels. This is recommended for areas where theft of signs is a problem.

(4) Within the Residential Old Historic (ROH) District, only signs complying with § 340-29C, D and E are permitted.

G. Regulations.

(1) Rocks and stone posts are not permitted as street name signs.

(2) Metal signs and posts are not permitted.

**§ 340-29. Suspended signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

SUSPENDED SIGN — A sign that hangs from below a porch roof or eave and hangs in a horizontal orientation.

B. Size.

(1) The maximum total area of a suspended sign on a one-story building shall be no more than four square feet per sign face.

(2) The maximum total area of a suspended sign on a building with a street front exceeding one story shall be no more than five square feet per sign face.

C. Placement.

(1) A suspended sign must be located at or near a public entrance.

(2) The lowest point of a suspended sign shall be not less than seven feet, six inches above the sidewalk.

(3) The highest point of a suspended sign and its supporting frame shall be no higher than the eave line of the roof.

D. Combinations. A suspended sign may be combined with a window sign or a menu box.

E. Attachments. Attachments to suspended signs are not permitted.

**§ 340-30. Symbol signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

SYMBOL SIGN — A three-dimensional representation of a product or service that a business sells.

B. Size.

(1) The area of a symbol sign shall be no more than 1/2 the allowable area for a projecting sign. (See § 340-25.)

(2) The size shall be calculated by adding one front view and one side view of the object.

(3) The front and side views are considered to be that which will fit into a rectangle or other geometric shape.

C. Placement.

(1) A symbol sign must be located at or near the public entrance.

(2) A symbol sign shall be allowed for each entrance door or set of entrances of a building, with a maximum of one symbol sign per business.

(3) The lowest point of a symbol sign shall be not less than seven feet, six inches above the sidewalk.

(4) A symbol sign shall be separated from the building face from which it projects by no less than three inches and shall project not more than four feet from that face, or 2/3 of the width of the sidewalk, whichever is less.

(5) The highest point of a symbol sign and its supporting frame shall be no higher than the top of the second-story window sills of the building from which the sign projects.

(6) All symbol signs over a public way, such as a sidewalk, come under the jurisdiction of the Select Board of the Town of Nantucket and may at any time be reviewed by that Board for compliance with Town regulations.

D. Sign support.

(1) The symbol sign shall be attached to the bracket on which it is hung so that the sign will not swing.

(2) A symbol sign or its supporting bracket shall not extend above the top cornice line of the building from which the sign projects.

E. Combinations.

(1) A symbol sign may be used in combination with one of the following: menu box, wall sign or window sign.

(2) A symbol sign may be incorporated as part of a projecting sign, the area of which is calculated by adding the area of the projecting sign and symbol sign. (See § 340-25.)

**§ 340-31. Temporary signs.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

TEMPORARY SIGN — Any sign, including its supporting structure, maintained for 30 days or less. Extensions can be granted by the Historic District Commission. **[Amended during codification]**

B. Regulations. General regulations governing other sign types apply to temporary signs as well.

C. Date-specific signage. Signage intended to inform the public about date-specific events shall be permitted, provided they comply with the provisions of this section and § 340-17D. Size shall be limited to less than or equal to 11 inches by 17 inches. Signage over 11 inches by 17 inches shall require an application to the Historic District Commission. Only one sign per event, per commercial location shall be permitted.

D. Banners. Banners are large-format temporary signage. While banners have historical precedent, the proliferation of banners is to be avoided. Banners should fit within an architectural area so as to not obscure larger architectural articulation (examples include false doorways, niches, or between columns). Sizes must conform to wall sign dimensions. Design should conform to the guidelines previously stated. Sail canvas or other fabric should be considered for the material.[4]

E. Political signs. A political sign is a temporary sign used to advertise candidates for public office or to address public concerns. The HDC encourages political signs to conform to all relevant stated guidelines. The HDC recommends that political candidate signs be removed immediately following an election; however, signage must be limited to 30 days.

**§ 340-32. Traffic/Directional signs.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

TRAFFIC/DIRECTIONAL SIGNS — Signs that are necessary for the safety and direction of pedestrians and automobiles, including, but not limited to, stop signs, pedestrian crossing signs, one-way street signs, "do not enter" signs, etc.

B. Size. Within the Residential Old Historic (ROH) District, a horizontal sign shall not exceed one square foot in area and must comply with the DPW standards for street signage.

C. Content. Traffic/Directional signs shall not carry the name of any business or product.

**§ 340-33. Vehicle signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

VEHICLE SIGN — Any permanent or temporary sign affixed to, painted on, or placed in or upon any parked vehicle, parked trailer, or other parked device capable of being towed, which is obviously and conspicuously parked so as to advertise the business to the passing motorist or pedestrian; and the primary purpose of which is to provide additional on-site signage or is to serve the function of an outdoor advertising sign.

B. Location; prohibition. In order to not be deemed a vehicle sign, the vehicle must be parked in a legal parking space. All vehicles with signage are otherwise prohibited.

**§ 340-34. Vending machines.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

VENDING MACHINE — A coin-operated machine that dispenses merchandise.

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**4. Editor's Note: See also Ch. 354, Art. II, Banners on Main Street, of the Town Regulations.**

B. Regulations.

(1) Vending machines shall be hidden from a traveled way.

(2) The HDC encourages the use of fencing and/or lattice to conceal vending machines from sight of a traveled way, which must be separately or previously approved by the HDC.

(3) Vending machines shall not be illuminated.

**§ 340-35. Wall signs.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

WALL SIGN — A sign securely affixed to a wall, or painted on a wall, and not projecting beyond the building face fronting on a street or parking lot, and not above the highest line of the building to which it is attached.

B. Size and format restrictions.

(1) Horizontal-format signs.

(a) Horizontal-format signs shall not exceed two feet in height.

(b) One wall sign with a horizontal format for a first-floor establishment shall have a square footage not exceeding one square foot per linear foot of building face, not exceeding 20 square feet. The building face is the primary entrance facade. **[Amended during codification]**

(c) On a sign with a horizontal format, the maximum allowable height for lettering shall not be more than 3/4 of the total height of the sign.

(2) Vertical-format signs shall not exceed six square feet.

C. Placement.

(1) A wall sign must be located at or near a public entrance.

(2) One wall sign is permitted for each public entrance of a building.

(3) When located on a corner lot, a wall sign will be permitted for each building side of a business, with a maximum of two signs. The second sign, located on the side without an entrance, shall be 20% smaller than the main entrance sign.

(4) Outside the Residential Old Historic (ROH) District, if all of the business parking is located behind the building and the building or rented portion thereof maintains street frontage, one wall sign may be used at the entry/parking facade and one wall sign at the street facade. Within the ROH, only one wall sign is permitted. The applicant also must comply with Subsection D, Combinations.

D. Combinations.

(1) A wall sign may be used in combination with an awning sign, flag sign, menu box, symbol sign, or window sign.

(2) Except in residential neighborhoods, a wall sign may be used in combination with a projecting sign that does not exceed two square feet.

E. Signage for second-story businesses.

(1) Total wall sign area allowed for a business establishment located on an upper floor shall not exceed 1/2 square foot per linear foot of building face nor more than 10 square feet in the area above the first-story window trim, cornice, or lintel. A building face may have up to 15 square feet of total sign area for two or more businesses located on upper floors, provided each business has its own entrance. (The "building face" for second-floor establishments is to be measured at the second floor.)

(2) If one business is located on an upper floor served by its own entrance, a wall sign not to exceed one square foot in size may be used at the first-floor entrance.

(3) If two or more businesses are located on the upper floor(s), sharing a common first-floor entrance, the applicant must use a directory sign. (See § 340-20.)

F. Signage for basement-level businesses. A sign is permitted for each business located in a building where the first floor is substantially above street grade and the basement level is only partially below street grade, provided that the aggregate square footage of the signs on a facade does not exceed the area described in Subsection B.

**§ 340-36. Wharf signs.**

A. Definition. As used in this section, the following terms shall have the meanings indicated:

WHARF SIGN — A sign used to identify a business operating from a boat with slip privileges. A wharf sign may be attached to a wharf or a boat.

B. Size and placement. A wharf sign shall conform to any one of three types of wharf signs as follows:

(1) A one-sided horizontal wharf sign shall be placed between two pilings at the end of an individual slip and shall run parallel to the wharf. A horizontal sign shall be the width of the space between the two pilings and shall not exceed four feet in width and one foot in height.

(2) A one-sided vertical wharf sign shall be attached to the face of a piling at the entrance to an individual slip and shall not be higher or wider than the piling.

(3) A two-sided vertical wharf sign shall be attached to a piling at the entrance of an individual slip on the water side, and shall be no higher than the piling to which it is attached and shall not exceed 10 inches in width.

C. Combinations. No combinations are permitted.

D. Content. Signs may not include rates.

**§ 340-37. Window signs.**

A. Definitions. As used in this section, the following terms shall have the meanings indicated:

WINDOW SIGN — Any sign affixed to the surface of the glass or visible through a window or door on a permanent basis within one foot of the glass and visible from a traveled way.

B. Size. The area of window signs shall not exceed 15% of the window area or 10% of the glass area of any required exit door. (See § 340-35.) No window sign shall exceed the maximum allowable space for a wall sign when visible from the exterior.

C. Combinations. Window signs may be used in combination with one of the following: awning sign, flag sign, menu box, projecting sign, symbol sign, or wall sign.

D. Regulations.

(1) "Permanent basis" is defined as more than 30 days.

(2) Removable window signs, indicating hours of operation, business affiliations, emergency information and the like (excluding product or service information), are permitted, provided the aggregate area of all such signs for a single business does not exceed one square foot per entrance and that bright or fluorescent colors are not used.

E. Temporary window signs. Temporary window signs pertaining to special sales or events are permitted for no more than 15 days and may be affixed to windows, provided that the total area of such sign(s) shall not cover more than 15% of the area of the window to which it is affixed.

## ARTICLE V
## Commercial Buildings and Master Sign Plans

**§ 340-38. Definitions.**

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

COMMERCIAL BUILDINGS — Includes all buildings that are constructed to contain businesses and services.

MASTER SIGN PLAN — A proposal submitted by the owner of a building with multiple tenants, or a group of buildings, to create a harmonious and aesthetically pleasing signage effect within a commercial building or buildings with multiple tenants.

MULTIPLE-TENANT COMMERCIAL BUILDING — A commercial building with multiple commercial spaces.

**§ 340-39. Review process.**

A Master Sign Plan shall be developed for all multiple-tenant commercial buildings in advance of sign applications being submitted for individual tenants. The Master Sign Plan

should contain proposals for sign types, sizes, and locations, and will be reviewed by the SAC prior to approval by the HDC. Applications for individual tenants will depict the sign's design and color scheme. Existing signage as of January 1, 2005, in the sizes, types, formats, and locations should be considered part of a Master Sign Plan for any changes of use.

### § 340-40. Requirements.

A Master Sign Plan should contain the following:

A. A detailed listing of all sign types and locations keyed into the plot plan.

B. An accurate indication on the plot plan of the proposed location, types, and sizes of each present and future sign.

C. Elevations and/or photographs of buildings and existing signage.

D. An accurate plot plan of the site, showing the location of the building, or buildings, parking lots, driveways, etc.

### § 340-41. Amendments.

Master Sign Plans may be amended by submitting a new Master Sign Plan that conforms to all other requirements of this article. The new application will then be reviewed by the SAC prior to HDC review.

### § 340-42. Regulations.

A. After approval of a Master Sign Plan, no sign shall be erected, placed, or modified, except in conformance with such plan or amended plan.

B. No permit shall be issued for an individual sign in a multiple-tenant commercial building until a Master Sign Plan has been approved by the HDC.

## ARTICLE VI
## Preexisting Nonconforming Signs

### § 340-43. Continuity.

A. On-premises signs or other advertising devices erected before the effective date of the Historic District Act of 1959 in the Historic Districts of Nantucket and Siasconset, or before the Historic District Act of 1970 elsewhere, may continue to be maintained, unless any such sign is enlarged, reworded, redesigned, or altered in any way, including repainting in a different color. If and when the sign cannot continue to be maintained pursuant to the foregoing, immediate application must be made for a certificate of appropriateness for a new sign.

B. As part of the application, reuse of a freestanding sign armature with the proposed new sign may be approved, provided that:

(1) The armature was in use before the effective date of the Historic District Act of 1959 in the Historic Districts of Nantucket and Siasconset, or before the Historic District Act of 1970 elsewhere, or there exists a certificate of appropriateness issued by the HDC for the armature and a sign.

(2) An approved or preexisting sign and armature was maintained within three years of the date of application.

(3) The size of the new sign shall be equal to the size of the previously approved sign for that armature. Documentation of the previously approved and/or erected sign shall be submitted.

(4) The location of the armature has not changed.

(5) The proposed new sign is otherwise appropriate and approvable under the regulations set forth in this Chapter 340.

C. See Article III, General Regulations, for further information.

# Chapter 345

# SMOKING AND TOBACCO PRODUCTS


ARTICLE I
**Tobacco Regulations**

**§ 345-1. Findings.**
**§ 345-2. Authority.**
**§ 345-3. Definitions.**
**§ 345-4. Smoking in public places prohibited.**
**§ 345-5. Smoking in food service establishments, lounges and bars prohibited.**
**§ 345-6. Workplace restrictions.**
**§ 345-7. Posting of prohibitions.**
**§ 345-8. Variances.**
**§ 345-9. Sale and distribution of tobacco products.**
**§ 345-10. Violations and penalties.**
**§ 345-11. Severability.**
**§ 345-12. Enforcement; complaints.**
**§ 345-13. Effective date.**

ARTICLE II
**Smoking in Town Recreation Areas**

**§ 345-14. Findings and intent.**
**§ 345-15. Authority.**
**§ 345-16. Definitions.**
**§ 345-17. Smoking and use of tobacco products prohibited.**
**§ 345-18. Enforcement; violations and penalties.**
**§ 345-19. When effective.**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**
**Smoking restrictions — See Ch. 86, Art. I.**
**Cigarette vending machines — See Ch. 97, Art. II.**

**TOWN REGULATIONS REFERENCES**

**Beaches — See Ch. 216.**
**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**

## ARTICLE I
## Tobacco Regulations
## [Adopted by the Board of Health 3-31-1999]

### § 345-1. Findings.

A. The 1986 Surgeon General's Report on "Health Consequences of Involuntary Smoking" clearly documents that nonsmokers are placed at risk for developing disease as a result of exposure to environmental tobacco smoke, or secondhand smoke. In 1993, the Environmental Protection Agency classified environmental tobacco smoke as a known

carcinogen. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers.

B. Exposure to environmental tobacco smoke presents a serious and substantial public health risk. Of particular concern is the workplace environment of nonsmokers, where they may be subjected to sustained, involuntary exposure. At special risk are children, the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

C. Studies have shown that vending machines afford an opportunity for unauthorized sale of cigarettes to minors. Evidence further demonstrates that tobacco is extremely addictive. Approximately 80% of all smokers begin smoking before age 18 and more than 3,000 young people begin smoking every day in this nation.

**§ 345-2. Authority.**

The Town of Nantucket, pursuant to MGL c. 111, § 31, adopts these regulations as reasonable health regulations designed to protect and improve the health of its residents.

**§ 345-3. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

BAR OR LOUNGE — An establishment with or without a food service license, devoted primarily to serving alcoholic beverages for consumption by guests on the premises, in which the consumption of food is incidental only to the consumption of such beverages.

EMPLOYEE — A person who performs services for wages or other consideration.

EMPLOYER — A person, partnership, association, corporation, company or other organized group, including the County/Town of Nantucket and any department or agency thereof, and any municipal entity, which utilizes the services of two or more employees.

FOOD SERVICE ESTABLISHMENT — An establishment having one or more seats at which food is served to the public that is a covered area or located within a permanent structure.

FUNCTION ROOM/HALL — A separate, enclosed room used for private functions within a food service establishment.

MINOR — A person under 18 years of age.

PUBLIC PLACE — An enclosed, indoor area that is open to and used by the general public, including and not limited to the following facilities: licensed child-care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; bars or lounges; common areas (not including actual sleeping quarters) of guest houses, bed-and-breakfasts, inns, hotels and motels; food service establishments; public rest rooms; laundromats; hair salons, barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and, any function rooms/halls when used

for public meetings or public social functions. A function room/hall used for a private social function, in which the sponsor of the private function and not the owner or proprietor has control over the seating arrangements, shall not be construed as a public place.

SMOKING — The lighting of or having in one's possession any lighted cigarette, cigar, pipe, marijuana delivery product, tobacco product, or any other matter or substance that contains tobacco, nicotine or marijuana. The term "smoking" shall also include using or having in one's possession any activated nicotine delivery product. **[Amended during codification]**

TOBACCO — Cigarettes, cigars, snuff, chewing tobacco or tobacco in any of its forms.

TOBACCO VENDING MACHINE — A mechanical or electrical device which dispenses tobacco products by self-service, with or without the assistance of a clerk or operator.

VENTILATION SYSTEM — A mechanical or electrical device or system capable of removing contaminated air from an enclosed space at a rate of 60 cubic feet per minute.

WORKPLACE — Any area within a structure or portion thereof in which two or more employees perform services for their employer. It also includes employee lounges, rest rooms, dining areas, conference rooms, hallways, stairways, and entranceways.

### § 345-4. Smoking in public places prohibited.

Smoking shall be prohibited in all public places (as defined in § 345-3) as of March 1, 1997.

### § 345-5. Smoking in food service establishments, lounges and bars prohibited.

Smoking shall be prohibited in all food service establishments and bars or lounges as defined in § 345-3, Definitions, as of January 2, 2000.

### § 345-6. Workplace restrictions.

A. It shall be unlawful for any person to smoke in any workplace except in specifically designated smoking areas as described in Subsection B.

B. Each employer may specifically designate enclosed areas in which employees may smoke; provided, however, that comparable nonsmoking areas of adequate size and capacity are available; and provided, further, that physical barriers and separate ventilation systems, vented directly to the outside, are used to segregate smoking areas from nonsmoking areas.

(1) Smoking areas shall be such that smoke is not able to migrate into nonsmoking areas. Common areas, including hallways, elevators, entranceways, stairwells, rest rooms, and waiting areas listed in § 345-3, may not be designated as smoking areas. Areas designated as smoking and nonsmoking must be conspicuously marked.

(2) Plans of the design of the ventilation system and the maintenance schedule for the designated smoking area must be approved by the Nantucket Board of Health. Said ventilation system shall provide a minimum ventilation rate of 60 cubic feet

per minute. Annual inspection by a qualified HVAC contractor or otherwise qualified professional approved by the Nantucket Board of Health shall be required to assure satisfactory compliance with ventilation requirements. This annual report must be submitted to the Nantucket Health Department in writing prior to the issuance or renewal of any permit or license.

C. Each person having control of premises upon which smoking is prohibited by this regulation shall not knowingly permit a violation of this regulation.

**§ 345-7. Posting of prohibitions.**

Every person having control of a premises where smoking is prohibited by this regulation shall conspicuously display on the premises, including the primary entrance doorways, signs reading "Smoking prohibited by law." Posting of the international symbol for "no smoking" (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be deemed as compliance.

**§ 345-8. Variances.**

The owner of a bar or lounge may apply to the Board of Health for the variance of the prohibition of smoking in each bar or lounge. Application shall be made in writing to the Board of Health, stating the reasons and justification for the request. The Board of Health shall conduct a public hearing on the request, at which time the owner or operator shall present the request and the basis for the request. The Board of Health may grant the requested variance, provided the bar or lounge is equipped with a ventilation system as defined herein.

**§ 345-9. Sale and distribution of tobacco products.**

A. Permit. To monitor compliance of the sale of tobacco products, permits will be issued. No person, firm, corporation, establishment or agency shall sell tobacco products within the Town of Nantucket without a valid tobacco sales permit issued by the Board of Health. Permits must be posted in a manner conspicuous to the public. Tobacco sales permits must be renewed annually at a time and fee set forth by the Board of Health.

B. Sales to minors. In conformance with MGL c. 270, § 6, no person, firm, corporation, establishment, or agency shall sell tobacco products to a minor. Each employee working in an establishment licensed to sell tobacco products shall be required to read the Board of Health regulations and state laws regarding the sale of tobacco, and sign a form indicating that such regulations/laws have been read and understood, a copy of which must be placed on file in the office of the employer and retained. Such signed forms must be made available for inspection during the license holder's normal business hours upon request of the agent of the Board of Health.

C. Distribution of tobacco products. No person, firm, corporation, establishment, or agency shall distribute tobacco products free of charge or in connection with a commercial or promotional endeavor within the Town of Nantucket. Such endeavors include, but are not limited to, product "giveaways" or distribution of a tobacco product as an incentive, prize, award, or bonus in a game, contest, or tournament involving skill or chance.

Such restrictions shall not apply to use of coupons from magazines, newspapers, periodicals or attached to packaging. All distributors/retailers of tobacco products or tobacco merchandise must require that the customer present a valid state-issued picture identification card or driver's license with appropriate photograph to confirm that the customer is of a legal age to purchase the tobacco products.

D. Restrictions on self-service (freestanding) tobacco displays. It has been shown that self-service (freestanding) tobacco displays encourage illegal activity by youth and provide youth with easier access to tobacco products. Therefore, tobacco products on freestanding displays in retail locations, where a tobacco product may be selected by the customer, shall be restricted in the following manner:

(1) Self-service (freestanding) displays shall be permitted only on a checkout counter/register, in full view of a clerk and at a distance of no more than five feet from the clerk.

(2) No floor displays shall be permitted.

(3) If a checkout counter/register is not staffed, the tobacco products must be in an enclosed, locked case or otherwise inaccessible for self-service.

**§ 345-10. Violations and penalties.**

A. Violations of this smoking regulation will be subject to the provisions of the regulations of the Town of Nantucket regarding noncriminal disposition.[1]

B. Any person who knowingly violates any provision of this regulation, or who smokes in a municipal area subject to regulation in which a "Smoking Prohibited by Law" sign or its equivalent is conspicuously displayed, shall be punished by a fine of up to $50 for each offense.

C. Any proprietor(s) or other person(s) in charge of a public place or workplace, including municipal entities, who fails to comply with these regulations shall be subject to the following actions for each offense:

(1) A warning shall be issued for a first offense. A fine of up to $100 may be issued for a second offense, up to $200 for a third offense, up to $300 for a fourth offense, and up to $300 for any subsequent offense; and

(2) Following the second offense, the Board of Health may, after a public hearing, suspend any license for that public place for a period of up to two days for each day of noncompliance, or withhold renewal of the license. Following a third offense, the Board of Health may suspend an existing permit/license for a period of time determined by the Board of Health until compliance is achieved.

D. Persons, firms, corporations, or agencies selling tobacco products to minors or selling tobacco products without a tobacco sales permit shall be punished by a fine of not more than $300 per day for each day of such violation and/or suspension of the tobacco sales permit.

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1. **Editor's Note: See Ch. 1, Art. II, Noncriminal Disposition of Bylaw and Regulation Violations, of the Code of the Town of Nantucket.**

E. In addition to the remedies provided by Subsections B, C, and D above, the Board of Health or any person aggrieved by the failure of the proprietor or other person in charge of a public place or workplace to comply with any provision of this regulation may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

### § 345-11. Severability.

If any provision of these regulations is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

### § 345-12. Enforcement; complaints.

A. The Board of Health or its enforcement officer(s) shall enforce this regulation. Any violation of these regulations may be enforced and punished by the provisions of Chapter 1, Article II, Noncriminal Disposition of Bylaw and Regulation Violations, of the Code of the Town of Nantucket.

B. Any citizen who desires to register a complaint of noncompliance under this regulation may do so by contacting the Health Department.

### § 345-13. Effective date.

These regulations shall be effective as of April 1, 1999.

## ARTICLE II
## Smoking in Town Recreation Areas
## [Adopted by the Board of Health 5-21-2015]

### § 345-14. Findings and intent.

A. There exists conclusive evidence that tobacco, nicotine and marijuana products cause cancer, respiratory disease, various cardiac problems, allergies and irritations to the eyes, oral and nasal cavities and are hazardous to persons with compromised immune systems, children and pregnant women. This has been proven for users, nonusers and employees who are exposed to such products; and the Town of Nantucket's Board of Health has engaged in continuing efforts to keep Nantucket beaches and recreation areas clean, so as to promote the health, safety, and enjoyment of all individuals.

B. In light of these concerns and to protect public health, safety and welfare, the Town of Nantucket Board of Health hereby enacts this regulation to prohibit smoking and the use of tobacco products on all Town-owned recreation areas, including all public beaches, playgrounds, parks, and adjacent parking areas.

**§ 345-15. Authority.**

This regulation is adopted by the Town of Nantucket Board of Health as authorized by MGL c. 111, § 31.

**§ 345-16. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

MARIJUANA — As defined in MGL c. 94C, § 1.

MARIJUANA DELIVERY PRODUCT — Any device or material of any kind used to inhale marijuana, including but not limited to the items defined as "drug paraphernalia" in MGL c. 94C, § 1.

NICOTINE DELIVERY PRODUCT — Any device or material of any kind used to inhale nicotine, including but not limited to e-cigarettes, e-cigars and e-pipes.

RECREATION AREA — Any property which is owned by the Town of Nantucket and which is open to use by the public for recreational purposes, including but not limited to beaches, parks, playgrounds and all parking areas and structures used in connection therewith.

SMOKING — The lighting of or having in one's possession any lighted cigarette, cigar, pipe, marijuana delivery product, tobacco product, or any other matter or substance that contains tobacco, nicotine or marijuana. The term "smoking" shall also include using or having in one's possession an activated nicotine delivery product.

TOBACCO PRODUCT — Any product containing tobacco, including but not limited to cigarettes, cigars, pipes, chewing tobacco and snuff.

**§ 345-17. Smoking and use of tobacco products prohibited.**

Smoking and the use of any tobacco product on or in any recreation area is prohibited, unless the person is sitting in a parked motor vehicle.

**§ 345-18. Enforcement; violations and penalties.**

A. Noncriminal disposition.

(1) This regulation may be enforced by the Town of Nantucket enforcement personnel, including, but not limited to, seasonal enforcement officers, police, health, marine, and natural resources individuals.

(2) Whoever violates any provision of this regulation may be penalized by a noncriminal disposition process as provided in MGL c. 40, § 21D and the Town's noncriminal disposition bylaw.[2] If noncriminal disposition is elected, then any person who violates any provision of this regulation shall be subject to the following penalties:

2. **Editor's Note: See Ch. 1, Art. II, Noncriminal Disposition of Bylaw and Regulation Violations, of the Code of the Town of Nantucket.**

(a) First offense: verbal warning.

(b) Second offense: $100 fine.

(c) Third offense: $200 fine.

(d) Fourth or subsequent offense: $300 fine.

B. Criminal disposition. Whoever violates any provision of this regulation may be penalized by indictment or on complaint brought in District Court. Except as may be otherwise provided by law and as the District Court may see fit to impose, the maximum penalty for each violation or offense shall be $300.

C. Permit suspension or revocation. The Town may suspend or revoke any Town of Nantucket beach permit issued for any violation of this regulation. Such revocation or suspension may take place after a hearing held by the Board of Health of which the permit holder is given seven days' written notice. Such notice shall be deemed given upon mailing same, certified mail, return receipt requested, to the address listed on the permit application.

D. Other remedies. The Board of Health may enforce this regulation or enjoin violations thereof through any lawful process, and the election of one remedy by the Board of Health shall not preclude enforcement through any other lawful means.

E. Any penalty imposed under this regulation for the possession of marijuana shall be in addition to any civil penalty that may be imposed pursuant to MGL c. 94C, § 32L.

**§ 345-19. When effective.**

This regulation shall be effective May 31 through September 30 of each year.

# Chapter 349

# SOLID WASTE


ARTICLE I
**Landfill User Fees**

**§ 349-1. Fee classifications.**
**§ 349-2. Bills for landfill user fees.**
**§ 349-3. Utility fees appeal process.**
**§ 349-4. Exemptions.**

ARTICLE II
**Recycling of Municipal Waste**

**§ 349-5. Authority and purpose.**
**§ 349-6. Definitions.**
**§ 349-7. Hazardous wastes.**
**§ 349-8. Separation of materials at source; prohibition of landfill disposal of recyclables.**
**§ 349-9. Scavenging prohibited.**
**§ 349-10. Enforcement.**
**§ 349-11. Violations and penalties.**
**§ 349-12. Effective date.**

ARTICLE III
**Biodegradable Packaging**

**§ 349-13. Findings and intent.**
**§ 349-14. Definitions.**
**§ 349-15. Sale and packaging restrictions.**
**§ 349-16. Exemptions.**
**§ 349-17. Violations and penalties.**
**§ 349-18. Appeal process.**
**Exhibit 1, Building Department Fee Schedule**
**Exhibit 2, Flow Chart for Abatement Requests**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**
**Solid waste enterprise — See Ch. 42.**
**Solid waste disposal — See Ch. 125.**

**TOWN REGULATIONS REFERENCES**

**Biodegradable packaging — See Ch. 220.**
**Food service establishments — See Ch. 265.**

## ARTICLE I
## Landfill User Fees
**[Adopted by the Board of Selectmen (now Select Board) 12-14-1988]**

### § 349-1. Fee classifications. [Amended 10-15-1997; 7-1-1998]

A. Landfill user fee amendments.

(1) Amendment 1: July 1, 1998.

(a) Class 2b (fast-food establishments) rates are revised from $5,000 to $3,000 for their FY98 assessment.

(2) Amendment 2: July 1, 1998.

(a) Residential landfill user fees will be incorporated in the tax base beginning Fiscal Year 1999.

(b) Commercial landfill user fees will revert to the FY97 User Fee Schedule beginning fiscal year 1999. This schedule is shown below.

B. Landfill user fee classifications.

(1) Commercial. All commercial property shall be assessed a fee by the Town in one of the following six categories:

(a) Class 1: trucking terminals, storage warehouses and distributing firms, automotive repair, gas stations, residence halls and dormitories of 10 or fewer occupants (no food-serving facilities), stores under 1,000 square feet, business offices under 1,000 square feet, recreational establishments and art galleries. No establishment in this class can have food-serving facilities attached.

(b) Class 2A: markets and grocery stores with below 10,000 square feet, banks, general multioffice buildings, commercial greenhouses, stores over 1,000 square feet and multistore buildings, hardware stores, printing shops and liquor stores. No establishment in this class can have a restaurant or any type of food service facility attached or included.

(c) Class 2B: retail food stores and bakeries which sell commercially prepared foods and also prepare foods for sale in bulk quantities (not single servings) for off-premises consumption.

(d) Class 3: supermarkets (in excess of 10,000 square feet), restaurants, lumber yards, yacht clubs, caterers, nursing homes and hospitals.

(e) Class 4A: boarding and rooming houses, hotels, motels, resorts, all to be without restaurants (continental breakfast not considered a restaurant).

(f) Class 4B: boarding and rooming houses, hotels, motels, resorts that have restaurants.

| Landfill User Fees | |
|---|---|
| Class 1 | $150 |
| Class 2A | $300 |
| Class 2B | $600 |
| Class 3 | $1,200 |
| Class 4A | $65 + $15 per guest room |

| Landfill User Fees | |
|---|---|
| Class 4B | $65 + $15 per guest room + Class 3 fee |

C. Building Department. A fee for each new building, addition, demolition or renovation shown in Exhibit 1 of this article as additions to other building fees being charged.[1]

**§ 349-2. Bills for landfill user fees. [Amended 1-7-1998]**

A. Charges for the landfill user fee shall be billed to each commercial and industrial property owner once each year.

B. A bill is considered delinquent 30 days after the mailing date. A delinquent notice may be sent 15 days thereafter. Sixty days after the mailing date an interest charge of 1.5% per month on any outstanding balance that is more than 30 days in arrears will be assessed.

C. If a landfill bill shows an obvious accounting or classification error, the DPW Director may allow an adjustment of the bill without prior payment.

**§ 349-3. Utility fees appeal process.**

A. Requests for a reduction in the amount billed will follow the process shown in the flow chart and accompanying forms shown in Exhibit 2 of this regulation.[2] User fees must be paid no later than 30 days from the date of billing; any abatement authorized will later be returned to the applicant. Requests for abatements must be filed no later than 30 days from the date of billing.

B. A request received on the Application for Abatement Form will be checked for a billing error, either a classification issue (reviewed by the Assessor) or a nonclassification issue. If there is an obvious error, the Superintendent of Public Works can authorize the proper abatement; otherwise, the Superintendent of Public Works shall send a letter with the reason for disapproval to the applicant, which can then be appealed within 30 days from the date of disapproval to the Utility Billing Appeals Board. **[Amended 9-29-1993]**

C. The Utility Billing Appeals Board shall consist of five members, two to be appointed by the Select Board as members of the general public and three appointed from their respective departments by the Building Commissioner, the DPW Superintendent and the Director of Municipal Finance. The Board shall make its best efforts to determine if an abatement of the amount billed to the applicant is warranted on the basis of the existence of a hardship; or the recipient of the user fee charge demonstrates an alternate lawful arrangement for the disposal of recipient's solid waste at a landfill or disposal site other than the Town of Nantucket landfill. Once the Board has received notice that an appeal is requested of the applicant, it shall make its best efforts to notify the applicant within 10 days of the hearing date. The Board shall then record the outcome

1. **Editor's Note: Exhibit 1 is included as an attachment to this chapter.**

2. **Editor's Note: Exhibit 2 is included as an attachment to this chapter.**

of its vote and send a letter to the applicant to confirm the decision of the Board. If the appeal has been denied, the applicant will also be sent a denial notice from the Utility Billing Appeals Board. A final appeal from the decision of the Board may be made to the Board of Public Works, in writing, within 30 days. **[Amended 11-4-1992; 9-29-1993; 12-3-1997]**

D. Payment in full of any outstanding balance must be made prior to a Utility Billing Appeals Board hearing. **[Added 9-29-1993]**

E. The Board will hear the applications for hardship and make recommendations to the Board of Public Works for its decision in the matter. **[Added 9-29-1993]**

### § 349-4. Exemptions. [Added 11-2-1994]

Commencing Fiscal Year 1995, unless otherwise adopted or amended, landfill user fees will not be assessed to properties that have been determined to be exempt from local taxation pursuant to the Town Assessor's records in accordance with MGL c. 59, § 5, Clauses 1 through 15, as of July 1 of each year.

## ARTICLE II
## Recycling of Municipal Waste
## [Adopted by the Board of Selectmen (now Select Board) 3-19-1997]

### § 349-5. Authority and purpose.

These rules and regulations are promulgated by the Town of Nantucket Board of Public Works pursuant to the authority granted to such Board by Article 49 of the 1996 Annual Town Meeting and by Chapter 125, Solid Waste Disposal, § 125-2, of the Code of the Town of Nantucket. It is the goal of the Town of Nantucket to dispose of solid waste in the most environmentally acceptable manner and to reduce the amounts of solid wastes which are landfill. Through a mandatory recycling initiative, the Town will increase the percentage of solid waste which is recycled and maintain such percentage above the minimum 25% required by 310 CMR 19.038(2)(d), and by rigorous enforcement of this initiative, divert that portion of the solid waste from the landfill, thereby preserving space in the landfill.

### § 349-6. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

COMMERCIAL SANITATION COMPANY — Businesses collecting, hauling or transporting municipal solid waste from residents or businesses and delivering such waste to the landfill or materials recovery facility.

LANDFILL — The Town of Nantucket solid waste sanitary landfill facility located on Madaket Road, Nantucket, Massachusetts.

MATERIALS RECOVERY FACILITY (MRF) — The facility existing or to be constructed at the site on Madaket Road adjacent to the landfill.

RECYCLABLES — Materials designated for separation from other solid waste according to a list maintained in the Town offices and on the Town website, including certain types of paper, glass, metal, plastic and yard waste. **[Amended during codification]**

### § 349-7. Hazardous wastes. [Amended during codification]

All material listed as hazardous wastes by the Massachusetts Department of Environmental Protection shall be separated from and not intermixed with any other wastes. These wastes shall only be accepted at the landfill or MRF on designated household hazardous waste collection days in accordance with 310 CMR 30.390 through 30.399. Hazardous waste generated by businesses or commercial operations or otherwise generated other than as part of residential household operations composed primarily of materials found in the wastes generated by consumers in their homes shall not be accepted at any time for collection or disposal by the Town of Nantucket. Automotive and household batteries may be recycled during normal landfill hours.

### § 349-8. Separation of materials at source; prohibition of landfill disposal of recyclables.

All recyclables shall be separated from nonrecyclable materials at the generation source and shall be delivered to the MRF or landfill, as the case may be, where such recyclable material will be separated by category and put into that category's container. All materials listed as "recyclables" shall be separated from and not intermingled with any other wastes nor deposited in the waste disposal area of the landfill.

### § 349-9. Scavenging prohibited.

No person except those individuals and companies authorized by the Select Board shall collect or pick up or cause to be collected or picked up recyclable materials deposited in designated drop-off containers.

### § 349-10. Enforcement.

The Director of Public Works, or designee, shall have the right to periodically inspect any materials delivered to the materials recovery facility or landfill for compliance with these regulations. The Director of Public Works, or designee, may refuse to accept any materials that are not properly separated, and further reserves the right to impose a penalty or fine set forth in § 349-11 for violation of these regulations. Inspection reports shall be maintained as part of the DPW records.

### § 349-11. Violations and penalties.

A. The enforcement officer for these rules and regulations shall be the Director of Public Works or designee or any police officer of the Town of Nantucket. Any delivery, by any person or commercial hauler, that violates these rules and regulations shall be punished pursuant to Chapter 1, Article II, of the Code of the Town of Nantucket.

   (1) Residential.

(a) First offense: Warning.

(b) Second offense: $50 fine.

(c) Third or more offenses: $100 fine.

(2) Commercial.

(a) First offense: Warning.

(b) Second offense: $150 fine.

(c) Third or more offenses: $300 fine.

B. Each noncomplying delivery shall constitute a separate violation.

**§ 349-12. Effective date.**

These rules and regulations shall take effect July 1, 1997.

ARTICLE III

**Biodegradable Packaging**
**[Adopted by the Board of Selectmen (now Select Board) 1-10-1990]**

**§ 349-13. Findings and intent.**

A. The Town of Nantucket recognizes that discarded packaging constitutes the largest single category of waste within the Town and County of Nantucket's waste stream and is, therefore, a necessary focus of any effort towards reducing the filling of the Town's landfill as well as towards reducing the economic and environmental costs of waste management.

B. In addition, the Town finds that discarded nonbiodegradable packaging and plastic contained within the waste stream of Nantucket is a fundamental cause of problems associated with solid waste disposal.

C. The Town understands that the landfill space within the Town and County of Nantucket is diminishing rapidly; that the Department of Environmental Protection (DEP) mandates closure of existing unlined landfills in sensitive groundwater areas by 1993; that solid waste receiving areas outside the Island of Nantucket are becoming increasingly uncertain and expensive; and that for both economic and environmental reasons, measures to simplify the chemical complexity of solid waste and thereby streamline solid waste management must be vigorously pursued.

D. The Town finds that the chemical composition and ability of a substance to biodegrade are meaningful and useful criteria to focus upon when establishing public policy that is intended to improve the management and disposal of solid waste, reduce the cumulative impact of litter, encourage composting and other forms of recycling, and otherwise anticipate environmental problems that may be caused by municipal solid waste disposal programs. The Town also finds and determines that the use of plastics and other nonbiodegradable packaging has become widespread throughout the Island and

the resulting mixed substance waste stream is a serious impediment to solid waste management programs that are being considered for the Town and County of Nantucket.

E. The Town further finds that the widespread use of plastics and nonbiodegradable packaging poses a threat to the environment on the Island of Nantucket by causing rapid filling of landfill space and by the possible introduction of toxic by-products into the groundwater and general environment of the Island of Nantucket.

F. The economic and environmental problems associated with the mixed-substance waste stream are so severe that a program to incrementally simplify the chemical composition of solid waste, thereby encouraging the composting of putrescible biodegradable wastes and encouraging other forms of recycling of solid waste substances, is a policy goal of the Town of Nantucket.

G. Certain retail establishments within the Island of Nantucket are points of origin for a substantial volume of packaging waste and, therefore, are particularly susceptible to actions which have significant potential for simplifying the chemical composition of the waste stream.

H. The Town recognizes that there are readily available paper or biodegradable product substitutes for most of the retail packaging now being used on the Island, the use of which alternatives would be environmentally and economically advantageous to the community of Nantucket.

I. Therefore, the purpose of this regulation is to incrementally, to the maximum extent possible, eliminate the use of nonbiodegradable packaging originating at retail establishments within the Town and County of Nantucket, in order to protect the air, land, and waters of the Island against environmental contamination and degradation.

**§ 349-14. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

BIODEGRADABLE PACKAGING — Packaging other than plastic or Styrofoam.

MERCHANDISE — Products that are purchased in retail stores.

PACKAGING — All food and retail-related wrappings, adhesives, cords, bindings, strings, bags, boxes, containers, portable Styrofoam coolers, and disposable or nonreusable plates, cups, or drinking utensils intended for use within the Town and County of Nantucket. **[Amended 8-8-1990]**

RETAIL ESTABLISHMENT — All sales outlets, stores, shops or other places of business located within the Town and County of Nantucket which sell or convey merchandise directly to the ultimate consumer. **[Amended 8-8-1990]**

RETAIL FOOD ESTABLISHMENT — All sales outlets, stores, shops, restaurants, clubs or other places of business located within the Town and County of Nantucket which sell, serve or convey foods directly to the ultimate consumer. This definition shall include but is not limited to any place where food is prepared, mixed, cooked, baked, smoked, preserved, bottled, packaged, handled, stored, manufactured, sold or offered to the public; similar places

in which food or drink is prepared for sale or service on the premises or elsewhere; and any other establishment or operation, including in-home caterers, where food is processed, prepared, stored, served or provided for the public, regardless of whether there is a charge for the food. **[Amended 8-8-1990]**

RETAIL SERVICE ESTABLISHMENTS — All places of business located within the Town and County of Nantucket where a service, specialized or professional work is offered to the public, regardless of whether there is a charge for the service. **[Added 8-8-1990]**

### § 349-15. Sale and packaging restrictions.

A. No retail establishment located and doing business within the Town and County of Nantucket shall sell or convey merchandise to ultimate consumers within the Town and County of Nantucket unless such merchandise is sold without additional packaging or placed, wrapped or packaged in biodegradable packaging at the conclusion of any sales transaction which takes place on the premises of such retail establishment at or near a sales counter or equivalent customer purchasing station but prior to removal of such merchandise from the premises of such retail establishment.

B. No retail food establishment located and doing business within the Town and County of Nantucket shall give, sell, or provide food containers to any customer within the Town and County of Nantucket if such food container is composed of nonbiodegradable materials.

C. Any packaging added by a retail service establishment located and doing business within the Town and County of Nantucket shall be of biodegradable material. **[Added 8-8-1990]**

D. All household and commercial waste taken to the landfill (other than construction and demolition debris, landscaping debris, appliances, furniture and hazardous waste) must be contained within transparent trash bags, effective January 1, 2000. **[Added 10-20-1999]**

### § 349-16. Exemptions.

Section 349-15 of this regulation shall not apply to the following items:

A. Any flexible transparent covering for uncooked or raw meat, poultry, raw fish, hard cheese, cold cuts, fruit, and vegetable products, baked goods, or bread.

B. Any food packaging used at hospitals or nursing homes.

C. Any plastic covers, covering materials, or lids that are not replaceable by biodegradable substitutes.

D. Any other packaging that is nonbiodegradable for which there is no available substitute, so that a "hardship" is found by the method described in § 349-18 below. However, any reasonably absorbable increase in cost of the replacement item is not considered a hardship.

E. Any packaging which was purchased by the retail establishments prior to August 1, 1989, may be used. Proof of the date of purchase of such packaging must be presented upon request or in case of appeal.

### § 349-17. Violations and penalties.

In accordance with Chapter 125, Solid Waste Disposal, § 125-3 and § 125-6, of the Code of the Town of Nantucket, violations of these regulations shall be subject to the penalties set forth in Chapter 1 of the Code of the Town of Nantucket.

### § 349-18. Appeal process.

A. Appeals of penalties shall be made to the Packaging Review Committee established by the Select Board acting as the Board of Public Works. This Committee may be made up of a representative of the Department of Public Works, Police and Health Departments, and four members of the community. **[Amended 8-8-1990]**

B. This Committee will hear the applications for hardship and make recommendations to the Board of Public Works for its decision in the matter.

C. In addition to the above-mentioned procedures, the Town may, at its discretion, seek to obtain voluntary compliance with Chapter 125, Solid Waste Disposal, § 125-3 (and amendments thereto), of the Code of the Town of Nantucket and the above additional clarifications by way of notice, warning or educational means. This section shall not be construed to require that such noncompulsory methods must be employed.

# Chapter 354

# STREETS AND SIDEWALKS


ARTICLE I
**Street Openings**

**§ 354-1. Purpose and authority.**
**§ 354-2. Applicability; permits required.**
**§ 354-3. Definitions.**
**§ 354-4. General permit, license and operating requirements.**
**§ 354-5. Excavation specifications.**
**§ 354-6. Bicycle paths.**
**§ 354-7. Traffic control.**
**§ 354-8. Street opening restrictions.**
**§ 354-9. Inspections.**
**§ 354-10. Emergency permits.**
**§ 354-11. Indemnification of Town and county; notification of utilities.**
**§ 354-12. Enforcement; violations and penalties.**
**§ 354-13. Permit provisions.**
**§ 354-14. Severability.**
**§ 354-15. Effective date.**


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

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**
**Poles and wires — See Ch. 113.**
**Streets and sidewalks — See Ch. 127.**
**Excavation and trench safety — See Ch. 128.**

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**TOWN REGULATIONS REFERENCES**

**Subdivisions — See Ch. 358.**

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ARTICLE I

**Street Openings**

**[Adopted by the Board of Selectmen (now Select Board) 8-15-2007]**

## § 354-1. Purpose and authority.

A. The purpose of this regulation is to protect the safety and general welfare of the inhabitants of the Town of Nantucket by creating standards, guidelines, specifications and administrative processes to govern and regulate street openings.

B. These regulations are adopted under the authority of MGL c. 82A, § 2 and the Home Rule Amendment to the Massachusetts Constitution.

**§ 354-2. Applicability; permits required.**

A. The following regulations shall apply to all excavators, including but not limited to any person, contractor, developer, partnership, corporation, limited-liability corporation, municipality, special district, or other governmental entity, who or which for any reason cuts, disturbs, or otherwise defaces any public right-of-way maintained or not maintained. Excavators shall obtain a street opening excavator's license from the Department of Public Works in accordance with these requirements and a street opening permit for specific work projects to be undertaken by each excavator licensed hereunder.

B. The excavator acquiring a permit must be familiar with and at all times shall observe and comply with all federal and state laws, local bylaws and regulations pertaining to street openings.

**§ 354-3. Definitions.**

As used in these regulations, the following words shall have the following meanings, unless a different meaning is clearly apparent from the language or context:

COMPANY — A natural gas pipeline company, petroleum or petroleum products pipeline company, public utility company, cable television company, and municipal utility company or department that supplies gas, electricity, telephone, communication or cable television services or private water companies within the Town. **[Amended during codification]**

DESCRIPTION OF EXCAVATION LOCATION — Such description shall include the name of the Town street, way, or route number where appropriate, the name of the streets at the nearest intersection to the excavation, the number of the buildings closest to the excavation or any other description, including landmarks, utility pole numbers or other information which will accurately define the location of the excavation. **[Amended during codification]**

EMERGENCY — A condition in which the safety of the public is in imminent danger, such as a threat to life or health or where immediate correction is required to maintain or restore essential public utility service.

EXCAVATION — An operation for the purpose of movement or removal of earth, rock or the materials in the ground, including, but not limited to, digging, blasting, augering, backfilling, test boring, drilling, pile driving, grading, plowing in, hammering, pulling in, jacking in, trenching, tunneling and demolition of structures, excluding excavation by tools manipulated only by human power for gardening purposes and use of blasting for quarrying purposes.

EXCAVATOR — Any entity including, but not limited to, a person, partnership, joint venture, trust, corporation, association, public utility, company or state or local government body which performs excavation operations.

PREMARK — To delineate the general scope of the excavation or boring on the paved surface of the ground using white paint, or stakes or other suitable white markings on nonpaved surfaces. No premarking shall be acceptable if such marks can reasonably interfere with traffic or pedestrian control or are misleading to the general public. Premarking shall not be required of any continuous excavation that is over 500 feet in length.

PUBLIC WORKS DEPARTMENT — A department of the Town of Nantucket, Massachusetts.

PUBLIC WORKS DIRECTOR — The duly appointed head of the Public Works Department of the Town of Nantucket, Massachusetts.

SAFETY ZONE — A zone designated on the surface by the use of standard color-coded markings which contains the width of the facilities plus not more than 18 inches on each side.

SELECT BOARD — The duly elected members of the Select Board for the Town of Nantucket, Massachusetts.

STANDARD COLOR-CODED MARKINGS —

A. Red: electric power lines, cables, conduit or light cables.

B. Yellow: gas, oil, street petroleum, or other gaseous materials.

C. Orange: communications cables or conduit, alarm or signal lines.

D. Blue: water, irrigation and slurry lines.

E. Green: sewer and drain lines.

F. White: premark of proposed excavation.

STREET OPENING PERMIT — A permit required by the Town of Nantucket for the opening or cutting of any street, road, sidewalk or bicycle path of the Town and County of Nantucket.

SYSTEM — The underground plant damage prevention system as defined in MGL c. 164, § 76D.

**§ 354-4. General permit, license and operating requirements.**

A. Only properly licensed individuals, companies or corporations may apply for a street opening permit in accordance with Subsection B below.

B. An excavator license may be issued to an individual, company or corporation which can demonstrate to the Public Works Director possession of a working knowledge of excavation construction; can access the construction equipment necessary to professionally complete a street opening; possesses the required insurance indemnifying the Town of Nantucket from any and all liability which may arise from a street opening; has access to safety equipment as required by the Manual of Uniform Traffic Control Devices; has the ability to obtain the required performance bond; and has paid the annual street opening excavator license fee as set from time to time by the Select Board. **[Amended during codification]**

C. Prior to the issuance of a street opening excavator license, an applicant shall provide the Town of Nantucket with a $10,000 annual performance bond. Should the licensee fail to meet performance standards, the bond will be used by the Town to correct any deficiency(ies). The license and the performance bond shall run concurrently. The license is issued annually.

D. Failure by the permittee to comply with conditions of the street opening permit or street opening excavator license may result in revocation of the permit by the Director of Public Works or designee.

E. The Select Board may hear any appeal of a decision of the Director of Public Works to revoke or not issue a street opening license or permit.

F. The Manual of Uniform Traffic Control Devices (MUTCD) shall be used as the standard in establishing a work zone to provide for public safety, including but not limited to proper signage, barricades, and third-party detail(s).

G. The permittee must provide written notice to the Department of Public Works, Police and Fire Departments, Town Administration and the Nantucket Regional Transit Authority a minimum of five days in advance of the proposed excavation.

H. A copy of the permit shall be kept at the work site and shall be available to designated Town officials upon request.

I. Streets shall not be unnecessarily obstructed, and must be made safe and convenient for use by pedestrians, bicyclists and motor vehicles during excavation. No street shall be closed, nor detour established, without the approval of the Department of Public Works, the Police Department and the Fire Department.

J. All surplus and/or unacceptable excavated materials shall be removed from the job site by the excavator to an approved disposal site immediately following completion of the work. The excavation site shall be maintained in a clean and safe condition at all times. Sidewalks and streets shall be cleaned and opened to traffic at the end of each working day, unless otherwise authorized by the Department of Public Works. Access to properties adjacent to, or in the immediate area of, the excavation site is to be maintained during the excavation work. The removal and disposal of materials, including pavement, is the responsibility of the permittee. This shall be achieved in such a manner as to minimize interference with pedestrian and vehicular traffic.

**§ 354-5. Excavation specifications.**

A. Compaction. All open trenches must be backfilled with dry, clean fill. Backfilling of the trench will be done in two-foot lifts and compacted to a level within 16 inches of the roadway surface. In the last 16 inches of the backfill process the excavator shall place a six-inch lift of 3/4-inch processed gravel, followed by compaction. A second six-inch lift of 3/4-inch processed gravel shall be placed and compacted. The final four-inch lift shall be comprised of cold-mixed asphalt rolled or compacted to form a smooth transition from the undisturbed roadway surface onto and off the patch. This constitutes the temporary asphalt patch. Prior to installation of the temporary patch the excavator shall sawcut the asphalt edges of the street opening, providing a clean vertical face, free from surface deformation.

B. The DPW may, under certain conditions or in specific locations, require the use of flowable fill to assure proper compaction of trenches.

C. A permanent full-depth Type I asphalt patch shall be placed within 30 days of the installation of the temporary patch. At a minimum, the permanent patch will be

comprised of two two-inch lifts compacted separately. The patch shall provide a smooth transition, with no noticeable depression or rise above or below the existing road surface. The permittee shall be responsible for maintaining the permanent patch for a period of one year from the date of the installation of the patch. Should the patch fail at any time within the one-year period, the permittee shall remove and replace the patch. During winter months, Type I asphalt may not be available; in such cases the permittee shall place a cold-mix asphalt patch and maintain the patch as required, or directed, until such time as the permanent patch may be placed.

### § 354-6. Bicycle paths.

Cuts in bicycle paths are to be avoided. Boring beneath the bicycle path surface is to be used for the installation of all utilities whenever possible. If not possible, as may be determined by the DPW Director, or designee, the opening shall be corrected in the manner described in § 354-5.

### § 354-7. Traffic control.

A. If the specified work will disrupt traffic flow, it is the responsibility of the permittee to provide a third-party detail, signage and/or traffic control devices as required by the Manual of Uniform Traffic Control Devices (MUTCD), as approved by the Chief of Police or designee.

B. Every attempt shall be made by the permittee to keep at least one lane of the street open for vehicular traffic during the work activity. In cases where this is not possible, the permittee must obtain a Town of Nantucket street closing permit at least 24 hours in advance of such closure and provide signs designating detour routes as approved by the Director of Public Works or designee.

### § 354-8. Street opening restrictions.

A. Street openings are only allowed between April 15 and November 15, with the exception of emergency work as defined herein. Construction may not begin before 7:30 a.m. on any day.

B. Street opening permits shall not be issued for any street within three years of its having been resurfaced. Justified emergency work, as determined by the Director of Public Works or designee, may be exempted, provided that the permanent patch shall be placed using infrared paving technology.

### § 354-9. Inspections.

The DPW Director or designee may reject defective or inferior materials, defective or poor workmanship and may suspend work until such time as the excavator shall correct the situation in question, the corrective work being subject to approval by the DPW Director or designee.

**§ 354-10. Emergency permits.**

Nothing in this regulation shall be construed to prevent such excavations as may be necessary for the preservation of life or property; or for the location of disruption in conduit or pipe; or for making repairs, provided that the person making such excavation shall apply to the Town for such a permit on the first working day after such work is commenced. Before any excavation work is started, the person or utility excavating must contact all agencies as identified herein.

**§ 354-11. Indemnification of Town and county; notification of utilities.**

A. A permittee shall, at all times during the work, indemnify and hold harmless the Town and County of Nantucket and its agents and employees from all actions, claims, demands, liabilities, losses, or damages by reason of or in connection with the work of the permittee or excavator.

B. Before making any excavation on a public way, the applicant shall give notice to the public utility companies in accordance with MGL c. 82, § 40 as amended. In addition, at least 72 hours before commencing work, the following agencies must be notified: Department of Public Works, Fire Department, Police Department, Wannacomet Water, School Department, Dig Safe, NRTA (in season), the electric, telephone and cable utilities.

**§ 354-12. Enforcement; violations and penalties.**

A. It shall be the duty of the Department of Public Works and the Police Department to enforce the provisions of these regulations.

B. Any police officer of the Town may utilize, without limitation, the noncriminal disposition procedure as specified in MGL c. 40, § 21D; Chapter 1, Article II, of the Code of the Town of Nantucket, and Chapter 127, Streets and Sidewalks, § 127-2.1, of the Code of the Town of Nantucket to enforce these regulations.

C. The penalties for violation of the regulations shall be $300 per violation. Each violation shall be a separate charge. The penalty shall be in addition to any other penalty that may apply, including revocation of permit if one has been obtained.

**§ 354-13. Permit provisions.**

A. A permit issued pursuant to these regulations shall include the following provisions:

(1) A trench shall not be excavated unless the requirements of MGL c. 82, § 40 to § 40D, inclusive, and any accompanying regulations, have been met; and this permit is invalid unless the requirements have been complied with by the excavator applying for the permit, including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as provided in MGL c. 164, § 76D.

(2) Trenches may pose a significant health and safety hazard. Pursuant to MGL c. 82, § 1, an excavator shall not leave any open trench unattended without first making reasonable efforts to eliminate any recognized safety hazard that may exist as a result of leaving the open trench unattended. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by the Department to eliminate safety hazards, which may include covering, barricading or otherwise protecting open trenches from accidental entry.

(3) Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P, Excavations.

(4) Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to MGL c. 146 shall only employ individuals licensed to operate said equipment by the Department of Public Safety pursuant to said Chapter 146, and this permit shall be presented to the licensed operator before excavation is commenced.

(5) By applying for, accepting and signing this permit, the applicant hereby attests to the following:

(a) That the applicant has read and understands the regulations promulgated by the Department of Public Safety with regard to construction-related excavations and trench safety;

(b) That the applicant has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P, Excavations; and

(c) That the applicant is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a Town public way that forms the basis of the permit application, complied with the requirements of MGL c. 82, § 40 to § 40D, inclusive, and with the requirements set forth in these regulations. **[Amended during codification]**

(6) This permit shall be posted in plain view on the site of the trench.

B. Nothing in these regulations shall be construed or applied to contravene the provisions of MGL c. 164, c. 165, c. 166 and c. 166A concerning excavation of a lane, highway or way by a public utility.

**§ 354-14. Severability.**

If any provisions or any portion thereof contained in these regulations is held to be unconstitutional, invalid or unenforceable, the remainder of the regulations or portions thereof shall be deemed severable, and shall not be affected and shall remain in full force and effect.

**§ 354-15. Effective date.**

This regulation shall take effect September 1, 2007.

# Chapter 358

# SUBDIVISIONS


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**Cluster and Major Residential Subdivisions**

**§ 358-1.1. Required approvals.**

**ARTICLE II**
**Subdivision Regulations**

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**§ 358-2.2. Applicability.**
**§ 358-2.3. Purpose.**
**§ 358-2.4. Definitions.**
**§ 358-2.5. Waiver of compliance.**
**§ 358-2.6. Amendments.**

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**§ 358-2.32. Guard rails and posts.**
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**§ 358-2.40. Sidewalks.**
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**§ 358-2.52. Drainage system.**

**§ 358-2.53. Subsurface grading and filling.**

**§ 358-2.54. Roadway pavement.**

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**§ 358-2.56. Inspection required; removal or remedy of noncompliant work.**

**§ 358-2.57. Notification of Board; liability for costs of reinspection.**

**§ 358-2.58. Lines and grades.**

**§ 358-2.59. Required inspections.**

**Appendix A, Specifications and Plates**

**Appendix B, Forms**

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

**TOWN CODE REFERENCES**

**Housing Needs Covenant Program — See Ch. 100.**
**Signs; satellite dishes; rooflines — See Ch. 124.**
**Street numbers — See Ch. 126.**
**Streets and sidewalks — See Ch. 127.**
**Wetlands — See Ch. 136.**
**Zoning — See Ch. 139.**
**Right to farm — See Ch. 140.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**
**Comprehensive permits — See Ch. 238.**
**Sewage disposal and treatment — See Ch. 332.**
**Sewers — See Ch. 336.**
**Street signs — See Ch. 340, § 340-28.**
**Wells — See Ch. 386.**
**Wetlands protection — See Ch. 390.**

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## ARTICLE I
## Cluster and Major Residential Subdivisions
## [Adopted by the Board of Health 1997]

### § 358-1.1. Required approvals.

A. In addition to the requirements of 310 CMR 15.216 of the State Sanitary Code, all cluster subdivisions and major residential development subdivisions shall file and have approved by the local Board of Health a master plan of septic system and well locations in conformity with local Board of Health regulations in Chapter 332, Article III, On-Site Sewage Disposal Systems, and Chapter 386, Article I, Private Wells, of the Town Regulations.

B. See Chapter 139, Zoning, § 139-7B, of the Code of the Town of Nantucket. **[Amended during codification]**

## ARTICLE II
## Subdivision Regulations
## [Adopted by the Planning Board 12-20-1999]

Part 1
**General Provisions**

### § 358-2.1. Authority, adoption and effective date.

The Subdivision Control Law of the Commonwealth of Massachusetts (MGL c. 41, § 81K through § 81GG, inclusive) is in effect in the Town of Nantucket, having been adopted on February 16, 1955. Under authority vested in the Nantucket Planning Board by MGL c. 41, § 81Q, the Board hereby adopts these rules and regulations governing the subdivision of land, which shall be effective on and after December 20, 1999, until modified or amended by the Board.

### § 358-2.2. Applicability.

No person shall make a subdivision of any land within the Town, or proceed with the improvement or sale of lots in a subdivision, or the construction of ways, or the installation of municipal services therein unless and until a definitive plan of such subdivision has been submitted to and approved by the Board, as hereinafter provided.

### § 358-2.3. Purpose.

A. These regulations have been adopted for the purpose of protecting the safety, convenience and welfare of the inhabitants of Nantucket by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and, in proper cases, parks and open space.

B. In achieving these purposes, the powers of the Board shall be exercised with due regard:

(1) For the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel;

(2) For lessening congestion in such ways and in the adjacent public ways;

(3) For reducing danger to life and limb in the operation of motor vehicles;

(4) For securing safety in the case of fire, flood, panic and other emergency;

(5) For ensuring compliance with Chapter 139, Zoning, of the Code of the Town of Nantucket;

(6) For securing adequate provision of water, sewerage, drainage, underground utility service, fire, police and other municipal equipment, streetlighting, and other requirements, where necessary, in a subdivision;

(7) For coordinating the ways in a subdivision with each other and with the public ways in the Town and with the ways in neighboring subdivisions; and

(8) To advance the community master plan known as the Town's "Goals and Objectives for Balanced Growth," as amended from time to time by the Town Meeting, such plan to be construed as conforming to MGL c. 41, § 81D.

**§ 358-2.4. Definitions.**

A. As used in these regulations, words in the singular include the plural and those in the plural include the singular. The word "may" is permissive; the word "shall" or "will" is mandatory.

B. For the purpose of these rules and regulations, the following words used herein are hereby defined as follows:

APPLICANT — The person who applies for the approval of a plan, or for "approval not required" endorsement, or said person's administrators, executors, heirs, devisees, successors and assigns.

BOARD — The Planning Board of the Town of Nantucket.

LOT — An area of land in one ownership, with definite boundaries, used or available for use as the site of one or more buildings, and intended for transfer of ownership.

SUBDIVISION — As defined in MGL c. 41, § 81L, as amended.

**§ 358-2.5. Waiver of compliance.**

Strict compliance with the requirements of these rules and regulations may be waived when, in the judgement of the Board, such action is in the public interest and not inconsistent with the Subdivision Control Law. The application for approval of a definitive plan must be accompanied by a written request for waiver of strict compliance with these rules, the regulation sought to be waived, the nature and location of the waiver sought, and a statement

by the applicant's surveyor or engineer that such waiver is consistent with each of the purposes set forth in § 358-2.3 of these rules and regulations.

### § 358-2.6. Amendments.

These regulations or any portion thereof may be amended, supplemented or repealed from time to time by the Board after a public hearing on its own motion or by petition.

## Part 2
## Submission and Approval of Plans

### § 358-2.7. Review or filing required.

Only those plans which constitute "subdivisions," as that term is defined in § 358-2.4, require the approval of the Board. However, all plans, whether "subdivisions" within the meaning of the law or not, must be reviewed by the Board before any approval is given, or before an endorsement is made that the plan does not constitute a subdivision and therefore does not require approval. The Register of Deeds of Nantucket shall not record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, unless 1) such plan bears an endorsement of the Planning Board that such plan has been approved by the Planning Board, and a certificate by the Town Clerk is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the 20 days next after receipt and recording of notice from the Planning Board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or 2) such plan bears an endorsement of the Planning Board that approval of such plan is not required, or 3) the plan is accompanied by a certificate of the Town Clerk that it is a plan which has been approved by reason of the failure of the Planning Board to act thereon within the time prescribed, or that it is a plan submitted pursuant to MGL c. 41, § 81P and that it has been determined, by failure of the Planning Board to act thereon within the prescribed time, that approval is not required. In order to obtain a permit for the erection of a building on a lot, a way giving access to such lot must appear on a plan recorded at the Nantucket Registry of Deeds or entitled to be recorded under MGL c. 41, § 81X.

### § 358-2.8. Submission completeness.

No plan for review, whether for approval or for endorsement of "approval not required," shall be accepted as a submittal unless and until all information necessary for such review, as described herein under the applicable provisions of submission requirements, are fully provided, unless waived in writing by the Board. At the time of submission, a determination shall be made by the Planning Board, or its designee, using a checklist, that the submission materials are either complete or incomplete. If the submission has been determined to be incomplete, the plan shall be returned to the applicant either in person or by certified mail with a letter indicating that insufficient information has been provided, making it impossible for the Board to adequately review the plan, to approve the plan or endorse the plan "Approval Not Required." Incomplete plans shall not be considered submittals and shall not

be considered the start of any time limits within which the Board is required to act under various provisions of state law.

**§ 358-2.9. Plans believed not to require approval (ANR).**

The following provisions apply to all plans for which "Approval Not Required" endorsement is desired.

A. "Approval not required" plan submission requirements. Any person may submit a plan seeking endorsement that the plan does not require approval under the Subdivision Control Law by providing the Board with the following:

(1) An original plan on linen or reproducible Mylar and two paper prints of the plan showing:

(a) The area, frontage and dimensions of the lot or lots requiring endorsement and any contiguous lots in common beneficial ownership whose dimensions are altered by the plan having area or frontage less than twice the prevailing required area and/or frontage for the zoning district in which the land is located. In a case where said contiguous lots have less than twice the required frontage but more than twice the area, only the frontage shall be shown on the plan.

(b) The date of the plan, scale, North point.

(c) The names of the record owner and the applicant, and the name, seal and signature of the registered surveyor.

(d) Abutting properties, with the names of owners from the most recent tax list and showing all relevant abutting lot lines.

(e) Zoning classification data, wetlands and floodplains.

(f) The Assessor's map and parcel number as it is recorded on the official Tax Maps of Nantucket and recently recorded plans for the parcel.

(g) The name(s) of the way(s) on which the lots front.

(h) The physical condition of the way(s) shown on the plan, including actual width, surface condition and available drainage.

(i) An area set aside for the signatures of Board members, file number and date of endorsement, preceded by the words "Approval Under the Subdivision Control Law Not Required, Nantucket Planning Board."

(j) A locus plan at a scale of at least one inch equals 2,000 feet, containing sufficient information so that the land can be readily located, including streets bounding on or near the property.

(k) Each plan shall contain a note or notes as to the compliance of each lot shown thereon with the lot area requirements as provided in Chapter 139, Zoning, § 139-2A and § 139-16A, of the Code of the Town of Nantucket. The Mylar plan shall show the entire area of such lot as computed pursuant

to the minimum technical standards for surveys as set forth under 250 CMR 6.01, including such areas subject to protection under the State Wetlands Protection Act.

[1] The notes to be set forth on each such plan, as applicable in each individual instance, shall be substantially to the following effect:

"The Planning Board determines that:

[a] Lot(s) _____ is/are subject in part to protection under the Massachusetts Wetlands Protection Act, but contain sufficient lot area, as defined in the Nantucket Zoning Bylaw, to comply with the applicable zoning requirements. A Notice of Intent may be required to be filed with the Nantucket Conservation Commission with regard to proposed construction on such lot(s)."

[b] Lot(s) _____ does (do) not contain areas subject to protection under the Massachusetts Wetlands Protection Act which are required to be excluded from lot area under the Nantucket Zoning Bylaw, but still may be subject to protection under State and Local Wetland Bylaws. Determination of applicability may be obtained through application to the Conservation Commission."

[c] Lot(s) _____ contains inadequate lot area, as defined in the Nantucket Zoning Bylaw, to comply with minimum area requirements applicable under such bylaw."

[2] To enable the Board to make such findings, a third separate paper print shall serve as a worksheet to determine lot area compliance with zoning. This print shall show the full area of the lot, and shall also show the full area computed in accordance with Chapter 139, Zoning, of the Code of the Town of Nantucket. The boundary of each such area subject to protection under the State Wetlands Protection Act which is excluded from lot area under Chapter 139 of the Code of the Town of Nantucket shall be clearly shown and labeled upon each such plan. A note shall be included on this plan which shall be substantially to the following effect:

"Wetlands lines are approximate and for purposes of determining zoning compliance only."

[3] Any necessary supporting documentation shall be submitted along with the worksheet plan as part of the submission and will be kept on file with signed plans at the Planning Board office.

(2) A properly executed Form A application as shown in Appendix B.[1]

1. **Editor's Note: Appendix B is included as an attachment to this chapter.**

(3) Necessary evidence to show that the plan does not require approval, which shall include the precise legal ownership of the way(s) and proper positive documentation that every lot within the divided tract has frontage either on a public way or a way which the Town Clerk certifies is maintained and used as a public way or a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law; or a way in existence on February 16, 1955, having, in the opinion of the Planning Board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. All plans seeking "Approval Not Required" endorsement shall be accompanied by adequate evidence that there is practical interior access to the proposed house sites. Plans and profiles of access roads previously approved by the Planning Board which do not provide frontage for any lot shown on a subject plan shall not be construed as a way shown on a plan theretofore approved and endorsed in accordance with the Subdivision Control Law.

B. "Approval not required" plan filing procedures.

(1) Persons seeking endorsement of plans "Approval Not Required" shall submit such plans, either by mail or in person, to the Nantucket Planning Board, the Town and County Building, 16 Broad Street, Nantucket, Massachusetts 02554. In order to be included in the agenda for consideration at a Planning Board meeting, the plan must be submitted to the Planning Board office before 12:00 noon of the Wednesday before the meeting. Any plans received after the Wednesday 12:00 noon deadline will automatically be carried over to the agenda for the following meeting, unless the Chair, with staff recommendation, determines there are special circumstances that warrant a late submittal.

(2) A fee shall accompany the application in an amount set from time to time by the Planning Board. **[Amended during codification]**

(3) The applicant shall file, by delivery or registered mail, a notice with the Town Clerk stating the date of submission for such determination.

C. "Approval not required" plan action.

(1) A determination of wetland boundaries from the Nantucket Conservation Commission may be required in order to verify that the area of one or more lots complies with zoning requirements. For plans which are submitted without such determination, and for which a question as to the accuracy of the delineation of wetland boundaries arises, the applicant shall obtain a determination from the Conservation Commission. Failure to do so within the twenty-one-day statutory decision period shall cause the Planning Board to add a notation to the plan stating that the lot in question has not been determined to have sufficient area to comply with zoning requirements and to notify the Building Department that a building permit shall not be issued until the Planning Board has been provided satisfactory information to determine that the lot in question has sufficient area to meet lot area requirements.

(2) If the Board determines that the plan does not require approval, it shall forthwith, without public hearing, endorse the plan accordingly. The plan shall be returned to the applicant so endorsed within 14 days of submission of said plan.

(3) If the Board determines that the plan does require approval, it shall, without a public hearing and within 21 days of submission, notify the applicant and the Town Clerk of the determination.

(4) If the Board fails to take action within 21 days of submission, the plan is automatically deemed not a subdivision plan and the Board shall forthwith make such endorsement. On its failure to do so forthwith, the Town Clerk shall issue a certificate to the same effect.

D. Ways in existence. Existing ways will normally be determined by the Board to provide adequate access to qualify a plan as not constituting a subdivision only when the layout, design and construction meet the standards of these rules and regulations.

### § 358-2.10. Presubmission review (sketch plan).

Prior to investing in extensive professional design efforts for subdivision plans, it will often prove useful to review the proposed development of a parcel of land with the Board in an informal manner, in order that general approaches, possible use of cluster development, and potential problems can be freely explored. Pencil sketches and other illustrations, which need not be professionally prepared, will assist the discussion, and might show some, but not all, of the information shown on a preliminary plan. In some cases, presubmission review may eliminate the advisability of submitting a preliminary plan. However, the presubmission review provision is strictly a voluntary procedure left to the discretion of the applicant. The presubmission review has no legal status whatsoever, insofar as zoning exemptions are concerned.

### § 358-2.11. Preliminary plans.

A preliminary plan of a residential subdivision may, and a preliminary plan of a nonresidential subdivision shall, be submitted by the subdivider for discussion and approval, modification or disapproval by the Planning Board and the Board of Health. The submission of such a preliminary plan will enable the subdivider, the Planning Board, and other municipal agencies to discuss and clarify the problems of such a subdivision before extensive engineering costs are incurred in the preparation of the definitive plan.

A. Submission requirements. Preliminary plans shall be drawn on tracing paper, or a print thereof, and shall show:

(1) The subdivision name, boundaries, North point, date, scale, legend and title "Preliminary Plan";

(2) The names of the record owner and the applicant and the names of the designer, engineer and surveyor;

(3) The names of all abutters, as determined from the most recent tax list;

(4) The existing and proposed line of streets, ways, easements, any public or common areas and lots shown in a general manner;

(5) A schematic representation of the proposed system of drainage, including adjacent existing natural waterways;

(6) The approximate boundary lines of proposed lots, with approximate areas and dimensions;

(7) The names, approximate location and widths of adjacent streets;

(8) The topography of the land in a general manner, including areas of the tract suspected to be floodprone and/or wetlands;

(9) A vicinity map to appear in the upper right corner of the plan showing the location of the parcel as it relates to areas of the community within at least one-half mile of the tract boundaries (suggested scale: one inch equals 2,000 feet);

(10) The zoning classification of the land to be subdivided;

(11) Proposed sewage, water and utility systems, shown in a general manner; and

(12) In the case of a subdivision covering less than all of the land owned by the subdivider in the area of the subdivision, a plan showing, in a general manner, the proposed overall development of all of said land.

B. Filing procedures for preliminary plans.

(1) An application for consideration of the preliminary plan shall be accompanied by 12 contact prints of the plan and a filing fee as set from time to time by the Planning Board. The applicant shall also file one contact print with the Board of Health. **[Amended during codification]**

(2) The applicant shall give written notice to the Town Clerk of Nantucket by delivery or by registered mail, postage prepaid, that the applicant has submitted such a plan.

C. Plan action for preliminary plans. Within 45 days after submission of a preliminary plan, the Board shall either approve the plan, with or without modifications, or the Board shall disapprove the plan. In the case of disapproval, the Board shall state its reasons therefor. The Board shall notify the Town Clerk of its action in writing. The action of the Board shall be on two copies of the preliminary plan, referenced and attached to any conditions. One copy shall be returned to the applicant and the other retained by the Board. Approval of the preliminary plan does not constitute approval of the subdivision for recording but does facilitate the procedure in securing approval of the definitive plan. The Rules and Regulations Governing the Subdivision of Land in effect at the time of its submission shall govern the definitive plan evolved from such preliminary plan, provided that the definitive plan is duly submitted within seven months from the date of submission of the preliminary plan and said definitive plan is ultimately approved. Such exemptions shall endure for eight years from the date of definitive plan approval.

**§ 358-2.12. Definitive plans.**

The definitive plan of a subdivision shall conform substantially to the preliminary plan as approved but may constitute only that portion which is proposed to be recorded and developed at the time. The subdivision rules and regulations and zoning in effect at the time of the submission of the preliminary plan shall govern the definitive plan if it is duly submitted within seven months. Applicants are strongly urged to schedule a presubmission conference and tour with the Planning Board and its staff to identify as early as possible any items requiring special attention.

A. Submission requirements. An applicant seeking approval of a definitive plan of a subdivision shall file with the Board the following:

(1) The original drawings of the definitive plan and 12 prints thereof, which shall be distributed for review to the following agencies: Conservation Commission, Department of Public Works, Fire Department and Water Company.

(2) A street network plan shall be submitted on 8.5-inch-by-11-inch paper showing, at a minimum, proposed, existing, and adjacent streets, names and locations of abutters, North arrow, and any adjacent natural features.

(3) A properly executed application in the form shown as Form B in Appendix B, which form may be changed from time to time by the Planning Board.[2]

(4) A list of the names and addresses of all abutters, certified as complete by the Tax Assessor, plus a set of gummed mailing labels bearing these names and addresses plus a set of certified mailing materials, i.e., both 1) Receipts for Certified Mail and 2) Domestic Return Receipts, all appropriately and completely prepared for mailing. "Abutters" shall be defined as those landowners immediately bordering the proposed subdivision, those landowners abutting the immediate abutters, and those landowners located directly across all segments of streets and ways bordering the proposed subdivision.

(5) A master plan showing a possible or prospective street and lot layout for any adjacent unsubdivided land owned or controlled by the owner or subdivider of the subdivision shall be submitted, unless such a plan has already been filed with the Board.

(6) A filing fee shall accompany the application in an amount set from time to time by the Planning Board. **[Amended during codification]**

(7) In addition to the filing fee, applications shall be accompanied by a check in an amount set from time to time by the Planning Board per linear foot of new or reconstructed interior or perimeter roadway in accordance with Subsection K located herein, to be deposited into a Road Inspection Escrow Account within the Town Treasury, to be kept separate from other funds, the proceeds of which shall be drawn upon from time to time by the Board to pay for costs associated with the inspection of the applicant's required public improvements. **[Amended during codification]**

**2. Editor's Note: Appendix B is included as an attachment to this chapter.**

(8) A proposed covenant or bond in accordance with Subsection F, Performance Guarantee.

(9) Notice to Town Clerk. The applicant shall give written notice to the Town Clerk by delivery or by registered mail, postage prepaid, that the applicant has submitted such a definitive plan, accompanied by a copy of the application, within 48 hours of submission. If the notice is given by delivery, the Town Clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the Town Clerk as true, unless contrary is made to appear. If sent by registered mail, the date of the mailing shall be the date of submission of the definitive plan. The definitive plan shall be considered submitted only when all plan requirements specified in Subsections A and B of this section are included, unless waived in writing by the Board, as provided in § 358-2.5.

(10) The Planning Board shall require the submission of storm drainage runoff flow calculations in order to evaluate the drainage plan.

(11) Site analysis report and map.

(a) An applicant seeking approval of a definitive plan shall submit, at the time of filing, three copies of a Site Analysis Report and three copies of a Site Analysis Map. Any submission of a definitive plan lacking these documents will be considered incomplete (§ 358-2.8).

(b) The Site Analysis Map shall be one sheet of drawing paper no larger than 42 inches by 60 inches and shall show the entire subdivision at a suitable scale. If the definitive plan includes less than the preliminary plan from which it was derived, the Site Analysis Map shall include all the land shown on the preliminary plan. Applicants are encouraged to use tissue, acetate or Mylar overlays in conjunction with a paper base map. The base for the Site Analysis Map shall show tract boundaries, proposed lots, ways, easements, open spaces, landmarks and existing structures and roads within 100 feet of the tract boundaries. Overlays using color or black-and-white patterns shall show the following information:

[1] Wetlands, including ponds, marshes, bogs, streams and all areas of the site subject to the Massachusetts Coastal Wetlands Act, as amended;

[2] Areas of special flood hazard, as designated by the Federal Emergency Management Agency (FEMA) as part of the Flood Insurance Program for Nantucket; **[Amended during codification]**

[3] Areas with severe limitations for on-site sewage systems, as mapped by the USDA Natural Resources Conservation Service's Soil Survey of the Island of Nantucket; **[Amended during codification]**

[4] Areas with severe limitations due to seasonal high water table, as mapped by the USDA Natural Resources Conservation Service's Soil Survey for the Island of Nantucket; **[Amended during codification]**

[5] Areas where special drainage, erosion and sedimentation measures will be undertaken. Arrows shall show the predominant drainage patterns. The location of catchment basins and points of discharge shall be shown. Two-foot contour lines shall also appear on this map;

[6] Predominant vegetative cover type, including areas of the site the applicant feels are important to protect and all areas containing stands of trees with three-inch caliper or more; and

[7] Protected areas, including all areas of the tract permanently kept from being developed by virtue of their being scenic, access, drainage or slope easements, or through other interest of fee-simple grants of land to a conservation group or homeowners' association.

(c) The Site Analysis Report shall be a typed copy on 8.5-inch-by-11-inch paper with a cover sheet indicating the name of the subdivision, the owner of the land, the applicant, the engineer/surveyor/land planner and the date of submission. The report shall consist of a narrative statement and appropriate data, documenting the likely impact of the subdivision on the following subject areas with references to the Site Analysis Map:

[1] Surface water resources. How will the proposed subdivision, when fully developed, affect the quality and quantity of ponds, marshes, bogs, streams and other surface water resources both on and off the site? What measures have been taken to assure full compliance with the State Coastal Wetlands Act? Will drainage easements be used to identify and protect portions of individual lots subject to the State Coastal Wetlands Act in order that prospective purchasers of lots in the subdivision will be adequately aware of the status of their property? What erosion and sediment control measures will be taken to prevent undue loss of topsoil and sedimentation of surface waters during construction? Has public access been provided to significant surface water resources?

[2] Groundwater resources. How will the proposed subdivision, when fully developed, affect the quality and quantity of groundwater resources in the area? Has every effort been made to tie in with the community-wide sewage system? Have percolation tests been done on every lot to be used for residential or commercial purposes in the subdivision?

[3] Flood hazard. Has the layout of streets and lots fully reflected the need to protect life and property by properly locating building lots out of areas of special flood hazard as delineated by the federal government? Will floodway easements be used to protect these areas from encroachment and advise lot purchasers of the nature of their

prospective property? Has the proposed system of drainage taken severe storm damage into account?

[4] Vegetative cover. Are there any groves of trees with three-inch caliper or more? If so, what measures have been taken to protect them? Has the applicant considered cooperating with the Nantucket Conservation District in reforesting portions of the tract at minimal cost? Have scenic or access easements or fee-simple grants of land been employed to protect valuable areas of the site?

[5] Traffic safety and convenience. Does the subdivision provide for adequate internal circulation for both pedestrian and vehicular/bicycle traffic? Is the site served adequately by existing roads in the area when other subdivisions (both built-up and unbuilt) are considered? Has the applicant considered tying in with Nantucket's Island-wide bicycle path system? Has there been sufficient consideration for tying into anticipated future subdivisions on adjacent tracts of land now vacant? Will emergency vehicles be able to properly service this new neighborhood? What form of performance guarantee will be used for all public improvements? What is the physical condition of adjacent roads and access roads (width, surface and drainage)? What is the precise legal ownership of adjacent roads and access roads? Will the subdivision substantially affect traffic flow and safety in the area surrounding the subdivision? If so, what mitigating measures are being undertaken to decrease any detrimental effects?

[6] Development phasing. When will all the required public improvements be completed? If this is the first of several definitive plans based on a larger preliminary plan, when does the applicant expect to submit other definitive plans? What will be the maximum number of dwelling units on this definitive plan (including seasonal cottages)?

[7] Common open spaces. If the applicant includes in the plan common open spaces and other neighborhood facilities and services, how will such areas be owned and maintained (homeowners' association, trust, condominium association, etc.)? Are these areas permanently preserved?

(d) If any questions arise during the public hearing concerning the aforementioned subject areas, the Planning Board may require complete and detailed substantiation of any claim by the applicant, which could include an investigation by an outside consultant.

(12) Traffic study.

(a) If, in the opinion of the Planning Board, the size, scale or location of the subdivision may result in a significant impact on the surrounding road system, the Board may require the applicant to submit a traffic study. The study shall be prepared by a professional engineer specializing in traffic analysis and identify, at a minimum, the following:

[1] Internal vehicular circulation patterns.

[2] Estimated daily and peak-hour vehicle trips.

[3] The measured daily and peak-hour traffic flows, both weekday and weekend (nonholiday), measured during the period between June 15 and September 15, or other times as the Board may deem appropriate, on public and private roads and key intersections expected to be impacted by the project.

[4] Proposed composite daily and peak-hour traffic on public and private roads and key intersections; a documentation of impacts on level of service.

[5] Suggested remedial measures to mitigate the expected impacts of the proposed subdivision.

(b) Applicants are urged to meet with the Planning Board or planning staff prior to preparation of the study to identify the study area and the appropriate elements of the traffic study.

B. Contents of the definitive plan. A definitive plan of a subdivision shall be drawn on linen or reproducible Mylar by a registered land surveyor at a scale of one inch equals 40 feet, or such other scale as the Board may accept to show details clearly and adequately, but no smaller than one inch equals 100 feet. Sheet sizes shall not exceed 24 inches by 36 inches. If multiple sheets are used, they shall be accompanied by an index sheet showing the entire subdivision. The definitive plan shall show the following:

(1) Subdivision name, if any; boundaries, North point, date, scale, legend and title "Definitive Plan";

(2) The names of the record owner(s) and the applicant(s) and the applicant's engineer and surveyor, and the seal and signature of said engineer or surveyor;

(3) The names of all abutters, as determined from the most recent local tax list;

(4) Current zoning information, i.e., district, minimum lot size, front/side/rear yard setbacks, frontage, and ground coverage ratio. This information shall appear on every sheet in the plan;

(5) The existing and proposed lines of streets, ways and easements and their widths; sidewalks, footpaths, bridle and bicycle paths and their widths; and any public or common areas within the subdivision. The proposed names of ways shall be shown in pencil until they have been approved by the Board;

(6) Sufficient data to determine readily the location, bearing, and length of every street and way line, lot line, boundary line and to reproduce same on the ground. At least one bound on each proposed lot of a subdivision shall show the x and y coordinates relating to the Massachusetts Coordinate System, Island Zone;

(7) The location of all permanent monuments properly identified as to whether existing or proposed;

(8) Boundary lines of lots, lot areas and lot numbers;

(9) Names, location and widths of adjacent streets and streets approaching the subdivision;

(10) The topography of the land at two-foot contour intervals; location of areas of the tract suspected to be floodprone and/or wetlands, and existing and proposed watercourses and ponds. Elevations must refer to a known benchmark using the half-tide datum plan established by the U.S. Geological Survey or the National Geodetic Survey;

(11) A vicinity map to appear in upper right corner of the plan showing the location of the parcel as it relates to areas of the community within at least one-half mile of the tract boundaries (suggested scale: one inch equals 2,000 feet). The vicinity map shall reference the number of the map and parcel as it is recorded on the official Tax Maps of Nantucket;

(12) The zoning classification of the land to be subdivided;

(13) All existing and proposed municipal services and their appurtenances shall be shown in such detail as necessary to coordinate all such services. An approved utility plan (or plans) accurately showing all electric streetlighting, water, fire alarm, hydrants, sewer, storm drains, telephone, electric and cable television lines shall be submitted with the definitive plan. The Board shall review and approve, modify or disapprove the plans for municipal services and utilities as part of its approval;

(14) A landscape plan showing:

(a) Location, size, and species of all proposed landscape plantings; and

(b) Location and size of existing trees to be preserved;

(15) A signature block to record the action of the Board shall be located above the title block in the same lower right area of each sheet;

(16) Location of curbs and gutters;

(17) A typical cross-section of road(s) within and outside the subdivision proposed to be constructed or improved;

(18) Location of on-site disposal areas for brush and trees to be removed due to the construction of public improvements, if determined by the Planning Board to be appropriate (see § 358-2.50);

(19) Proposed system of storm drainage, including natural waterways, man-made systems, and drainage easements, both within and adjacent to the limits of the subdivision;

(20) Profiles of proposed streets and utilities may be made on a separate sheet and shall be drawn at the scale of 40 feet to the inch vertical; the existing center line shall be shown as fine black solid line, existing right side line as fine black line with long dashes and existing left side line as fine black line with short dashes; a proposed center line shall be shown in red with a line and with elevations every

50 feet, except that in vertical curves elevations shall be shown at every twenty-five-foot interval and at PVC and PVY; all existing intersecting walks and driveways, if any, shall be shown on both sides as well as the location of existing and proposed drainage lines and their appurtenances; sizes of all pipes shall be shown as well as inverts of all pipes at each manhole or catch basin, together with invert elevation and rim elevation of each manhole or catch basin; all center lines, street lines and curblines with elevations every 25 feet of streets for 200 feet either side of each intersection on a connecting street shall be shown. Plans, profiles and cross-sections of access roads to be improved shall be prepared at the same scale and in the same format as those drawn for proposed streets;

(21) Erosion and airborne dust control plans (§ 358-2.51);

(22) Reference to any covenant that may be required shall appear on the plan;

(23) Each plan shall contain a note or notes as to the compliance of each lot shown thereon with the lot area requirements as provided in Chapter 139, Zoning, § 139-2A and § 139-16A, of the Code of the Town of Nantucket. The Mylar plan shall show the entire area of such lot as computed pursuant to the minimum technical standards for surveys as set forth under the State Wetlands Protection Act.

(a) The notes to be set forth on each such plan, as applicable in each individual instance, shall be substantially to the following effect:

"The Planning Board determines that:

[1] Lot(s) _____ is/are subject in part to protection under the Massachusetts Wetlands Protection Act, but contain sufficient lot area, as defined in the Nantucket Zoning Bylaw, to comply with applicable zoning requirements. A Notice of Intent may be required to be filed with the Nantucket Conservation Commission with regard to proposed construction of such lot(s)."

[2] Lot(s)_____ does/do not contain areas subject to protection under the Massachusetts Wetlands Protection Act which are required to be excluded from lot area under the Nantucket Zoning Bylaw but still may be subject to protection under State and Local Wetland Bylaw. Determination of applicability may be obtained through application to the Conservation Commission."

[3] Lot(s) _____ contains inadequate lot area, as defined in the Nantucket Zoning Bylaw, to comply with minimum area requirements applicable under such bylaw."

(b) To enable the Board to make such findings, a third, separate paper print shall serve as a worksheet to determine lot area compliance with zoning. This print shall show the full area of the lot, and shall also show the area of lot as computed in accordance with Chapter 139, Zoning, of the Code of the Town of Nantucket. The boundary of each such area subject to protection under the State Wetlands Protection Act which is excluded from lot area under Chapter 139, Zoning, shall be clearly shown and labeled upon each

such plan. A note shall be included on this plan which shall be substantially to the following effect:

"Wetlands lines are approximate and for purposes of determining zoning compliance only."

(c) Any necessary supporting documentation shall be submitted along with the worksheet plan as part of the submission and will be kept on file with signed plans at the Planning Board office.

C. Review by Board of Health.

(1) At the time of filing of the definitive plan, the subdivider shall also file with the Board of Health two prints of the definitive plan and comply with other Board of Health requirements, including percolation tests and test excavations.

(2) The Board of Health shall, within 45 days after filing of the plan, report to the Planning Board, in writing, with its recommendation of approval or disapproval of said plan. If the Board of Health disapproves said plan, it shall make specific findings as to which, if any, of the lots shown on such plan cannot be used for building sites without injury to the public's health.

(3) Every building lot so located that it cannot be served by a connection to the municipal sewer system shall be provided with a sewage disposal system approved by the Board of Health.

D. Review by other officials. Before the definitive plan is submitted, the Planning Board urges that the applicant consult with and obtain written statements that the proposed improvements shown on a separate utility plan or road plan and profiles are laid out to the satisfaction of the following authorities and for the facilities listed below:

(1) The Chief of the Fire Department as to the location of hydrants, adequacy of water flow at the hydrant, the layout of a fire alarm system, including location of boxes and location and installation of emergency water supply systems for fire fighting.

(2) The Department of Public Works as to the requirements for provision for connections to and compatibility with the sewer system and, if required, the layout and design of the necessary connecting mains, laterals, manholes, and stubs for such system. In such cases, review by the DPW Superintendent will include the profiles of the streets.

(3) The Manager of the Wannacomet Water Company and Siasconset Water Department as to the location and size of water mains, including service to the fire hydrants.

(4) The Nantucket Electric Company as to the requirements for electricity.

(5) The telephone company as to the location of the telephone lines.

(6) The Conservation Commission as to the requirements under the Wetlands Protection Act (MGL c. 131, § 40 and § 40A).

E. Staking of subdivision. In order to facilitate on-site review by the various reviewing agencies, the applicant shall, at the time of filing of the definitive plan, stake and brush cut to a minimum of five feet the center line of all proposed ways in the subdivision and shall stake all points where lot lines intersect rights-of-way.

F. Performance guarantee.

(1) Before endorsement of its approval of a definitive plan, the Planning Board shall require that the construction of ways and the installation of municipal services be secured by one of the four methods listed below, or a combination of methods which, from time to time, may be varied by the applicant upon approval of the Board:

(a) By a proper bond, sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan; and the Planning Board may require that the applicant specify the time within which such construction shall be completed.

(b) By a deposit of money or negotiable securities sufficient in the opinion of the Planning Board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan; and the Planning Board may require that the applicant specify the time within which such construction shall be completed.

(c) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided that a mortgagee who acquired title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provided that no lot shall be built upon until such ways and services have been provided to serve each lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such covenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the Planning Board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed. A suggested, but not required, form of the covenant is given by Form I in Appendix B,[3] which form may be changed from time to time by the Planning Board. Any covenant given under the preceding paragraph and any condition required by the Board of Health shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

(d) By delivery to the Planning Board of an agreement executed after the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, which agreement shall be executed by the applicant and the

**3. Editor's Note: Appendix B is included as an attachment to this chapter.**

lender and shall provide for the retention by the lender of funds sufficient in the opinion of the Planning Board and otherwise due the applicant to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

(2) The penal sum of any such performance guarantee described under Subsection F(1)(a), (b) or (d) shall bear a direct and reasonable relationship to the expected cost, including the effects of inflation, necessary to complete the subject work. Such amount or amounts shall from time to time be reduced so that the amount bonded, deposited or retained continues to reflect the actual expected cost of work remaining to be completed.

(3) The form of the performance guarantee may be as given by Form G or Form I in Appendix B,[4] or as otherwise required by the Board, and shall be contingent upon the completion of said improvements within two years of the date of the agreement. At the discretion of the Board, a time extension may be granted for a period not to exceed one year, provided such an extension may be conditioned upon an increase in the amount of such bond or security as determined by the Board.

(4) The failure of the applicant to complete the required construction of ways and installation of municipal services within two years from the date of the agreement shall be grounds for the rescission of the approval of the plan.

G. Public hearing. Before approval, modification and approval or disapproval of the definitive plan, a public hearing shall be held by the Board after proper advertisements and notification of abutters as provided by MGL c. 41, § 81T of the Subdivision Control Law.

H. Plan action.

(1) After the public hearing, the Board shall approve or, if such plan does not comply with the Subdivision Control Law, these rules and regulations or recommendations of the Board of Health, shall modify and approve, or disapprove the definitive plan. In the event of disapproval, the Board shall state in detail wherein the plan does not conform to the rules and regulations and recommendations of the Board of Health and shall revoke its disapproval and approve a plan which, as amended, conforms to such rules and regulations or recommendations.

(2) In the case of a nonresidential subdivision where a preliminary plan has been duly submitted and acted upon or where 45 days have elapsed since submission of the preliminary plan, and then a definitive plan is submitted, the failure of the Planning Board either to take final action or to file with the Town Clerk a certificate of such action regarding the definitive plan submitted by an applicant

**4. Editor's Note: Appendix B is included as an attachment to this chapter.**

within 90 days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the Planning Board with the Town Clerk.

(3) In the case of a subdivision showing lots in a residential zone, where a preliminary plan has been acted upon by the Planning Board or where at least 45 days have elapsed since submission of the preliminary plan, and a definitive plan is submitted, the failure of the Planning Board to take final action or to file with the Town Clerk a certificate of such action on the definitive plan within 90 days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension shall be filed forthwith by the Planning Board with the Town Clerk.

(4) In the case of a subdivision showing lots in a residential zone, where no preliminary plan has been submitted and acted upon or where 45 days have not elapsed since submission of such preliminary plan, and a definitive plan is submitted, the failure of the Planning Board either to take final action or to file with the Town Clerk a certificate of such action regarding the definitive plan submitted by an applicant within 135 days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof. Notice of such extension of time shall be filed forthwith by the Planning Board with the Town Clerk.

(5) In addition to filing a certificate of its action with the Town Clerk, a copy of which shall be recorded by the Town Clerk, in a book kept for this purpose, the Board shall also send notice of such action by registered mail, postage prepaid, to the applicant at the address stated on the application.

(6) In the case of approval of a plan by action of the Board, after the expiration of 20 days without notice of appeal to the Superior Court or Land Court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the Board shall cause to be made upon the plan a written endorsement of its approval. The applicant shall have submitted to the Board a set of plans appropriately prepared for said endorsement and shall have included with these plans a road layout plan reduced to fit 8.5-inch-by-11-inch paper. In case of the approval of such plan by reason of the failure of the Board to act within the time prescribed, the Town Clerk shall, after the expiration of 20 days without notice of appeal to the Supreme Court or Land Court, or, if appeal has been taken, after receipt of certified records of the Supreme Court or Land Court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the Board failed to take action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the Board, or, in the case of the certificate, by the Town Clerk, to the person who submitted such plan. **[Amended during codification]**

I. Modification, amendment, or rescission of approved plans.

(1) The Board, on its own motion or on the petition of any interested person, has the power to modify, amend, or rescind its approval of a plan, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the Subdivision Control Law and these rules and regulations relating to the submission and approval of a plan shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan that has been changed under this subsection.

(2) No modification, amendment or rescission of the approval of a plan or change in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon.

(3) So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this subsection shall take effect until:

(a) The plan as originally approved, or a copy thereof and a certificate copy of the vote of the Board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded;

(b) An endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded; and

(c) Such vote is indexed in the grantor index under the names of the owners of record of the land affected.

(4) So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until such modification, amendment or change has been verified by the Land Court pursuant to MGL c. 185, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to MGL c. 185, § 114.

J. Appeal by any person. Any person, whether or not a party to the proceedings, aggrieved by a decision of the Board of Appeals or by the Planning Board concerning a plan of a subdivision, or by failure of such a plan within the required time, or any municipal officer or board, may appeal to the Superior Court sitting in equity for Nantucket County, provided that such appeal is entered within 20 days after such decision has been recorded in the office of the Town Clerk or within 20 days after the required time aforesaid, as the case may be, and notice of such appeal is given to the Town Clerk so as to be received within 20 days.

K. Inspection of improvements.

(1) General procedure and inspection escrow funds.

(a) Prior to the endorsement of a plan as approved, and prior to the return of such plan to the applicant, the applicant shall be required to deposit with

the Treasurer of the Town an amount set from time to time by the Planning Board times the number of linear feet of proposed or reconstructed ways located within and outside of the boundaries of the subdivision. The Planning Board shall direct the Treasurer to expend such funds to pay for all reasonable design review, construction inspection services and subdivision modification design reviews by its engineer or other professional persons required to assist the Planning Board in its determination as to the adequacy of the definitive plan with regard to the Subdivision Control Law and these rules and regulations and as to the adequacy of the subdivision construction and any design modifications to the plan and changes made in the field. **[Amended during codification]**

(b) However, no such payment shall be directed until 14 days after a photocopy of the bill purporting to represent charges for such services and review has been sent, by certified mail, to the applicant. The balance of this account shall at no time be less than 1/2 the initial deposit, and the applicant shall deposit with the Treasurer such additional funds as are required to restore the account to the amount of the initial deposit upon notice from the Board, by first class mail, that the amount on deposit has been decreased by the expenditures described herein to an amount at or near 1/2 the initial deposit. The account shall be closed and the remaining funds returned to the applicant when, in the opinion of the Board, all work required by the approved plan, any conditions placed upon such approval, and any subsequently approved modifications and these rules, and all inspections required by these rules, have been completed.

(c) The failure of the applicant to make the initial deposit, and to maintain the account in accordance with this subsection, shall be grounds for rescission of the approval of the plan and for disapproval.

(d) The full cost of any special nonscheduled inspections deemed necessary by the failure of construction to proceed entirely in accordance with the approved plan, or as a result of any question concerning the accuracy of any data provided by the applicant at any time, shall be borne by the applicant.

(e) In the event the Planning Board denies approval of a plan, the account shall be closed and the unexpended funds returned to the applicant within 21 days from the date the subdivision plan was denied an approval.

(f) The Planning Board, in its discretion, may waive or refund the inspection fee in whole or in part to the extent the Board determines that professional or other services were not required in consideration of the definitive plan.

L. "As built" plans, profiles and cross-sections.

(1) Prior to release from the performance guarantee of the last 20% of the lots in a subdivision, the applicant shall submit "as built" plans and profiles, and cross-sections showing the actual constructed interior and access road(s), including any curbing, shoulders, sidewalks/bicycle paths, drainage facilities, invert and top-of-frame elevations for drainage structures, utility service connections (including

sewer, water, electric, etc.), utilities (including sizes, materials, and locations), "as built" contours for detention and retention basins with contour intervals matching those depicted on the subdivision plan, landscaping installed as per the definitive plan approval, and other appurtenances as may have been required to be constructed. "As built" plans, profiles and cross-sections shall be prepared at the same scale and in the same format as those which accompanied the definitive plan. Plans and profiles shall be prepared using data points no less frequently than every 50 feet, except within 50 feet on either side of any catch basins, in which case data points shall be every 25 feet. Plans and profiles shall also show the locations of structures, such as drainage facilities, water lines, sewer lines, electrical, telephone and cable TV lines and their appurtenances.

(2) Cross-sections of the right-of-way showing paving surface, curbing, shoulders and sidewalks/bicycle paths shall be submitted for sections every 200 feet as measured from the center line of adjoining streets. Nine elevation points shall be shown across the right-of-way, including center line of road, five feet off center line in both directions, both edges of surface, edge of right-of-way, top of slope or toe of slope and edge of shoulders. Two-inch or greater core samples shall be taken and reported along with each cross-section to determine thickness of paving material, said samples to be determined by the Planning Board.

(3) "As built" plans, profiles and cross-sections shall be prepared by, bear the stamp of, and be signed by a Registered land surveyor or registered engineer, and shall include the following statement: "I hereby certify that the plans, profiles and cross-sections included herein were prepared as the result of survey work performed on the ground and represent conditions in the field as they existed on _____ (date)."

M. Acceptance of water and sewer lines.

(1) All water lines shown on the subdivision plan shall be offered for acceptance to the local municipal water company prior to the final release of security for the subdivision.

(2) All sewer lines shown on the subdivision plan shall be offered for acceptance to the Town or County of Nantucket prior to the final release of security for the subdivision.

N. Roadway maintenance and open space management.

(1) The Planning Board shall require the formation of a homeowners' association for subdivisions containing common open areas and/or ways which will remain private, the purpose of which is to maintain said private ways and open spaces for the protection of the lot owners in the subdivision.

(2) In cases where a home owners' association is required, there shall be written into each deed out for every building lot in the subdivision a set of covenants and restrictions, the form and content of which shall be subject to the review and approval of the Planning Board, which shall provide for the following:

(a) Establishment of a maintenance trust fund to be drawn upon from time to time by the association to perform needed maintenance to and

reconstruction of private roads, as well as maintenance of common open spaces in the subdivision. Said fund shall consist of two parts:

[1] A maintenance endowment shall be established by the developer in the amount of $200 per lot, prior to the release of any lot in the subdivision. The principal amount of the endowment shall not be drawn upon by the association for at least 25 years from the date of its establishment, at which time it may be drawn upon for maintenance or reconstruction of roads.

[2] Annual maintenance deposits shall consist of interest generated by the endowment and annual assessments made to association members, the amount of such annual assessment to be established by majority vote of the association.

## Part 3
## Layout Design Standards

### § 358-2.13. Zoning bylaw compliance.

All lots shown on the plan shall comply with area, frontage and other requirements of Chapter 139, Zoning, of the Code of the Town of Nantucket.

### § 358-2.14. Public open spaces.

Before approval of a plan by the Planning Board, the Board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes, or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so determined said Board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

### § 358-2.15. Protection of wetlands.

A. All subdivisions shall comply with Chapter 136, Wetlands, of the Code of the Town of Nantucket regarding wetland protection and the Massachusetts Wetlands Protection Act (MGL c. 131, § 40, as amended) and the rules and regulations promulgated under the provision of said act by the Massachusetts Department of Environmental Protection.

B. In addition to compliance of all proposed public improvements with the Wetlands Protection Act and Chapter 136, Wetlands, of the Code of the Town of Nantucket, the layout of all lots and open spaces shall comply with the intent of said Act and Chapter 136 and the rules and regulations promulgated under them[5] by protecting wetlands through the use of one, or a combination of several, of the following methods:

5. **Editor's Note: See Ch. 390, Wetlands Protection, of the Town Regulations.**

(1) Making lots large enough and of such shape and location so that anticipated future structures and access to those structures may be accompanied by full compliance to the Wetlands Protection Act and Chapter 136, Wetlands, of the Code of the Town of Nantucket and their rules and regulations; or

(2) Designating wetland areas as common open space to be deeded, fee simple, to the Nantucket Conservation Commission, a homeowners' association or suitable conservation organization (Nothing herein shall obligate the Town of Nantucket to accept such common open space.); or

(3) The inclusion of conservation easements in the plan to accommodate wetlands areas.

**§ 358-2.16. Floodprone areas.**

A. All subdivisions shall be designed with due regard to the prevention of loss of life and property due to flooding. Areas shall be considered floodprone which appear on the Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps, as amended effective September 13, 1974.[6] Applicants not in agreement with this delineation may appeal the delineation by providing the Board with sufficient positive documentation prepared by a registered engineer, including, but not limited to, maps, profiles and written historical accounts showing that the particular area being appealed is not, in fact, subject to periodic flood hazard. If deemed valid, these materials will be used to petition FEMA to amend the official Flood Hazard Boundary Map for Nantucket. The arrangement, shape, and size of lots on the plan shall protect future development of the site by any one, or a combination of several, of the following methods: **[Amended during codification]**

(1) Lots large enough and of such shape and location that anticipated new structures will be able to be safely sited within areas of each lot so that the lowest floor (including basement) is elevated to or above the level of the one-hundred-year flood may be developed unless the anticipated construction:

(a) Is located landward of the reach of the mean high tide;

(b) Is elevated on adequately anchored piles or columns to a lowest floor level at or above the one-hundred-year flood level and securely anchored to such piles or columns; and

(c) Has no basement and has the space below the lowest floor free of obstructions so that the impact of abnormally high tides or wind-driven water is minimized.

(2) Designating flood hazard areas as common open space to be deeded fee simple to the Nantucket Conservation Commission, a homeowners' association or suitable conservation organization. (Nothing herein shall obligate the Town of Nantucket to accept such common open space.)

**6. Editor's Note: The current FEMA flood maps for Nantucket are dated 6-9-2014. See Ch. 139, Zoning, § 139-12A, of the Code of the Town of Nantucket.**

(3) The inclusion of conservation easements in the plan to accommodate flood hazard areas.

B. All public utilities and facilities, such as sewer, gas, electrical and water systems shall be located, elevated and constructed to minimize or eliminate flood damage. Special drainage measures shall be taken to reduce exposure of areas, both on- and off-site, to flood damage.

### § 358-2.17. Protection of natural features.

Due regard shall be shown for all natural features, such as large trees, watercourses, scenic points, historic locations and similar community assets which, if preserved, will add attractiveness and value to the neighborhood.

### § 358-2.18. Number of dwellings per lot. [Amended during codification]

Not more than one building designed or available for use as a dwelling shall be erected or placed or converted to such use on any lot in a subdivision or elsewhere in the Town, without the consent of the Board, and such consent may be conditional upon the providing of adequate ways furnishing access to each site for lots within a subdivision. A fee shall accompany a request for a second dwelling in the amount set from time to time by the Planning Board. See also Chapter 139, Zoning, § 139-7A, of the Code of the Town of Nantucket.

### § 358-2.19. Further subdivision.

In case a tract is subdivided into larger parcels than ordinary building lots, such parcels shall be arranged so as to allow the logical and economic extension of streets, utility easements, drainageways and public areas into such parcels.

### § 358-2.20. Hazards.

Land subject to hazard to life, health or property shall not be subdivided for residential purposes until such hazards have been eliminated or unless adequate safeguards against such hazards are provided by the subdivision.

### § 358-2.21. Reverse lot frontage.

The Board may require that proposed lots not front on existing major thoroughfares.

### § 358-2.22. Street system.

The street system shall comply with the following requirements for locations and alignments:

A. The street system shall conform to the Master Plan, if any, of proposed streets as adopted in whole or in part by the Board.

B. Streets shall be continuous and in alignment with existing streets as far as practicable.

C. Provisions shall be made for the proper projection of streets if adjoining property is not subdivided.

D. Streets shall be designed to provide the most direct and convenient access to the site for normal traffic and emergency vehicles, while still respecting the natural contours of the land as far as possible.

## Part 4
## Design Standards and Required Improvements

### § 358-2.23. Compliance with minimum standards.

A. Subdivision plans shall comply with the following minimum design standards. Applicants are encouraged to exceed these minimum standards whenever possible.

B. It is difficult to create design standards appropriate to all types and sizes of subdivisions. While the standards included here are applicable to the vast majority of cases, there may be limited instances where different standards may apply, particularly for commercial and large-scale development. For this reason, applicants are urged to discuss their proposals with the Planning Board staff and Board members early in the concept stage of planning, before money is spent on the final design, in order to determine if any different or additional standards would apply due to the unique character of the proposal. The Planning Board reserves the right to require design standards above the minimum standards described herein when a finding is made by the Board that the purposes of the Subdivision Control Law would be better served by doing so.

### § 358-2.24. Roadway layout and parcel perimeter monuments.

A. Monuments shall be installed on both sides of the street:

(1) At all intersections;

(2) At all points in change of direction or curvature; and

(3) No less frequently than one monument every 500 feet for straight sections.

B. Monuments shall be installed at each lot corner along the street.

C. All monuments shall be of reinforced concrete, five inches by five inches by 30 inches. Monuments to be set shall be shown on "as built" plans as a solid box.

### § 358-2.25. Streets.

A. Street width shall depend on the street's functional classification, as follows:

(1) A minor subdivision street which, in the opinion of the Board, provides access to abutting lots, and is not intended for use by through traffic, shall be paved to a

width of not less than 20 feet and shall be designed and constructed in conformance with Part 5, Specifications for Construction of Required Improvements, and as shown on Plate No. 5 in Appendix A.[7]

(2) A secondary subdivision street which, in the opinion of the Board, carries traffic from minor streets to major streets or community facilities shall be paved to a width of not less than 22 feet and shall be designed and constructed in conformance with Part 5, Specifications for Construction of Required Improvements, and as shown on Plate No. 5 in Appendix A.

B. Street intersections shall be laid out as nearly as possible at right angles. No street shall intersect any other street at less than 60°.

C. Changes in grading exceeding 0.5 of 1% shall be connected by vertical curves of sufficient length.

D. Sight distances for subdivision roads intersecting major Island roads shall not be less than 300 feet.

E. Design standards.

(1) The following design standards for streets shall apply:

**Minimum Design Standards for Streets**

| Type of Street | Width of Layout (feet) | Width of Roadway (feet) | Minimum Center-line Radius (feet) | Maximum Center-line Grade | Minimum Center-line Grade | Minimum* Curb Radius at Street Intersection (feet) |
|---|---|---|---|---|---|---|
| Secondary | 40 | 22 | 300 | 6% | 0.5% | 25 |
| Minor | 40 | 20 | 200 | 10% | 0.5% | 15 |

* Right-of-way shall be symmetrical with curbline radii of the street.

(2) These design specifications represent minimum standards. More stringent design criteria may be required by the Board.

### § 358-2.26. Dead-end streets.

A. Dead-end streets shall not be longer than 1,000 feet unless, in the opinion of the Board, a greater length is necessitated by topography or other local conditions.

B. Dead-end streets shall be provided at the closed end with a turnaround having an exterior layout radius of at least 60 feet. The roadway shall have an exterior radius of at least 50 feet. An island suitably landscaped with grass, ground cover, trees, natural rock and/or elements blending with the surroundings shall be provided in the center of the

7. **Editor's Note: Appendix A is included as an attachment to this chapter.**

turnaround with a radius of at least 30 feet. The island shall be enclosed with vertical granite curbing with six-inch reveal from the roadway pavement. (See Appendix A, Plate Nos. 1 and 2, for turnaround and island plan.) An island shall not be required in a temporary turnaround; however, the turnaround shall be paved. When the dead-end street is extended, the turnaround easement shall terminate and the applicant shall be required to remove, regrade and restore the turnaround area to the satisfaction of the Planning Board. Alternate turnarounds are contained in Appendix A, Plate Nos. 3 and 4. The temporary turnaround shall conform to Appendix A, Plate Nos. 1, 2, 3 and 4.[8]

**§ 358-2.27. Street construction.**

All subdivision streets shall be constructed of an approved roadway pavement as specified within Part 5, Specifications for Construction of Required Improvements.

A. Rural road alternative. In certain cases, where approval is sought for a subdivision on land of a rural or sensitive nature, the Board may, at its discretion, waive strict compliance with the requirements of § 358-2.25 in order to allow roads more in keeping with the character of the rural landscape. In such cases, the Board will consider the following factors before granting a waiver of the standard road requirements:

(1) Zoning and density of land use.

(2) Number of lots and probable traffic volume in the proposed subdivision.

(3) Applicable covenants restricting future density increase (e.g., one dwelling per lot).

(4) Projected future development likely to use road.

(5) Other public uses of the road (e.g., beach access).

(6) Road length.

(7) Design of the road and of the development with respect to preservation of open space, scenic amenity, and other conservation measures.

B. The following standards shall apply to rural roads:

(1) Rural roads shall be designed with consideration for the natural contours of the landscape, and should provide adequate natural drainage at all points, while minimizing erosion both on and beside the road. Depressions should be filled to a grade above that of the adjacent roadside and, where possible, natural drainage measures (i.e., swales and retention ponds) shall be employed rather than storm sewers and catch basins. Where natural drainage is used, drainage easements shall be provided to permit maintenance and to countenance possible water accumulation. Appropriate measures should be taken to reduce siltation and to preserve and restore roadside vegetation.

(2) Rural roads shall provide adequate access for emergency vehicles and normal traffic through the provision of turnouts at appropriately spaced intervals.

**8. Editor's Note: Appendix A is included as an attachment to this chapter.**

(3) Design and construction of rural roads shall conform to the specifications of Type 8 pavement (stabilized gravel base) described in § 358-2.54 and Appendix A.[9] Reductions in the width of the traveled way may be permitted, but in no case shall this way be less than 12 feet in width. A standard forty-foot-wide layout shall be maintained throughout.

(4) When the rural road alternative is approved, the applicant shall be required to establish a road maintenance endowment fund, of a sum to be specified by the Board, to ensure the proper long-term maintenance of the road(s). This fund shall be administered by a homeowner's association, with the Planning Board named as a third-party enforcing agent, and shall be used for road reconstruction and its supporting engineering review and inspection. The Planning Board shall devise a maintenance schedule prior to approval, and this schedule shall be incorporated into the documents creating the fund.

C. The Board reserves the right to require applicants to use this rural road alternative where it deems appropriate, notwithstanding the submission of an application expressly requesting use of any of the other roadway specifications outlined in § 358-2.54.

**§ 358-2.28. Storm drainage.**

A. Subsurface drains or subdrains. In areas where the finished grade of the roadway is less than four feet above the water table or in areas where less than four feet of fill is placed above water in swampy places or any standing water, or in other areas where, in the opinion of the Board, the subgrade must be drained, a system of subdrains shall be designed for such areas. The subdrain shall consist of at least one longitudinal drain for each side of the paved roadway. In addition, laterals may be required as directed by the Board in areas in which an undue amount of water could accumulate in the subgrade. The system of subdrains shall be discharged into the storm drain system or otherwise disposed of in a manner satisfactory to the Board.

B. Storm drains. A complete storm drain system shall be designed for each street of the subdivision to the satisfaction of the Board and shall be so laid out and of sufficient size to permit unimpeded flow of all natural waterways, to provide adequate drainage of all portions of the street system so that water does not accumulate thereon, to intercept stormwater runoff from the adjacent lots of the subdivision, and to eliminate undesirable or unnatural accumulation of water on any portion of the subdivision or surrounding property, and to be completely compatible with the existing Town municipal services and waterways. Those conditions which result from a twenty-five-year storm shall be assumed as a basis for design of the street drains. The storm drain system shall include gutters, catch basins, manholes, culverts, drain lines, concrete headwalls and such other items as may be required to complete the system to the satisfaction of the Board.

(1) Catch basins shall be located in pairs, one on each side of the roadway, at all low points or sag curves in the roadway, at intervals of not more than 300 feet on continuous grades of the roadway, at or near the corners of the roadway at

**9. Editor's Note: Appendix A is included as an attachment to this chapter.**

intersecting streets, and at the end of turnarounds. Invert and frame elevations shall be shown.

(2) Manholes shall be located at all changes in direction, either horizontally or vertically, of a drain line or at the intersection of two or more drain lines, or so located that no drain line greater than 500 feet in length would exist without either a catch basin or manhole. Invert and frame elevations shall be shown.

(3) At least one leaching basin shall be annexed to each pair of catch basins proposed. Leaching basins shall be placed in accordance with the above Subsection B(1) and (2) and shall conform to the specifications contained within § 358-2.52. (See Appendix A, Plate No. 12.[10])

(4) All roadway drain pipes shall be a minimum of 10 inches in diameter and be laid on a slope of not less than 0.5%. The designed maximum velocity shall not exceed 12 feet per second. All outfalls shall extend to, and be compatible with, either a natural waterway or an existing drainage system. The ground elevation of all outfall pipes, swales, channels or drainage ditches discharging to a stream, brook, pond, marsh or other wetland should be 0.5 foot to one foot above mean water elevation, or at higher elevations if required by the Planning Board because of special local situations based on consultation with the Conservation Commission. Provision shall be made for the disposal of surface water intercepted or collected by the system in such a manner that no flow is conducted over Town ways above grade, or over the land of others unless a drainage easement is obtained. Where adjacent property is not subdivided, provision shall be made for extensions of the system by continuing appropriate drains to the boundary of the subdivision at such size and grade as will allow their proper projection.

(5) Gas and oil separators shall be installed as required by the Planning Board. (See Appendix A, Plate 13.[11])

(6) Drainage systems within the Public Wellhead Recharge District (as designated in Chapter 139, Zoning, § 139-12B, of the Code of the Town of Nantucket) shall be designed in conformance with the publication entitled "Artificial Recharge: Evaluation and Guidance to Municipalities: A Guide to Stormwater Infiltration Practices in Public Water Supply Areas of Massachusetts," prepared by the Pioneer Valley Planning Commission.

C. Open drainage systems.

(1) Open drainage systems of swales, ridges, and slopes shall be designed to fit the natural contour of the land as much as possible. Disturbed land shall be landscaped to conform to the surrounding area and planted to eliminate the possibility of erosion and siltation. In no case shall side slopes in disturbed areas be greater than 25%. Swales and drainage channels shall have a minimum grade of 0.5% and a maximum grade of 5%, although for small areas draining not more than 0.5 acre, grades of up to 10% are permissible. The ground shall be sloped so

**10. Editor's Note: Appendix A is included as an attachment to this chapter.**

**11. Editor's Note: Appendix A is included as an attachment to this chapter.**

that there is no stagnant water or artificial pools on the site attributable to the open drainage system. Drainage channels and swales shall be provided with easements which shall also permit access by the Town of Nantucket for maintenance purposes. Easements shall conform to § 358-2.29 of these rules and regulations. Drainage channels and swales shall be shown on all plans.

(2) Where the Planning Board determines that the public interest and best interests of the Town and the subdivision will be served by extension of the drainage system outside the boundaries of the subdivision, the Planning Board may require the applicant, at its own expense, to continue the layout and construction of the drainage system to a point outside the boundaries of the subdivision where the drainage system may be connected to, and be compatible with, either a natural waterway or an existing public drainage system.

### § 358-2.29. Easements.

Easements for utilities, bicycle paths and pedestrian paths outside of street rights-of-way shall be provided and recorded as required and shall be at least 20 feet wide for water mains, sanitary sewers and storm drains, 10 feet wide for underground electrical, telephone and cable TV lines, and 15 feet wide for bicycle and pedestrian paths. Slope easements and site and/or scenic easements may be required where deemed necessary. Where a subdivision is transversed by a watercourse, drainageway, channel, other stream or wetland, the Board may require the provision of an easement of adequate width to conform substantially to the line of such watercourse, drainageway, channel, stream or wetland and to provide for the possibility of flood, protection of banks, future maintenance or construction and other necessary purposes.

### § 358-2.30. Access to site.

No subdivision shall be approved which does not have adequate access to the site. The applicant shall show to the satisfaction of the Board:

A. Adequate vehicular access to the subdivision has been provided by a way, or ways, having sufficient width, suitable grades and adequate construction to provide for vehicular traffic and to ensure direct ingress and a rapid response time for emergency vehicles. The Board may require that secondary access be provided for reasons of public safety and convenience. Said vehicular access shall meet the Town's specifications for paved roads described in Part 5. Access roads may, at a minimum, meet the Town's specification for stabilized gravel roads (see Appendix A[12]), provided that the maximum number of lots permitted under current zoning density requirements does not exceed six lots.

B. Adequate utility access from existing utility lines to the subdivision designed to deliver underground electrical and telephone service to serve the land and buildings erected or to be erected thereon.

**12. Editor's Note: Appendix A is included as an attachment to this chapter.**

C. The legal right to pass and repass over such access way or ways and the legal right to install underground utilities in the proposed location.

### § 358-2.31. Shoulders.

A. Pitched shoulders shall extend four feet immediately outside the treated surface, and the slopes joining the sideline of the right-of-way to natural grade shall not be steeper than two horizontal to one vertical.

B. The four-foot shoulder shall be spread with four inches of loam and seeded with grass seed. The remaining area disturbed during the construction program shall be cleared of rocks, stones, or other debris and also spread with four inches of loam and seeded with grass seed. The plane of the loam on the strip between the sideline of the right-of-way and the shoulder shall be two inches above the plane of the loam and the seeded shoulder. (See Appendix A, Plate No. 5, for typical cross-section.[13])

### § 358-2.32. Guard rails and posts.

Guard rails or posts shall be installed where necessary.

### § 358-2.33. Street signs.[14]

Street signs conforming in design to the pattern in use by the Town and bearing the names of the intersecting streets as indicated on the definitive plan shall be installed at all intersections of streets in the subdivision. Street sign design shall be subject to the approval of the Historic District Commission. Street names shall appear on both sides of the sign if placed on a post.

### § 358-2.34. Water pipes and related equipment.

Water pipes and related equipment such as hydrants, main shut-offs and laterals, including shut-offs, to serve each lot in the subdivision shall be constructed in accordance with the regulations and requirements of the Massachusetts Department of Public Health, the Nantucket Fire Department, and, where applicable, the local municipal or private water company. All water lines shall be offered for acceptance to the local municipal water company. A central water supply for more than six units must be approved by the State Department of Public Health and Public Utilities.

### § 358-2.35. Dry sewer lines.

Dry sewer lines shall be installed to service all lots in the subdivision with laterals running to the low points of the property line. Sewer lines and related equipment shall be constructed in accordance with the following specifications:

A. Minimum velocity: two feet per second.

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**13. Editor's Note: Appendix A is included as an attachment to this chapter.**

**14. Editor's Note: See also Ch. 340, Signs, § 340-28, of the Town Regulations.**

B. Design flow: 750 gallons per day per lot.

C. Tight joint pipe.

D. Lift stations and treatment plant to be approved by the Massachusetts Department of Public Health and the Nantucket Department of Public Works.

**§ 358-2.36. Power lines.**

A. Power lines shall be placed underground in accordance with the rules and regulations of the Nantucket Electric Company, provided that they are no less stringent than the Massachusetts Department of Public Utilities regulations. A letter from the Nantucket Electric Company shall be submitted stating that a person qualified to do so and acting on behalf of the Nantucket Electric Company has reviewed the proposed power line installation and that said installation meets with its approval.

B. All lines shall be placed in conduits in all locations where these lines pass under roadway surfaces. A flag shall be erected to mark each conduit location.

**§ 358-2.37. Telephone lines.**

A. All telephone lines shall be placed underground in accordance with the rules and regulations of the New England Telephone Company. A letter from the telephone company addressed to the Nantucket Planning Board shall be submitted stating that a person qualified to do so and acting on behalf of the New England Telephone Company has reviewed the proposed telephone installation and that said installation meets with its approval.

B. All lines shall be placed in conduits in all locations where these lines pass under roadway surfaces. A flag shall be erected to mark each conduit location.

**§ 358-2.38. Landscaping.**

A. A landscape plan shall be presented as part of each subdivision plan. This plan shall clearly show:

(1) The location and size of all proposed trees and other plantings; and

(2) The location and size of all existing trees and other vegetation on the site which are to be preserved.

B. The following standards shall apply:

(1) Existing vegetation shall be preserved wherever possible on every site. All existing trees over three-inch caliper, as well as any tree which has been flagged by the Planning Board or its designee, shall be shown on the landscape plan.

(2) New trees shall be planted on subdivision lots in order to provide shade, visual- and wind-screening, habitat for birds and other wildlife, and visual amenity for future residents. Planting requirements for new trees and other vegetation shall be

determined according to zoning and the density of the proposed subdivision. In general, the following guidelines shall apply: **[Amended during codification]**

| Zone | Planting Requirement |
|---|---|
| ROH, R-1, R-10, R-20, RC, RC-2, LC | One tree of 4" caliper per each proposed lot, planted in the layout or in the front or side setbacks |
| LUG-1<br>LUG-2<br>LUG-3<br>MMD | Any combination of planting of new species and preservation of existing vegetation which will demonstrate to the satisfaction of the Board that: 1) future dwellings will be suitably screened from roads and from each other; and 2) the entire subdivision, including lot and road siting and landscape plantings, has been planned with attention to the topography of the site so that the natural character of the landscape has been preserved and enhanced. |

(3) New tree plantings shall be of a type which is resistant to breakage and is long-lived, clean, and appropriate to the local landscape and growing conditions. Guidelines for species suitable to different local conditions are found below.

(4) All new trees shall have a diameter of four inches or greater, and shall be planted in a good loam and peat moss mixture, and guyed, wrapped, irrigated and otherwise maintained as necessary to ensure their survival.

(5) The subdivider shall be responsible to ensure the survival of all new trees and plantings for a period of one year from the date of their installation. A security, in an amount deemed sufficient by the Board, shall be held by the Board and released upon its certification that the landscaping requirements, including survival of all new plantings, have been met.

| Recommended Tree Species for New Plantings | | |
|---|---|---|
| **d = deciduous** | | |
| **e = evergreen** | | |
| | **Open Areas** | |
| | d | Plane tree (Platanus occidentalis) |
| | d | Gingko (Gingko biloba) |
| | d | Sycamore maple (Acer pseudoplatanus) |
| | d | Thornless honey locust (Gleditsia triacanthus) |
| | d | Japanese pagoda tree (Sophora japonica) |
| | d | Seedless ash (Fraxinus pennsylvatica lanceolata) |
| | e | Red cedar (Juniperus virginiana) |
| | e | Japanese black pine (Pinus thunbergii) |

| Recommended Tree Species for New Plantings | | |
|---|---|---|
| **d = deciduous** | | |
| **e = evergreen** | | |
| | e | Pitch pine (Pinus rigida) |
| | e | Spruce varieties (Picea sp.) |
| | e | White fir (Abies concolor) |
| | e | Arbor vitae (Thuja orientalis) |
| | e | Holly (Ilex opaca) |
| | e | Cryptomeria (Cryptomeria japonica) |
| | e | Sawara false cypress (Chamecyparis) |
| | **Sheltered Areas** | |
| | Any of the above species and, in addition: | |
| | d | Black tupelo (Nyssa sylvatica) |
| | d | Elms (Ulmus carpinifolia, U chinensis, U americana) |
| | d | Sweet gum (Liquidambar styraciflua) |
| | d | Flowering ash (Fraxinus ornus) |
| | d | Linden (Tilia americana) |
| | d | Gray birch (Betula populifolia) |
| | d | Washington thorn (Cratagaeus phaenopyrum) |
| | e | Holly (Ilex opaca) |
| | d | Crabapple (Malus sp.) |
| | d | White poplar (Populus alba) |
| | d | Niobe weeping willow (Salix niobe hort.) |
| | d | Oaks (Quercus rubra, Q. alba, Q. stellata) |
| | d | Black locust (Robinia pseudoacacia) |
| | d | Honeylocust (Gleditsia triacanthos) |

**§ 358-2.39. Fire alarm systems and emergency water supply systems.**

A. Fire alarm systems shall be required where applicable; installation and design shall be approved by the Chief or the Superintendent of Fire Alarms of the Nantucket Fire Department.

B. All lines shall be placed in conduits in all locations where these lines pass under roadway surfaces. A flag shall be erected to mark each conduit location.

C. Subdivisions not served by a public water system shall be provided with an emergency water supply system or, where a natural pond exists, a dry hydrant system, in accordance with the National Fire Code Manual, NFPA 1142, current edition, upon the recommendation of the Nantucket Fire Department. The location, installation and final testing for said systems shall be subject to the approval of the Nantucket Fire Department and shall be of a design capacity as the fire load for the development may require. **[Amended during codification]**

D. A natural pond proposed to be used as a backup source for water for fire fighting shall have adequate access to such pond to accommodate the weight and size of a fire pumper truck.

### § 358-2.40. Sidewalks.

A. Sidewalks, having a width of not less than four feet, constructed of either brick or Portland cement concrete shall be installed on both sides of the roadway along each way in a subdivision. Sidewalks shall be constructed in accordance with the latest revision of the rules and regulations of the Massachusetts Architectural Access Board (521 CMR).

B. The final decision as to the requirement and type of sidewalks will be at the Board's discretion, with due consideration being given to size and number of lots in the subdivision, population density of the subdivision, and location of the subdivision in regard to walking distance to both existing and future schools, shopping districts, etc.

### § 358-2.41. Bicycle paths.

A. Bicycle paths shall be required and shall be designed as follows:

(1) Designed to maximize the safety of path users.

(2) Minimum width: eight feet.

(3) Materials: bituminous concrete over gravel foundation (Appendix A, Plate No. 11[15]).

B. The Board may require that bicycle paths be constructed as necessary to connect the proposed subdivision with the Town's network of major bicycle paths.

### § 358-2.42. Streetlights.

Streetlights shall be required as designated by the Planning Board.

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**15. Editor's Note: Appendix A is included as an attachment to this chapter.**

### § 358-2.43. Bridges.

All bridges shall be built according to AASHTO H20-44 standards.

### § 358-2.44. Curbing and berms.

All streets shall have bituminous concrete "Cape Cod berm," vertical granite, or precast concrete curbing at the discretion of the Board, which shall be placed on both sides of all roadways. In the case where granite or precast concrete is used, the curbing shall extend along the entire circumference of curves plus six feet at all intersections from the point of tangency along the side of each roadway. The Board may waive "Cape Cod berm" in places where the road's design grade is less than 3%.

### § 358-2.45. Soil tests (deep observation holes and percolation tests).

Soil surveys to establish the suitability of the land for the proposed storm and sanitary drainage installations shall be required for all subdivision submissions. Standard Massachusetts Soil Evaluator Forms shall be submitted, signed by a licensed soil evaluator. The frequency of soil samples required and types of the soil test required will be determined by the Board or its agent.

### § 358-2.46. Driveway aprons.

A. Driveway aprons of cobblestone, Belgian block, concrete, brick, or asphalt shall be provided for each lot in the subdivision. Aprons shall extend from the traveled way to two feet beyond the outer edge of any on-site sidewalk/bicycle path or two feet beyond the lot line, whichever is farther. Turning radii shall be provided at each apron's intersection with the traveled way, and apron width may not be less than 10 feet.

B. The Board may require that common aprons be provided for adjoining lots. The Board may modify these requirements to meet local topographical conditions.

## Part 5
## Specifications for Construction of Required Improvements

### § 358-2.47. Compliance standards; review by Board.

A. All improvements specified or implied on the definitive plan shall be designed and constructed by the applicant in accordance with the provisions of this Part 5 of the rules and regulations or as directed by the Board. Items not specifically mentioned herein shall be constructed in accordance with the Standard Specifications for Highways and Bridges of the Massachusetts Department of Public Works, current edition (hereinafter referred to as the MassDPW Specifications), unless specifically directed otherwise by the Board. **[Amended during codification]**

B. All work performed by the applicant as a consequence of these rules and regulations will be subject to the review and acceptance or approval of the Board. The Board may employ a registered professional engineer to act as its agent for the inspection and

supervision of the work. In order for the Board to properly inspect the work as it progresses, the applicant shall keep the Board or its agent informed of the progress of the work, and shall at any time provide safe and convenient access to all parts of the work for inspection by members of the Board or its agent or such persons as the Board may designate. No work will be approved which has been covered prior to inspection by subsequent work. Reference should be made to Part 6 for specific inspections required by the Board.

### § 358-2.48. Subdivision layout.

A. The subdivision, including all way lines and drain lines and municipal services, shall be laid out as to line and grade by a registered land surveyor.

B. Any work which, in the opinion of the Board, has not been properly laid out or does not conform to the plans may be checked by a registered land surveyor employed by the Board. If the Board determines that such work does not conform to the plan, the applicant shall pay all costs which the Board incurs as a consequence of checking the work. The Board may require the removal and correct replacement of any work which has been incorrectly laid out.

### § 358-2.49. Clearing, grubbing and excavation.

All streets shall be graded by removal of all existing brush, stumps and topsoil below the finished grade, to a width of the area occupied by the roadway plus an additional four feet on each side or extending outward to the toe of slopes in fill areas, whichever is greater. Any loam, peat or other material not considered suitable as a subbase shall be completely excavated and replaced with a structural-grade material.

### § 358-2.50. On-site disposal of brush and trees.

If the Board determines that on-site disposal of brush and trees is appropriate, the Board shall approve the method and location of such disposal, which may include controlled burning with the approval of the Fire Chief, burial, chipping or a combination of these methods.

### § 358-2.51. Slope stabilization and erosion control.

A. Adequate erosion protection measures (vegetative and/or structural) shall be made to prevent surface water from eroding cut-and-fill side slopes, road shoulders and other areas brought to final grade and to reduce sedimentation in nearby wetlands and ponds. The applicant shall describe in the application the applicant's plan for minimizing erosion and also a proposed method for controlling airborne dust during construction and before landscaping and ground cover have rooted and grown sufficiently to retard erosion.

B. Erosion protection measures may include the use of mulches and temporary or permanent cover crops. Types of mulch material effective for erosion control are shredded or chopped cornstalks, hay, straw and wood chips. Mulch areas damaged after

heavy rainfalls, severe storms and construction activity shall be repaired as soon as discovered.

C. Where plantings are on areas subject to mulch removal by wind or water flows or where side slopes are steeper than 2:1 or higher than 10 feet, the mulch shall be anchored. Anchoring methods shall include tucking the mulch into the soil with a straight-blade disk, stapling netting (cotton or paper) over the mulch or driving pegs into the mulched area at intervals of about four feet and interlacing them with twine.

D. The Board may require temporary or permanent diversions, berms, grassed waterways, special culverts, shoulder dikes and land grading, where applicable, or such other mechanical measures as are necessary to intercept and divert surface water runoff. Retaining walls may be required where side slopes are steeper than 2:1.

E. The mouths of all catch basins shall be fitted with filter fabric during the entire construction process to retard siltation.

**§ 358-2.52. Drainage system.**

A. The construction of the drainage system, including methods of construction and quality of materials, shall conform to the applicable sections of the MassDPW Specifications except as modified hereafter or as directed by the Board.

B. Any storm drains positioned within the street line and in any location subject to vehicular loading shall be selected from the following list of alternatives and shall be in conformance with the MassDPW Specifications.

| Storm Drain Specifications | |
|---|---|
| **Type** | **Minimum Required Cover (feet)*** |
| Ductile iron pipe | 1.0 |
| Polyvinyl chloride (PVC) pipe | 2.5 |
| Asphalt-coated corrugated metal pipe | 1.5 |
| Reinforced concrete pipe (CL III min. wall B) | 2.5 |

* From top of pipe to bottom of subgrade

C. Pipes made from other materials may be used upon approval of the Board or its authorized agents.

D. Leaching catch basins shall be precast units which conform to the MassDPW Specifications. The cement concrete shall have a compressive strength of 3,000 psi after 28 days and a design loading conforming to AASHTO HS20-44. The leaching catch basin shall conform to Plate No. 12 as shown in Appendix A.[16]

16. **Editor's Note: Appendix A is included as an attachment to this chapter.**

**§ 358-2.53. Subsurface grading and filling.**

Appropriate cuts and fills shall be undertaken in conformance with the plans and profiles as approved and in conformance with MassDPW Specifications.

**§ 358-2.54. Roadway pavement.**

A. Roadway pavement shall be constructed of one of the following approved types of pavement sections:

**Type 1 - Full Depth Pavement**
3-inch bituminous concrete - Type I-1 Hot Mix
6-inch gravel (may use 3" gravel over 4" hardening)

**Type 2 - Full Depth Pavement**
3-inch bituminous concrete - Type I-1 Hot Mix
5-inch dense-graded crushed stone

**Type 3 - Full Depth Pavement**
1-1/2-inch bituminous concrete - Type I-1 Hot Mix
3-inch emulsified asphalt mix - Type I made with processed dense-graded aggregates

**Type 4 - Full Depth Pavement**
2-inch bituminous concrete - Type I-1 Hot Mix
2-inch emulsified asphalt mix - Type II made with semi-processed, crusher-run, pit-run or bank-run gravel

**Type 5 - Full Depth Pavement**
2-1/2-inch bituminous concrete - Type I-1 Hot Mix
2-inch emulsified asphalt mix - Type III made with sands or silty sands, mixed in place

Emulsified asphalt content shall be 14 gallons per ton of aggregate. Cut-back agent for MC-800 cut-back asphalt shall be 4% to 6% of mix. In the case of asphalt in which cold-mix or mix-in-place is used, the finished subgrade shall be primed with no less than 2/10 of a gallon of penetrating oil per square yard and let cure for 48 hours before placing the mix.

**Type 6 - Full Depth Pavement**
4-inch emulsified asphalt mix or MC-800 cut-back asphalt - Type I made with processed dense-graded aggregates
6-inch gravel (may use 3" gravel over 4" hardening)

The surface shall be sealed with a stone seal surface treatment as specified in Appendix A.[17]

**Type 7 - Full Depth Pavement**
Belgium Paving Block
1-1/2-inch stone dust
6-inch gravel (may use 3" gravel over 4" hardening)

Roadway pavement shall be constructed in conformance with the MassDPW Standard Specifications and supplemental specifications contained in Appendix A.[18]

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**17. Editor's Note: Appendix A is included as an attachment to this chapter.**

**18. Editor's Note: Appendix A is included as an attachment to this chapter.**

**Type 8 - Full Depth Pavement**
Stabilized Gravel Base
6-inch stabilized and compacted fill consisting of 35% dense-graded crushed stone and 65% crushed stone fines and silts. (See Appendix A and Plate No. 6.[19])

**Type 9 - Full Depth Pavement**
Cobblestone Pavers
9-inch stone dust
8-inch gravel (See Appendix A and Plate No. 14.[20])

**Type 10 - Full Depth Pavement**
Brick Pavers
1-inch stone dust
4-inch dense-graded crushed stone base
12-inch gravel borrow (See Appendix A and Plate No. 15.[21])

B. All pavement types which utilize emulsified asphalt or cut-back asphalt material shall be allowed to cure a minimum of 30 days to placement of top course.

### § 358-2.55. Cleaning up.

A. The entire area of the subdivision shall be cleaned up so as to leave a neat and orderly appearance free from debris and other objectionable materials. All catch basins and manholes shall be cleaned out.

B. Following the completion of this and other items of work as required herein, a final inspection will be made.

## Part 6
## Inspection

### § 358-2.56. Inspection required; removal or remedy of noncompliant work.

A. All work performed as a consequence of these rules and regulations shall be subject to the review of the Board, which shall approve and accept or disapprove and reject each phase, or portion, of such work and at completion shall recommend the acceptance of all work or disapproval of the work with reasons therefor. The Board may employ a registered professional engineer to act as its agent in the inspection of the work to ensure compliance with these rules and regulations and to report to the Board his/her recommendations as to approval or disapproval of the work. Such engineer will make certain inspections as prescribed herein in order to check the adequacy of the work at various stages prior to such work being covered by subsequent work. The Board, its engineer, and such other persons as the Board may designate shall have the right to inspect the work at any time. The applicant shall at any time provide safe and

**19. Editor's Note: Appendix A is included as an attachment to this chapter.**

**20. Editor's Note: Appendix A is included as an attachment to this chapter.**

**21. Editor's Note: Appendix A is included as an attachment to this chapter.**

convenient access to all parts of the work for inspection by the Board or its authorized agents.

B. All work which has been disapproved or is not acceptable to the Board shall be removed and replaced or otherwise corrected to the point of complying with the requirements of the Board for acceptance. Any work which has been covered by subsequent work prior to acceptance, or is otherwise not available or obscured to the point of rendering inspection of the work difficult, shall be considered to be not acceptable to the Board. Such subsequent work shall be removed as directed by the Board or its agent to ensure availability of the work to be inspected as required herein. The release of the performance guarantee shall depend upon the acceptance of all work prescribed herein and as shown on the definitive plan.

C. At points indicated in § 358-2.59, the construction of the required improvements shall be inspected by the Board or its agent. Unless approval of the work completed, including approval of materials used, to each such point has been given in writing, no further work shall be commenced. Such inspections may include the taking of certain samples for laboratory analysis or testing. In such cases, the applicant shall ensure that the Board or its agent is in no way hindered or obstructed in the course of obtaining such samples. Where such samples are removed from the completed work, the applicant shall replace and restore such work, to the satisfaction of the Board or its agent, to its condition prior to the taking of the sample.

**§ 358-2.57. Notification of Board; liability for costs of reinspection.**

A. The Planning Board shall be notified at least 48 hours before the completion of each of the stages listed in § 358-2.59, in order that it may arrange for proper inspection and approval of the work done. Each stage must be approved by the Planning Board or its agent before work on the subsequent stage can be started.

B. In the event the Board or its agent makes an inspection of the work at the time designated and finds that such work is not at the proper stage of completion or that the work has been covered or otherwise obscured, the Board or its agent shall notify the applicant as to the additional steps the applicant shall take to complete the work to the point required, or to the extent the work shall be uncovered or exposed to full view. The applicant shall notify the Board or its agent again when the work is ready as prescribed in Subsection A.

C. The applicant shall be liable for costs and fees incurred by the Board as a result of requests by the applicant for an inspection of the work which, in the opinion of the Board, was not at an acceptable stage of completion for such inspection.

D. To defray the cost of each reinspection of the same improvement caused by the failure of such improvement to meet the applicable specifications, the subdivider shall, at the time of each request for each subsequent inspection, pay the Town of Nantucket the full amount reasonably necessary to cover the costs of such reinspections.

**§ 358-2.58. Lines and grades.**

Prior to the inspection of any phase of the work, it shall be the applicant's responsibility to provide sufficient line stakes and grade stakes to ensure that a proper inspection may be made. These horizontal and vertical control stakes must be laid out to conform to the lines and grades shown on the approved definitive plan or any approved amendment thereto.

**§ 358-2.59. Required inspections.**

The following inspections of the required improvements shall be required by the Board:

A. Inspection No. 1: Excavation prior to subgrading. An inspection shall be made of the work upon completion of all clearing, grubbing and excavation and all work incidental thereto as may be required. No fill shall have been placed at the time of this inspection.

B. Inspection No. 2: Subsurface grading and filling. An inspection shall be made of the compacted fill as may be required to bring the roadways to their proposed grades. The applicant shall notify the Board or its agent as to the applicant's source of fill as soon as such information is known so that it may be determined if samples and analysis are required. The applicant is advised not to proceed with the filling operation until such time as the Board or its agent notifies the applicant that the proposed fill is acceptable. If the applicant proceeds with the fill prior to such notice, the applicant does so at its own risk.

C. Inspection No. 3: Drainage facilities and utilities.

(1) An inspection will be made of the completed drainage system. At the same time or such other time as the work may be available, an inspection will be made of the completed municipal services (without backfill) as required by the definitive plan. The inspection of the required municipal services will be made by the agency responsible for the particular service. Each agency so involved will notify the Board or its agent of the approval of such work.

(2) Backfill of any portion of the municipal services shall not be made until after receipt of notification of approval or acceptance by the Board or its agent, or the agency responsible.

D. Inspection No. 4: Roadway foundation. An inspection will be made of the compacted roadway foundation.

E. Inspection No. 5: Pavement surface course. An inspection will be made of the completed roadway pavement. Samples of the mix may be taken by the Board or its agent for the purposes of determining if the roadway specifications and pavement thickness meet the requirements of the approved roadway section as contained within § 358-2.54.

F. Inspection No. 6: Final. An inspection will be made of all work as required on sidewalks, curbing, landscaping, seeding, side slopes, monuments, bounds and cleanup.

# Chapter 363

# TANKS, UNDERGROUND


ARTICLE I
**General Provisions**

**§ 363-1. Authority.**
**§ 363-2. Findings and purpose.**
**§ 363-3. Definitions.**
**§ 363-4. Liability for costs.**
**§ 363-5. Variances.**

ARTICLE II
**Underground Gasoline Storage Facilities**

**§ 363-6. Tank registration.**
**§ 363-7. Periodic tank and pipe testing.**
**§ 363-8. Gasoline tank design and installation specifications.**
**§ 363-9. Tank and pipe removal.**

ARTICLE III
**Underground Fuel Oil Storage Facilities**

**§ 363-10. Tank registration.**
**§ 363-11. Notification of removal or replacement.**
**§ 363-12. Fuel oil delivery restrictions.**
**§ 363-13. Tank testing.**
**§ 363-14. Installation specifications for new fuel oil tanks.**
**§ 363-15. Vent alarms.**
**§ 363-16. Tank removal and disposal; piping repair.**
**§ 363-17. Violations and penalties.**


**[HISTORY: Adopted by the Board of Health of the Town of Nantucket 12-12-1984. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Underground fuel storage tanks — See Ch. 135.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**

**Toxic and hazardous materials — See Ch. 371.**

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ARTICLE I
**General Provisions**

## § 363-1. Authority.

The Town of Nantucket Board of Health hereby adopts the following regulations under powers authorized by MGL c. 111, § 31.

**§ 363-2. Findings and purpose.**

Nantucket Island's sole source of drinking water is its groundwater. Because of the Island's location 22 miles at sea, there is no opportunity to pipe water to the Island should this source be contaminated. The purpose of these regulations is to protect groundwater and surface waters from one potentially lethal source of contamination: leaking underground fuel and chemical storage tanks.

**§ 363-3. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

CATHODIC PROTECTION — A system which inhibits the corrosion of a tank or components through either the sacrificial anode or the impressed current method of creating a corrosion-inhibiting electrical current.

COMPONENTS — Piping, pumps and other related storage, conveyancing and dispensing elements which are installed underground and which, together with one or more tanks and any cathodic protection or monitoring system, constitute a storage system or facility.

FUEL OIL — Any petroleum product used for space or water heating, including, but not limited to, No. 2 fuel oil and kerosene.

GASOLINE — Any fuel which can be used to fuel Otto or diesel cycle internal combustion engines.

OPERATOR — The lessee of a storage facility or the persons responsible for the daily operation of a storage facility.

OWNER — The person or persons, corporation, real estate trust or other similar entity, including any government entity, having legal ownership of a storage facility.

UNDERGROUND TANK — Tanks installed below grade, in whole or in part, and shall include tanks installed above ground in which the tank itself, other than support structures, is in direct contact with the ground.

**§ 363-4. Liability for costs.**

In every instance except inspection and testing pursuant to § 363-13, the owner shall assume responsibility for all costs incurred necessary to comply with this regulation.

**§ 363-5. Variances.**

The Board of Health may vary the application of any provision of this regulation, unless such variance is otherwise prohibited by law, when, in the opinion of the Board, the applicant has demonstrated that an equivalent degree of groundwater protection will be provided. The Board of Health shall notify all abutters to the subject property by certified mail sent to their residence address as set forth in the most recent Assessor's record at least 10 days before the Board of Health meeting at which the variance will be considered, advising said abutters of the variance requested and the time and place of the meeting. Any approval or denial of the variance shall be in writing and shall include findings which were the basis for the decision

to approve or deny. The Board of Health may include in any approval of a variance additional requirements that must be met as a condition for granting such a variance.

## ARTICLE II
## Underground Gasoline Storage Facilities

### § 363-6. Tank registration.

A. Every owner of an underground gasoline storage system shall register with the Board of Health the size, type, age and location of each tank, and the type of material stored, on or before June 1, 1985. Information on the date of purchase, date of installation, and evidence of the issuance of a Fire Department permit shall be provided as part of such registration.

B. Owners of storage systems for which evidence of installation date is not available shall, by order of the Board of Health, have such tanks tested or uncovered for inspection. If, in the opinion of the Board of Health or the Fire Chief, the tank is not product tight, it shall be removed forthwith at the owner's expense.

### § 363-7. Periodic tank and pipe testing.

A. All underground gasoline storage tanks and piping systems shall be subject to a Petro-Tite (Kent-Moore) or leak locator test, or any other state-approved test providing equivalent safety and effectiveness in the opinion of the Nantucket Board of Health. Such tests shall be conducted prior to the 10th anniversary of the installation of the tank and annually thereafter. Air-pressure tests shall not be permitted on tanks which have or have had petroleum product in them.

B. The Nantucket Board of Health may postpone the testing required above for new tanks installed after the effective date of these regulations until the fifth year prior to the predicted mean age to leak as established by a method of predictability analysis which is recognized by the petroleum industry and approved by the Board of Health. The method shall be based upon, at a minimum, the following factors: soil pH, soil moisture, soil conductivity, tank size, type of backfill, height of water table, tank depth, and the presence or absence of sulfides in the soils. In no case shall the "fifth year prior to mean age" be in excess of 25 years after the installation. Testing will be required annually thereafter.

### § 363-8. Gasoline tank design and installation specifications.

All new or replacement gasoline tanks and their components shall be designed and constructed in accordance with the following specifications in order to provide maximum protection against corrosion and leakage.

A. Type of tank. Only the following tank systems shall be approved:

(1) UL-listed fiberglass-reinforced plastic (FRP) tanks. Fiberglass tanks shall be installed only by an installation contractor approved by the manufacturer of the tank.

(2) UL-listed steel tanks provided with cathodic protection, with a coal-tar epoxy or urethane coating and electrical isolation, and equipped with a test box to measure electrical potential.

(3) Steel tanks with bonded fiberglass coating, compatible inner corrosion-resistant lining and electrical isolation, the integrity of the outer coating to be verified by electrostatic testing and guaranteed by the manufacturer.

(4) Double-walled steel tanks with bonded fiberglass coating, electrical isolation, a vacuum of air pressure in the interstitial space and provision for continuous monitoring of the vacuum or air pressure.

(5) Any other "state-of-the-art" type tank construction approved by the State Fire Marshal, by the Board of Health and Fire Chief.

B. Striker plates. All new or replacement gasoline tanks must be equipped with a metallic or nonmetallic striker plate, at least 24 inches by 24 inches in area, at least 1/4-inch thick, and attached to the bottom of the tank under each opening.

C. Corrosion protection. All new or replacement tanks, including all accessory components, shall be protected against corrosion by use of noncorrosive materials or by use of cathodic protection and electrical isolation and be compatible with the product to be stored in the facility. All cathodic protection systems shall be tested annually by a qualified person and shall have at all times a negative voltage of at least 0.85 volt, as measured by a test box, between the structure being protected and a saturated copper-copper sulfate reference electrode contacting the soil electrolyte; provided that if a zinc reference electrode is used, the negative voltage must be at least 1.95 volts. These measurements shall be made with sacrificial anodes attached, or if impressed current is used, with the rectifier turned on.

D. Testing compatibility. All new or replacement gasoline tanks shall be designed, constructed and installed so as to allow testing for tightness or replacement without the need for disturbing elements of the storage facility other than the elements that are to be tested or replaced.

E. Backfilling. The Board of Health and the Fire Chief, or their agents, shall be present during the backfilling operations. The quality of the materials used for backfilling shall be subject to the approval of the Board of Health and Fire Chief, or their agents.

F. Testing after installation. All new or replacement tanks and their components shall be tested separately at the owner's expense, prior to being covered. The tank shall be tested hydrostatically, or by air pressure at not less than three pounds per square inch but not more than five pounds per square inch. The piping shall be tested hydrostatically to 150% of the maximum anticipated pressure of the system or tested pneumatically, after all joints and connections have been coated with soap solution, to 100% of the maximum anticipated pressure of the system, but not less than 50 pounds per square inch at the highest point of the system. After the tank and piping have been fully covered, the area paved and the tank filled with product, the tank and its piping shall be

again tested, separately, at the owner's expense, by any state-approved test, not involving air pressure, which is accurate to 0.05 gallon per hour or less, after the adjustment for variables, and which is approved by the Board of Health with a certified copy of the results of all testing required by this subsection, which the Board of Health shall keep with the records for the storage facility.

### § 363-9. Tank and pipe removal.

Effective January 1, 1988, all underground gasoline storage systems which do not meet the design specifications as set forth in § 363-8 shall be removed and properly disposed of at an age of 20 years after installation.

## ARTICLE III
## Underground Fuel Oil Storage Facilities
## [Added 8-14-1985]

### § 363-10. Tank registration.

Every owner of an underground fuel oil storage tank existing on the effective date of these regulations shall register with the Board of Health the type, size, date of original installation and location of all underground fuel oil storage tanks on or before January 1, 1987. Every owner of any underground fuel oil storage installed or replaced after the effective date of these regulations shall register with the Board of Health the type, size, date of installation and location of such tanks within 30 days of such installation or replacement.

### § 363-11. Notification of removal or replacement.

The Board of Health shall notify registered owners of underground fuel oil tanks of the date of required removal or replacement of such tanks pursuant to § 363-16 below one year prior to such required date of removal or replacement.

### § 363-12. Fuel oil delivery restrictions.

A. Fuel vendors shall be prohibited from delivering fuel oil to the following types of underground fuel oil tanks:

(1) Tanks which are not registered with the Board of Health, effective January 1, 1987.

(2) Tanks located in the Aquifer Protection Zone, as shown on the Zoning Map, which have a date of original installation greater than 20 years prior, effective June 15, 1987.

(3) Tanks located anywhere in the Town which have a date of original installation greater than 20 years prior, effective June 15, 1988.

B. In order to avoid property damage due to frozen pipes as well as to avoid adverse effects on personal health, nothing in this section shall prohibit fuel vendors from

delivering or filling fuel oil to tanks meeting the description of Subsection A above, on an emergency basis only, during the heating season from September 15 to June 15, inclusive, provided that the vendor notifies the Health Inspector in writing within 30 days of having done so that such an emergency delivery has been made. Emergency deliveries shall be limited to one heating season, except by written permission of the Board of Health.

### § 363-13. Tank testing.

The Nantucket Board of Health hereby has the right to enter onto private property in order to inspect and test underground fuel oil tanks which it suspects, in its sole judgment, may pose a hazard to public health or safety. The cost for such inspection and testing shall be borne by the Board of Health if the tank so tested passes the test and shall be borne by the owner of the tank if the tank fails the test.

### § 363-14. Installation specifications for new fuel oil tanks.

Following the effective date of these regulations, the installation of fuel oil tanks shall meet or exceed one of the following specifications:

A. Basement installation. Tanks shall be installed above ground in basements on a three-inch reinforced concrete floor or single pad. If a pad is used, the outside dimensions of the pads shall exceed by six inches the outside dimensions of the tank to be installed and shall include a one-inch-high containment lip around its perimeter.

B. Above-ground outdoor installation. Tanks shall be installed above ground outside the structure on a three-inch-thick, single, reinforced concrete pad, the outside dimensions of which shall exceed by six inches the outside dimensions of the tank to be installed. The tank may be screened by a board fence meeting the requirements of the Historic District Commission and/or the planting of a dense hedge or line of shrubs.

C. Underground tank installation outside Aquifer Protection District. Tanks meeting or exceeding the specifications for an STI-P3 steel tank, or UL-listed seamless spherical fiberglass tanks, may be installed underground if they are located outside the Aquifer Protection District, as delineated on the Town's Zoning Map. Such tanks shall be covered by a thirty-year written warranty by the manufacturer. Underground fuel oil tanks exceeding 1,000 gallons shall comply with the periodic tank and pipe testing requirements applicable to underground gasoline tanks found in § 363-7 of these regulations.

D. Underground tank installation inside the Aquifer Protection District. Double-walled steel tanks meeting or exceeding a Type 1 UL 58 secondary containment, or double-walled UL-listed spherical fiberglass tanks, may be installed underground if they are located within the Aquifer Protection District, as delineated on the Town's Zoning Map. Such tanks shall be covered by a thirty-year written warranty by the manufacturer, and shall include a means for continuously monitoring the space between the inner and outer wall for leaks in either wall, fitted with both visual and audible alarms. Underground fuel oil tanks exceeding 1,000 gallons installed after the effective date of

these regulations shall comply with the periodic tank and pipe testing requirements applicable to underground gasoline tanks found in § 363-7.

### § 363-15. Vent alarms.

All new installations of fuel oil tanks, whether above ground or below ground, shall be fitted with a functioning vent pipe alarm.

### § 363-16. Tank removal and disposal; piping repair.

A. Following the effective date of these regulations, any derelict or unused underground fuel oil tank, or any underground fuel oil tank found to be leaking by the Board of Health, Fire Chief or their respective agents, or any underground fuel oil tank that exceeds 20 years of use shall be removed and properly disposed of forthwith. The proper tank disposal method to be employed by the owner, particularly the condition under which said derelict or unused tank is to be removed from the site, transported and finally disposed of, shall be determined by the Fire Chief on a case-by-case basis in conformance with applicable state and federal regulations, which method shall include, as a minimum, the complete removal of any residual product found in the tank prior to excavation of the tank.

B. Any piping leading to or from a tank which is found to be leaking or not properly installed shall be repaired or replaced forthwith.

### § 363-17. Violations and penalties.

Any violation of Article III of these regulations by an owner of an underground fuel oil storage tank shall result in the prohibition of fuel oil delivery to an owner's tank, by order of the Board of Health. The Board of Health shall notify the owner of such prohibition and the owner's vendor of fuel oil by registered or certified mail within 30 days of such action.

# Chapter 367

# TAXICABS, CHARTER, LIMOUSINE AND TOUR VEHICLES


ARTICLE I
**Taxicabs**

**§ 367-1. Definitions; purpose.**
**§ 367-2. Taxicab licenses; vehicle condition; operating requirements.**
**§ 367-3. Taxicab operators.**
**§ 367-4. Prohibited practices.**
**§ 367-5. Fares.**
**§ 367-6. Violations and penalties.**
**§ 367-7. Authority; enforcement; severability.**

ARTICLE II
**Charters, Limousines and Tour Vehicles**

**§ 367-8. Definitions; purpose.**
**§ 367-9. Charter, limousine and tour vehicle licenses; vehicle condition; operating requirements.**
**§ 367-10. Charter, limousine or tour vehicle operators.**
**§ 367-11. Prohibited practices.**
**§ 367-12. Rates; minimum rental.**
**§ 367-13. Violations and penalties.**
**§ 367-14. Authority; enforcement; severability.**


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 3-23-1993. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Noncriminal disposition of violations — See Ch. 1, Art. II.**
**Buses — See Ch. 27.**
**Motor vehicles on beaches — See Ch. 56.**
**Bicycles and mopeds — See Ch. 57.**
**Motorized passenger devices — See Ch. 98.**
**Abandoned vehicles — See Ch. 104.**

**TOWN REGULATIONS REFERENCES**

**Pedicabs — See Ch. 316.**
**Traffic — See Ch. 375.**

## ARTICLE I
## Taxicabs

**[Amended 5-16-1994; 5-24-1995; 6-25-1997; 6-4-1998; 3-12-2003; 5-19-2005; 4-18-2007; 2-25-2009; 6-2-2010; 5-16-2012; 5-8-2013; 12-18-2013; 4-22-2015; 5-6-2015]**

### § 367-1. Definitions; purpose.

A. As used in these regulations the following terms shall have the following meanings, unless a different meaning is clearly apparent from the language or context.

ACCESSIBLE TAXICAB — A taxicab that is built to accommodate a motorized or nonmotorized wheelchair.

ACCESSIBLE TAXICAB OPERATOR — A person licensed by the Town to operate an accessible taxicab.

NANTUCKET COMMISSION ON DISABILITY — Represents and advocates for the needs and interests of the disabled community living on or visiting the Island of Nantucket pursuant to MGL c. 40, § 8J.

NUMBER PLATE — The sign or marker furnished by the Registry of Motor Vehicles on which is displayed the register number or mark of a motor vehicle assigned to such motor vehicle by the Registry of Motor Vehicles.

OFFICIAL WAITING LIST — The official codified list of names of prospective taxicab license applicants managed by the Town.

OFFICIAL WAITING LIST FORM — The form prospective applicants must complete to be placed on the Official Waiting List.

POLICE OFFICER or OFFICER — Any officer authorized to make arrests or serve criminal process, provided he/she is in uniform or displays her/his badge of office.

RELATED PARTIES — The applicant; any person who is a parent, spouse or child of the applicant; any entity (including, without limitation, corporations, partnerships, limited partnerships, limited-liability companies or other business entities) in which a related party holds more than a 50% direct or indirect ownership of the stock, capital or profits.

SELECT BOARD — The duly elected members of the Select Board for the Town of Nantucket, Massachusetts.

STAND — Halting of a motor vehicle, whether occupied or not. This term does not include halting to receive or discharge passengers.

TAXI STAND — A place or station in a way in the Town where taxicabs are authorized and required to park while waiting to be engaged for hire.

TAXI ZONE MAP — A geographical map of the Town defining specific boundaries between taxi fare destinations for the purposes of calculating the taxi fare.

TAXICAB — Any motor vehicle used or to be used for the conveyance of 10 or fewer persons, including the operator, for hire from place to place.

TAXICAB BUSINESS OWNER — Any person, persons, or corporate entity holding a majority interest in a business which operates any motor vehicle or vehicles used or to be used for the conveyance of persons for hire from place to place.

TAXICAB LICENSE — A license issued by the Town to a taxicab business owner specifying the number of taxicabs for that business and authorizing the use of said taxicab(s) after approval of the Town Manager.

TAXICAB OPERATOR — A person licensed by the Town to operate a taxicab.

TAXICAB OPERATOR'S LICENSE — A picture identification badge with a current validation sticker affixed issued by the Nantucket Police Department authorizing the holder to operate a taxicab.

TEMPORARY TAXICAB OPERATOR'S LICENSE — A license issued by the Town authorizing the holder to operate a taxicab on a limited or temporary basis for a period not to exceed 30 days.

THE REGULATIONS or REGULATIONS — Chapter 367, Article I, of the Town regulations of the Town of Nantucket.

TOWN — The Town and County of Nantucket, Massachusetts.

TOWN CLERK — The duly elected Clerk for the Town of Nantucket, Massachusetts.

TOWN MANAGER — The duly appointed Town administrator for the Town of Nantucket.[1]

VALIDATION STICKER — A sticker issued by the Town, which shall be affixed to the taxicab license. Said sticker shall indicate the expiration of the taxicab license.

VEHICLE DECAL — A sticker issued by the Town Clerk that shall be affixed to the interior of the windshield on the taxicab operator's side lower corner where the windshield meets the vehicle hood and door pillar of the taxicab. The vehicle decal shall be visible-from the exterior of the taxicab. An accessible taxicab shall be allowed to display the universal "wheelchair accessible" symbol.

WAY — Any public way, private way laid out for public use, any way indicated for public use or any way to which the public has a right of access as invitees, licensees or guests.

WINTER MONTHS — December, January and February of any given year.

B. Purpose. The purposes of the regulations, to be adopted pursuant to the authority of MGL c. 40, § 22, are to serve the public need and convenience and to promote the public health, welfare and safety of the residents of and visitors to the Town.

## § 367-2. Taxicab licenses; vehicle condition; operating requirements.

A. Taxicab license application.

(1) The Select Board may periodically determine the total number of taxicab licenses available for issuance to operate a taxicab in the Town, and annual taxicab license fees or fees associated with the Official Waiting List.

(2) In addition to the number so determined in Subsection A(1) of this section, there shall be at least two more taxicab licenses available for issuance for an accessible taxicab, to be issued to an applicant who agrees to operate seven days a week on demand 18 hours per day and who agrees to provide accessible taxicab operators who shall comply with the Code of Federal Regulations and shall comply with Subsection M of this section, at all times.

(3) Official Waiting List. In conjunction with monitoring available taxicab licenses, the Town will codify and actively manage an Official Waiting List of prospective

1. **Editor's Note: The definition of "unofficial waiting list," which followed this definition, was repealed during codification.**

applicant names based on order of submission by those interested in acquiring future taxicab licenses. The Unofficial Waiting List as of June 1, 2007, shall serve as the initial reference for the Official Waiting List. Applicants listed on the Official Waiting List shall retain their seniority on the list until such time any applicant requests removal from the list or does not provide annual written confirmation of interest to remain on the Official Waiting List. The Town will update the Official Waiting List in May of each year, and it is the responsibility of the prospective applicants to provide written confirmation of interest to remain on the Official Waiting List prior to the deadline established by the Town. Effective January 1, 2009, the Town may require prospective applicants to annually complete an "Official Waiting List Form" to be eligible for continued inclusion on the Official Waiting List.

(4) An application fee set by the Select Board or its designee shall be payable at the time of application and at the time of written annual confirmation of interest by an established deadline for those applicants on the Official Waiting List.

(5) An application for a taxicab license shall be made out by the taxicab business owner at the time the owner of the taxicab business becomes eligible for a taxicab license as determined in Subsection A(3) of this section. Such application shall set forth under oath all information that the Select Board may require. Each new applicant for an original taxicab license shall apply to the Town Manager for approval.

(6) An applicant who is denied a taxicab license by the Town Manager may appeal the decision to the Select Board. The request for an appeal must be made in writing and filed with the Select Board within 30 days of the issuance of the Town Manager's decision.

(7) Each taxicab license authorizes only one taxicab. No related parties shall hold more than four taxicab licenses at any one time. Related parties, as that term is defined in § 367-1 of this article, shall be considered and deemed to be one person, one business or one corporation for purposes of the regulations. Applicants shall not be eligible for more than one taxicab license in any twelve-month period. An application for a taxicab license shall be deemed to be a joint application by the applicant and all related parties.

(8) To be eligible for any additional taxicab licenses, the applicant must apply in the same manner as for an original license.

(9) Effective January 1, 2009, all applicants or prospective applicants for a taxicab license shall possess a current and valid Massachusetts motor vehicle driver's license, and be at least 18 years of age.

(10) Except as otherwise provided by law, no person shall engage in the business of transporting persons from place to place for hire in a motor vehicle without first having obtained a taxicab license from the Town Clerk.

B. Residency and address of record.

(1) No taxicab license shall be issued unless the proposed licensee demonstrates familiarity with the roads of the Town, to the satisfaction of the Chief of Police

or designee; provided, however, that anyone who has resided in the Town for at least one year prior to the application for such a license is to be presumed, in the absence of evidence to the contrary, to be familiar with the Town's roads.

(2) For a taxicab license, the address set forth in the taxicab license application shall be considered the address of record for all official business correspondence between the Town and the licensee. It shall be the responsibility of the licensee and applicant to provide written changes of address to the Town Clerk as necessary.

(3) For the Official Waiting List, the address set forth in the Official Waiting List Form shall be considered the address of record for all official business correspondence between the Town and the prospective applicant. It shall be the responsibility of the prospective applicant to provide written changes of address to the Town as necessary.

C. Possession of license. The taxicab license, or a photocopy of such license certified by the Town Clerk, shall be displayed in the interior of the taxicab in clear view of the passengers. Each vehicle licensed under the regulations shall, after payment of the fee and compliance with all application and licensing requirements, receive a vehicle decal from the Town Clerk, which shall be affixed to the licensed motor vehicle in accordance with the regulations. The address of the taxicab licensee is allowed to be removed from the display license; however, it must be on file with the Town Clerk's office and Police Department.

D. License fee. The fee for a taxicab license shall be set from time to time by the Select Board for each motor vehicle authorized by the Select Board to be operated under the regulations. There shall be a fee in an amount set from time to time by the Select Board for the transfer of a taxicab license from one vehicle to another during the current year of issuance after initial receipt. **[Amended during codification]**

E. Proof of registration. No taxicab license shall be issued by the Town Clerk until the applicant presents proof of registration and insurance appropriate for the operation of a taxicab and provided that such insurance and registration complies with the appropriate provisions of MGL c. 90. All applicants must present to the Town Clerk an original Massachusetts vehicle registration that clearly indicates the maximum passenger capacity of the motor vehicle being licensed. If such registration document does not indicate maximum passengers, then the applicant must provide the original motor vehicle title document issued by the Massachusetts Registrar of Motor Vehicles. The Town Clerk is prohibited from issuing any taxicab license to a motor vehicle which exceeds a carrying capacity of 10 persons, including the taxicab operator.

F. License transfer.

(1) No taxicab license provided for in the regulations shall be sold, assigned or transferred, nor shall a majority in interest of any entity holding such a license be sold, assigned or transferred without the approval of the Select Board. Such sale, assignment or transfer, without such approval, shall automatically terminate said license, and any such license held shall immediately be surrendered to the Town Clerk. The Town maintains a waiting list for those applicants who wish to obtain a taxicab license when it becomes available, as defined in § 367-1 and codified at

§ 367-2. The Select Board shall deny a request for a sale, assignment or transfer of an available taxicab license if there is any applicant on the Official Waiting List at the time of such request, except as provided for in Subsection F(3).

(2) No motor vehicle which is operated under the regulations shall be leased or borrowed by the taxicab license holder without the approval of the Select Board or its designee. No person or business which holds a taxicab license shall allow said license to be used or in any way controlled by any other person or business that is not the taxicab license holder as approved by the Select Board or its designee.

(3) Legacy taxicab licenses. The spouse or immediate family member (i.e., mother, father, son, daughter, sister, brother, registered domestic partner) of a current taxicab license holder who dies or becomes legally incapacitated may apply for the license within 30 days of the death or determination of incapacitation of the taxicab license holder. Upon approval by the Select Board, the taxicab license may be transferred to the spouse or immediate family member, if said person does not already hold a taxicab license.

G. Vehicle inspections; vehicle condition.

(1) Taxicabs are subject to periodic inspections by the Police Department throughout the year to determine fitness for continued operation, compliance with the regulations, and availability to serve the public.

(2) Taxicabs shall comply with all provisions relative to the operation and equipping of motor vehicles under MGL c. 89 and c. 90, any bylaw of the Town, or any rule or regulation promulgated by the Massachusetts Registrar of Motor Vehicles.

(3) Taxicabs shall be well maintained and be in a good and reliable mechanical condition. Taxicabs must have a valid state inspection sticker. No motor vehicle shall be operated with an inspection "rejection" for equipment or emissions, in accordance with state requirements.

(4) Taxicabs shall be clean inside and outside and be well-painted; all wheels of said taxicab shall be covered with hubcaps if so designed.

(5) Any violation of this subsection shall result in the automatic suspension of the right to operate the taxicab; such suspension shall not be rescinded until said violations are corrected to the satisfaction of the Town.

H. Rate posting. The holder of a taxicab license or a taxicab operator shall display the current fares and fees in the interior of the taxicab so as to be seen by any passenger(s) and shall make this information available to the passenger(s) upon request.

I. Fares.

(1) No holder of a taxicab license shall charge or receive fares for the hire of a taxicab in any sums of money other than those prescribed by the fee schedule promulgated by the Select Board and from time to time amended.

(2) The holder of a taxicab license or taxicab operator license shall clearly display a Contact Information Card on the rear of the driver's seat in the format approved by the Town.

J. Advertisements.

(1) No advertisements of any kind shall be displayed upon a taxicab.

(2) Rates or fares may not be displayed on the exterior of a taxicab.

(3) All taxicabs shall have permanently affixed to both sides of the vehicle, with letters at least three inches high but not higher than six inches, the name and company licensed to operate the taxicab. The taxicab operator's name, address and telephone number may be placed upon the taxicab's window glass; however, such information shall be placed so as to not impair or impede the operation of the taxicab or violate any provision of Massachusetts General Laws.

(4) All taxicabs shall have permanently affixed to the windows on both sides of the vehicle, and the rear window, a unique identification number found on the taxicab license issued by the Town Clerk's office. These numbers shall be four inches high and of contrasting color to the background so that they are clearly visible to passengers entering and exiting the taxicab.

(5) Any taxicab licensed under the regulations that advertise twenty-four-hour service shall be available if and when called.

(6) No taxicab business owner shall advertise in any manner, form or publication that its taxicab(s) is available for tours.

K. Record of trips.

(1) The taxicab operator for hire shall maintain a record of trips during all shifts worked. The written record of trips must be available for inspection, upon demand, by a police officer and must be turned in to the motor vehicle owner for recordkeeping purposes at the end of the taxicab operator's shift.

(2) The taxicab business owner must produce, upon demand of the Chief of Police, or any person designated by the Chief of Police, a record of all trips made by such taxicab(s) as the Chief of Police or the Chief of Police's designee requests for a period of up to 180 days, in addition to the name and address of the taxicab operator(s), the time of the beginning and termination of each trip, location of the first and last stop on each trip, and the total fare charged for each trip.

(3) Taxicab operators shall issue trip receipts upon request to paying customers using the approved Town format for same.

L. Duration of license.

(1) Taxicab licenses shall be valid from June 1 through May 31. Annual taxicab licenses may be renewed upon payment annually on or after May 15 and no later than May 31. There shall be no extensions or grace period after May 31, except that the Town may issue such license provisionally prior to May 31 pending the approval of the fingerprint-supported record check. Such provisional license shall

only be issued if the taxicab owner has met all conditions which would warrant the issuance of the license, including payment of any applicable fees and submission of fingerprints. If the applicant's record check produces a disqualifying record, the taxi license issued provisionally shall summarily be revoked.

(2) If a new taxicab license is granted during the year, the licensee shall accept and pay for said license no later than 30 days after said approval. Failure to do so will result in the license being invalid.

(3) All holders of taxicab licenses shall comply with MGL c. 62C, § 49A stating that such holder has complied with all laws of the Commonwealth relating to taxes prior to receiving her/his taxicab license from the Town Clerk.

(4) All taxicabs licensed by the Town must be operated during the months of June, July and August. Failure to do so will result in revocation of said license, which shall immediately be surrendered to the Town Clerk.

(5) Taxicabs not operating year-round shall notify the Town Clerk prior to ceasing to operate during any portion of the winter months.

M. Accessible taxicabs. Accessible taxicabs shall operate in the same fashion as the current taxi service in Town. Accessible taxicabs are not for the exclusive use of wheelchair users and may be utilized by the general public. All accessible taxicabs shall be equipped to accommodate a motorized and nonmotorized wheelchair and shall comply with the following restrictions as set forth in this section.

(1) A taxicab license for an accessible taxicab is strictly for the use of a wheelchair-accessible taxicab. If at any time an accessible taxicab needs to be replaced, it must be replaced with another wheelchair-accessible taxicab or the taxicab operator or taxicab business owner must surrender the license.

(2) An accessible taxicab shall operate seven days a week, and be on demand 18 hours per day.

(3) An accessible taxicab shall comply with the Code of Federal Regulations (49 CFR 38.23) in the following areas:

(a) The lift or the ramp must comply with 49 CFR 38.23;

(b) The securing devices and seatbelt and shoulder harness must comply with 49 CFR 38.25; and

(c) The accessible door height and overhead clearance must comply with 49 CFR 38.25.

(4) The accessible taxicab operator shall be knowledgeable in the following areas:

(a) The operation of a lift or ramp for the entry into the taxicab of a wheelchair;

(b) Securing the wheelchair in the taxicab; and

(c) Providing proper assistance to a disabled passenger.

(5) The holder of an accessible taxicab license or taxicab business owner shall be responsible for training all its operators about the accessible features of the accessible taxicab and is responsible for educating these operators about the regulations.

(6) An accessible taxicab operator shall be required to participate in ADA sensitivity training conducted by the Nantucket Commission on Disability, and it shall be the operator's responsibility to complete this training prior to operating an accessible taxicab.

(7) The Nantucket Commission on Disability will inspect all accessible taxicabs on an annual basis to ensure that the accessible taxicab meets the requirements of the regulations prior to issuance of a taxicab license for an accessible taxicab. Failure to pass this inspection will result in the suspension of said license.

(8) An accessible taxicab shall service the Steamship Authority, Airport and all Town Taxi Standing Areas, as that term is defined in the regulations.

(9) An accessible taxicab shall provide Town-wide services.

(10) The taxicab fare for a wheelchair user shall be the same as for an ambulatory customer.

(11) An accessible taxicab license holder shall provide notice to the public of the availability of its accessible taxicab unless notice is prohibited.

(a) Such notice shall be placed on the vehicle and in telephone directories; and

(b) All other taxi companies shall be informed about the accessible taxicab service and supply any disabled client with the appropriate information and telephone contact for an accessible taxicab.

(12) No advertisement for an accessible taxicab will include the word "handicapped" either in or on the accessible taxicabs or in any printed material. "Wheelchair Accessible" along with the universal symbol for special needs accessibility is appropriate on an accessible taxicab and using the word "disabled" or "special needs" versus the word "handicapped" is encouraged by the Town wherever possible.

N. Regulations. A copy of the regulations shall be kept in the taxicab at all times.

**§ 367-3. Taxicab operators.**

A. Taxicab operator's license.

(1) Every taxicab operator licensed under the regulations shall display his/her taxicab operator's license in the interior of his/her taxicab where it is in plain view and can be easily viewed by passengers riding in the rear seat of the aforesaid taxicab. The taxicab operator's address is allowed to be removed from the display license; however, the address must be on file with the Police Department.

(2) All taxicab operator's licenses shall be affixed with a current validation sticker as issued by the Town. All applicants for a taxicab operator's license shall possess a current and valid Massachusetts motor vehicle driver's license, and be at least 18 years of age.

(3) No taxicab operator's license shall be issued unless the proposed licensee demonstrates familiarity with the roads of the Town, to the satisfaction of the Chief of Police or designee; provided, however, that anyone who has resided in the Town for at least one year prior to the application for such a license is to be presumed, in the absence of evidence to the contrary, to be familiar with the Town's roads.

(4) At the Town's discretion, a temporary taxicab operator's license may be issued by the Town, provided that the applicant has provided all required information and meets all of the requirements for the issuance of a taxicab operator's license. The temporary taxicab operator's license is only to be issued so that the applicant may operate a taxicab during the pendency of the applicant's fingerprint record check and in no case shall it be valid for a period exceeding 30 days. The holder of a temporary taxicab operator's license shall be subject to all applicable sections of these regulations. **[Amended during codification]**

(5) Any temporary taxicab operator's license issued shall automatically terminate upon the expiration of the thirty-day period or shall automatically terminate after five calendar days (Saturday, Sunday and holidays included) from the date upon which the applicant is notified that his/her record check has been completed, whichever occurs first. Notification may be by message to the taxicab company owner who is listed on the application, voice message to the applicant's listed phone number, or by any other reasonable means.

B. Fee for taxicab operator's license. **[Amended during codification]**

(1) The fee for a taxicab operator's license shall be set from time to time by the Select Board. This fee is independent, and not reduced if a temporary taxicab operator's license is issued. Picture identification licenses shall not have to be renewed annually; however, a validation sticker shall be obtained yearly, clearly stating the expiration date of the taxicab operator's license. The fee for the validation sticker shall be set from time to time by the Select Board. If a taxicab operator's license is lost or in need of replacement, there shall be a replacement fee for the picture ID and for the validation sticker in amounts set from time to time by the Select Board.

(2) The fee for a temporary taxicab operator's license shall be set from time to time by the Select Board and shall be nonrefundable.

C. Application for taxicab operator's licenses. All applicants shall provide, under the penalties of perjury, such information as may be required of said applicant by the Town, including annually presenting an executed certification of understanding of the taxicab regulations of the Town of Nantucket. Failure to provide such certification shall result in the rejection of the application/renewal for a taxicab operator's license.

D. Rejection of application; revocation of license. In addition to failure to meet the requirements of the preceding subsections, a decision to reject an application, or to suspend, revoke, or fail to renew a license, may be based on the following:

(1) An applicant or licensee convicted of any felony or misdemeanor may be barred from receiving or holding a taxicab license for up to the following maximum periods of time:

(a) Five years after an incident leading to the applicant's or licensee's conviction or admission of sufficient facts or pleas of no contest for the sale or possession of a controlled substance, or for operating under the influence of an intoxicating liquor or of a controlled substance, or for assault and battery.

(b) Five years after the incident that led to the revocation, or two years after an incident leading to the suspension of a driver's license.

(2) For conviction or finding of responsibility for a moving violation, the Select Board may suspend or revoke the taxicab operator's license for a period of time set by the Select Board that shall not exceed seven days.

(3) Notwithstanding the preceding subsections, where the evidence shows that the applicant's or licensee's other activities or condition would, if combined with the use of a taxicab license, present a danger to the health, safety, welfare or morals of the Town, the Select Board or its designee may reject an application, or suspend, revoke or decline to renew an existing taxicab operator's license.

**§ 367-4. Prohibited practices.**

A. Taxi stands.

(1) A taxicab operator, when occupying that part of a way designated as a taxi stand, shall not decline to accept as a passenger anyone requesting service and, once engaged, must thereafter depart from said taxi stand without delay. If a disabled passenger is first among a group of individuals waiting for a taxicab at a designated taxi stand and the accessible taxicab is the next available taxicab, the disabled person and attendant party shall have access to that taxicab. If the disabled person is first among a group of people waiting for a taxicab at a designated taxi stand and the accessible taxicab is not the next available taxicab, the accessible taxicab may accommodate disabled passengers immediately, regardless of the accessible taxicab's position in the taxi stand line and regardless of the disabled person's position in the line waiting for taxicabs. No advertisement will include the word "handicapped" either on the accessible taxicab or in any printed material. "Wheelchair Accessible" along with the universal symbol for accessibility would be appropriate on the taxicab, and using the word "disabled" versus "handicapped" would be appropriate in all printed material.

(2) No taxicab operator, while awaiting employment by passengers, shall allow her/his motor vehicle to stand in any way except at an approved taxi stand. No taxicab operator shall leave an in-service taxicab unattended at a taxi stand.

(3) A taxicab holding itself out as available for limousine service shall not occupy the spaces reserved for taxicabs.

(4) No taxicab operator or taxicab business owner shall allow her/his motor vehicle to occupy the designated taxi stand directly across from Zero Main Street if said taxi stand is already occupied by a motor vehicle owned or operated by the same business.

(5) No person may park or stand a vehicle other than a Town-licensed taxicab in a taxi stand.

B. Tours or charters prohibited.

(1) A taxicab license does not qualify the licensee to conduct tours or charters. Taxicab operators shall not display in or about the taxicab a tour sign or an advertisement for same, nor shall there be advertised in any other way that the taxicab operator is available for tours or charters in any manner whatsoever.

(2) A taxicab operator may not offer tour services or in fact conduct tours or charters of any type.

C. Number of passengers.

(1) No taxicab operator or taxicab business owner shall permit, suffer or allow any taxicab under her/his control to operate with a number of passengers greater than the number of available seatbelts. No taxicab operator shall transport passengers under the regulations unless said passengers are able to occupy a seat with a seatbelt.

(2) No taxicab operator operating a taxicab in service for hire shall allow any person to ride upon the driver's seat; or a passenger seat unless said person is a bona fide passenger who has hired said taxicab under the regulations.

(3) No taxicab operator shall operate or allow to be operated any motor vehicle under the regulations with a maximum seating capacity of more than 10 persons, including said taxicab operator. **[Amended during codification]**

D. Operator/Owner conduct.

(1) Taxicab operators shall not dress in an unprofessional manner or in any manner not consistent with Subsection E of this section.

(2) No owner or person having care of a taxicab shall permit, suffer or allow any person other than a duly authorized taxicab operator under the regulations to operate the taxicab.

(3) No taxicab operator shall fail to produce her/his Massachusetts driver's license, vehicle registration or fail to stop and identify herself/himself and/or the owner of the taxicab upon the request of a police officer.

(4) No taxicab operator or taxicab business owner shall allow a motor vehicle to be operated on a way if it is in violation of any of the provisions of the regulations.

(5) Taxicab operators shall at all time while operating under the regulations maintain a professional, polite and courteous demeanor.

(6) Smoking is prohibited in licensed taxicabs.

E. Taxicab operator dress code. The following is a minimum professional standard of dress for taxicab operators.

(1) Pants/Skirts: clean, no holes, rips or tears. Hems must be sewn. Sweatpants are prohibited.

(2) Shorts: clean, no holes, rips or tears. Length must be equivalent to "Bermuda Short" type. No fringed bottoms; hems must be sewn. Athletic-type shorts are prohibited.

(3) Shirts: clean, with long or short sleeves, tucked neatly into pants if the shirt has tails. If the shirt has a square bottom, the shirt may be left out. No T-shirts or halter tops. Sweatshirts may be worn only as an outer garment.

(4) Shoes: Sneakers, loafers or docksiders are acceptable with no holes or tears. Sandals may be worn if secured around the ankle and the heel.

(5) Jackets: clean, no holes or rips; jackets with advertising, other than of the taxicab company, are prohibited.

(6) Caps/Hats: clean, no holes, worn on the top of the head and with the brim facing forward.

(7) Grooming: clean clothes; hair must be neat and combed; face must be clean shaven or beard and/or mustaches must be neat and trimmed.

F. A taxicab operator shall not decline to accept as a passenger anyone requesting service under any circumstance unless the taxicab operator reasonably determines that the potential passenger exhibits signs of inebriation, is engaged in disorderly conduct or abusive behavior, or if the taxicab operator reasonably determines, based on a potential passenger's behavior, that he or she constitutes a threat of physical harm to any individual, including other passengers or the taxicab operator.

**§ 367-5. Fares.**

A. Fare schedule. No taxicab operator shall charge or receive fares for the hire of such taxicab within the Town in any sums of money other than those prescribed by the "Established Taxi Rates" schedule promulgated by the Select Board, as from time to time amended.

B. Rate of fare. The fare to be taken by or paid to the taxicab business owner, taxicab operator, or other person having charge of any licensed taxicab shall be per the "Established Taxi Rates." The "Established Taxi Rates" may be amended by the Select Board periodically.

**§ 367-6. Violations and penalties.**

A. Fines. Any person, whether a taxicab business owner, taxicab operator or any other person, found in violation of any provision of the regulations shall be punished by a fine of $100 for each offense. This penalty may be enforced by the Nantucket Police Department by means of noncriminal disposition pursuant to Chapter 1, Article II, of the Code of the Town of Nantucket. If such person has incurred, and either plead guilty, chosen not to contest or been found guilty or "responsible" after hearing for three violations of the regulations during any given calendar year, then the penalty for the fourth offense during that same calendar year shall be $300. Subsequent violations may result in forfeiture of the vehicle license. **[Amended during codification]**

B. Suspension of license. The Chief of Police or the Chief of Police's designee may suspend, pending a hearing by the Select Board, the taxicab operator's license of any licensee found in violation of any provision of the regulations.

C. Revocation of license. Any violation of the regulations and rates may, after a public hearing by the Select Board, result in the suspension or revocation of the taxicab license.

**§ 367-7. Authority; enforcement; severability.**

A. Authority. The regulations are adopted under authority of MGL c. 40, § 22.

B. Enforcement. It shall be the duty of the Nantucket Police Department to enforce the regulations.

C. Severability. If any provision or any portion thereof contained in the regulations is held to be unconstitutional, invalid or unenforceable, the remainder of the regulations or portions thereof shall be deemed severable, shall not be affected and shall remain in full force and effect.

## ARTICLE II

## Charters, Limousines and Tour Vehicles

**[Amended 5-16-1994; 3-12-2003; 4-18-2007; 5-6-2015]**

**§ 367-8. Definitions; purpose.**

A. As used in these regulations, the following terms shall have the following meanings, unless a different meaning is clearly apparent from the language or context:

CHARTER VEHICLE — Any passenger motor vehicle capable of carrying no more than 10 passengers, including the operator, used for the exclusive purpose of conveying passengers to a predetermined, specific point, that is not upon a way of the Town, for sightseeing, excursions or other special events. A charter vehicle may traverse ways of the Town only to facilitate conveyance of passengers to the predetermined, specific point.

CHARTER VEHICLE LICENSE — A license issued by the Town Clerk authorizing the use of a charter vehicle after approval of the Select Board.

CHARTER VEHICLE OPERATOR'S LICENSE — A picture identification license issued by the Nantucket Police Department authorizing the holder to operate a charter vehicle.

LIMOUSINE VEHICLE — Any passenger motor vehicle capable of carrying no more than 10 passengers, including the operator, used for the exclusive purpose of conveying passengers between specific and predetermined points for an established hourly rate. A limousine vehicle shall not be used to conduct tours of any type.

LIMOUSINE VEHICLE LICENSE — A license issued by the Town Clerk authorizing the use of a limousine vehicle after approval of the Select Board.

LIMOUSINE VEHICLE OPERATOR'S LICENSE — A picture identification license issued by the Nantucket Police Department authorizing the holder to operate a limousine vehicle.

OPERATOR — Any person who operates a limousine, charter or tour vehicle.

PARKING SPACE — A designated parking space upon a public way of the Town reserved for the exclusive use of vehicles specifically regulated herein.

POLICE OFFICER or OFFICER — Any officer authorized to make arrests or serve criminal process, provided he/she is in uniform or displays her/his badge of office.

RELATED PARTIES — The applicant; any person who is a parent, spouse or child of an applicant; any entity (including, without limitation, corporations, partnerships, limited partnerships, limited-liability companies or other business entities) in which a related party holds more than a 50% direct or indirect ownership of the stock, capital or profits; or any entity that holds more than a 50% direct or indirect ownership of the stock, capital or profits.

SELECT BOARD — The duly elected members of the Select Board for the Town of Nantucket, Massachusetts.

TEMPORARY CHARTER, LIMOUSINE OR TOUR VEHICLE OPERATOR'S LICENSE — A license issued by the Town authorizing the holder to operate a charter, limousine or tour vehicle on a limited or temporary basis for a period not to exceed 30 days.

TOUR VEHICLE — Any passenger motor vehicle capable or carrying no more than 10 passengers, including the operator, used for the exclusive purpose of conveying passengers for an established hourly rate for sightseeing and guided tours upon ways of the Town.

TOUR VEHICLE LICENSE — A license issued by the Town Clerk authorizing the use of a tour vehicle after approval of the Select Board.

TOUR VEHICLE OPERATOR'S LICENSE — A picture identification license issued by the Nantucket Police Department authorizing the holder to operate a tour vehicle.

TOWN — The Town and County of Nantucket, Massachusetts.

TOWN CLERK — The duly elected Clerk for the Town of Nantucket, Massachusetts.

VALIDATION STICKER — A sticker issued by the Town which shall be affixed to the limousine, charter or tour vehicle operator's license. Said sticker shall indicate the expiration of the limousine, charter or tour vehicle operator's license.

VEHICLE DECAL — A sticker issued by the Town Clerk that shall be displayed on the interior of the windshield and affixed upon the driver's side lower corner where the windshield meets the vehicle hood and door pillar. The decal shall be affixed so that it is clearly visible above the hood from the exterior of the vehicle and in such a manner as to not restrict visibility.

WAITING LIST — The official codified list(s) of names of charter, limousine and tour license applicants managed by the Town.

WAY — Any public way, private way laid out for public use, any way indicated for public use or any way to which the public has a right of access as invitees, licensees or guests.

B. Purposes. The purposes of these regulations, to be adopted pursuant to the authority of MGL c. 40, § 22, are to serve the public need and convenience and to promote the public health, welfare and safety of the residents of and visitors to Nantucket.

**§ 367-9. Charter, limousine and tour vehicle licenses; vehicle condition; operating requirements. [Amended during codification]**

In conjunction with monitoring available annual licenses in this section, the Town will codify and actively manage an official waiting list of applicant names based on order of submission by those interested in acquiring future charter, limousine and tour licenses. An application fee may be set by the Select Board or its designee, payable at the time of application and at the time of written annual confirmation of interest by an established deadline for those on the waiting list(s).

A. Charter vehicle licenses.

(1) Application for a charter vehicle license shall be made by the owner of the charter vehicle business. An application by one party for a license shall be deemed to be a joint application by the applicant and all related parties who are also licensees. Such application shall set forth under oath all information that the Select Board may require. Each new applicant for an original license shall apply to the Select Board for its approval. One license shall be required for a charter vehicle business owner, with each license specifically designating the number of charter vehicles that the business owner is allowed to operate within the Town by the Select Board.

(2) There shall be no application for more than one charter vehicle license per business; except that any business which holds a valid license for a limousine/ charter vehicle(s) that was issued prior to April 1, 1993, may transfer said limousine/charter vehicle license(s) to a charter, limousine or tour vehicle license(s) upon making application for said license(s) prior to June 15, 1993. Multiple charter vehicles with one owner are permitted, with approval of the Select Board. To be eligible for any additional vehicle(s), the license holder must

apply in the same manner as for an original license. Only one additional vehicle per license may be awarded per year.

B. Limousine vehicle licenses.

(1) Application for a limousine vehicle shall be made by the owner of the limousine vehicle business. An application by one party for a license shall be deemed to be a joint application by the applicant and all related parties who are also licensees. Such application shall set forth under oath all information that the Select Board may require. Each new applicant for an original license shall apply to the Select Board for its approval. One license shall be required for a limousine vehicle business owner, with each license specifically designating the number of limousine vehicles that the business owner is allowed to operate within the Town by the Select Board.

(2) There shall be no more than one limousine vehicle license per business, unless said license was acquired through transfer of an existing multiple limousine/ charter vehicle license issued prior to April 1, 1993. Multiple limousine vehicles with one owner are permitted, with approval of the Select Board. To be eligible for any additional vehicle(s), the license holder must apply in the same manner as for an original license. Only one additional vehicle per license may be awarded per year.

C. Tour vehicle licenses.

(1) Application for a tour vehicle license shall be made by the owner of the tour vehicle business. Such application shall set forth under oath all information that the Select Board may require. Each new applicant for an original license shall apply to the Select Board for its approval. One license shall be required for a tour vehicle business owner, with each license specifically designating the number of tour vehicles that the business owner is allowed to operate within the Town by the Select Board.

(2) There shall be no more than one tour vehicle license per business, unless said license was acquired through transfer of an existing multiple limousine/charter vehicle license issued prior to April 1, 1993. Multiple tour vehicles with one owner are permitted, with approval of the Select Board. To be eligible for any additional vehicle(s), the license holder must apply in the same manner as for an original license. Only one additional vehicle per license may be awarded per year. An application by one party for a license shall be deemed to be a joint application by the applicant and all related parties who are also licensees.

D. License required. For charter, limousine and tour vehicle licenses, except as otherwise provided by law, no person shall engage in the business of transporting persons for hire in a vehicle without first having obtained a license from the Select Board authorizing and designating the number of vehicles that may be used under said license.

E. Number of licenses. The Select Board shall periodically determine the number of charter, limousine and tour vehicle licenses to be issued. Such determination shall be made based upon serving public need, convenience and the promotion of public health and safety, which shall be at the sole discretion of the Select Board.

F. Residency and address of record.

(1) No charter, limousine or tour vehicle license shall be issued unless the proposed licensee demonstrates familiarity with the roads of the Town to the satisfaction of the Chief of Police or designee; provided, however, that anyone who has resided on Nantucket for at least one year prior to the application for such a license is to be presumed, in the absence of evidence to the contrary, to be familiar with the Town's roads.

(2) The address set forth in the charter, limousine and tour license application shall be considered the address of record for all official business correspondence between the Town and licensee or waiting list applicants. Licensees and applicants shall provide to the Town written changes of address as necessary.

G. Possession of license. The charter, limousine or tour vehicle license, or a photocopy certified by the Town Clerk, shall be displayed in the interior of the charter, limousine or tour vehicle in clear view of the passengers. Each vehicle licensed under these regulations shall, after payment of the fee and compliance with all application and licensing requirements, receive a vehicle decal from the Town Clerk, which shall be affixed to the licensed vehicle in accordance with these regulations.

H. License fees. The fee for a charter vehicle license, limousine vehicle license, or tour vehicle license shall be set from time to time by the Select Board. There shall be a fee set by the Select Board for any transfer of license from one vehicle to another during the current year of issuance after initial receipt.

I. Proof of registration and insurance.

(1) No charter, limousine or tour vehicle license shall be issued by the Town Clerk until the applicant presents proof of registration and insurance appropriate for charter, limousine or tour vehicle operations, and provided that such insurance and registration complies with the provisions of MGL c. 90. All applicants must present to the Town Clerk an original Massachusetts vehicle registration that clearly indicates the maximum passenger capacity of the vehicle being licensed. If the registration document does not indicate maximum passengers, then the applicant must provide the original motor vehicle title document issued by the Massachusetts Registrar of Motor Vehicles. The Town Clerk is prohibited from issuing any license to a vehicle that has a maximum carrying capacity of more than 10 passengers (which includes the driver). If the charter, limousine or tour vehicle business owner is allowed by the Select Board to operate more than one charter, limousine or tour vehicle, the business owner shall provide proof that each vehicle licensed complies with this section.

(2) All insurance and registration requirements specified in the preceding subsection shall be for a minimum period of three months; provided that any vehicle so registered and insured must be inspected and equipped as provided in MGL c. 90. Any charter, limousine or tour vehicle license holder who fails to meet the requirements of this section shall forfeit said charter, limousine or tour vehicle license immediately.

J. License transfer.

(1) No charter, limousine or tour vehicle license provided for in these regulations shall be sold, assigned or transferred, nor shall a majority in interest of any entity holding such a license be sold, without the approval of the Select Board. Such sale, assignment or transfer, without such approval, shall automatically terminate said license, and any license held shall immediately be surrendered to the Town Clerk.

(2) No person or business who or which holds a charter, limousine or tour vehicle license shall allow said license to be used, managed or in any way controlled by any other person or business who or which is not the license holder as approved by the Select Board.

(3) No vehicle which is operated under these regulations shall be leased or borrowed by the charter, limousine or tour vehicle license holder without the approval of the Select Board.

(4) No charter or tour vehicle license may be transferred to a vehicle used as a taxicab within the Town, nor shall said charter or tour vehicle license be used in conjunction with a taxicab license issued to the same vehicle for a period of one year from the date of issue of the charter or tour vehicle license.

(5) A limousine license may not be used in conjunction with a taxicab license.

K. Vehicle inspections; vehicle condition.

(1) Charter, limousine or tour vehicles licensed by the Select Board are subject to periodic inspections by the Nantucket Police Department to determine their fitness for continued operation and compliance with the regulations herein.

(2) Charter, limousine or tour vehicles shall comply with all provisions relative to the operation and equipping of motor vehicles under MGL c. 89 and c. 90, any bylaw of the Town or any rule or regulation promulgated by the Registrar of Motor Vehicles. No vehicle shall be operated under these regulations with a "rejection sticker," so called, indicating a failure to comply with safety or emission requirements.

(3) Charter, limousine or tour vehicles shall be well maintained and be in a good and reliable mechanical condition.

(4) Charter, limousine or tour vehicles shall be clean, inside and outside, and be well painted. All external vehicle surfaces are to be free of major dents or other defects which could affect the appearance of the charter, limousine or tour vehicle.

(5) Charter, limousine or tour vehicles shall be equipped with either wheel covers or hub caps on all wheels of the vehicle.

(6) Any violation of the preceding subsections shall result in the automatic suspension of the charter, limousine or tour vehicle's right to operate. Such suspension shall not be rescinded until said violations are corrected.

L. Rate and license posting. Rates shall be determined by the Select Board and shall be clearly displayed along with the charter, limousine or tour vehicle license in view of

passengers, and shall be so placed and secured in a frame or in some other manner that they may not be easily molested or destroyed.

M. Advertisements. No advertisements of any description, including announcements of rates or fares, shall be displayed upon a charter, limousine or tour vehicle. The owner's name, address and telephone number may be placed upon the charter, limousine or tour vehicle; however, they shall be so placed so as to not impair or impede the operator of said limousine or charter vehicle, and further provided that they do not violate any provision of MGL c. 90, § 7, § 9 or § 13 or any section of the Code of Massachusetts Regulations.

N. Zoning requirements. All applicants shall comply with all zoning requirements of the Town and provide proof of compliance to the Select Board prior to the approval of said license.[2]

O. Duration of license.

(1) All charter, limousine or tour vehicle licenses shall be valid from June 1 through May 31. Charter, limousine or tour vehicle licenses approved by the Select Board and issued by the Town Clerk may be renewed upon payment annually on or after May 15 and no later than May 31. There shall be no extensions or grace period after May 31, except that the Town may issue such license provisionally prior to May 31 pending the approval of the fingerprint-supported record check. Such provisional license shall only be issued if the charter, limousine or tour vehicle owner has met all conditions which would warrant the issuance of the license, including payment of any applicable fees and submission of fingerprints. If the applicant's record check produces a disqualifying record, the charter, limousine or tour vehicle license issued provisionally shall summarily be revoked.

(2) If the Select Board grants a new license during the year, the license grantee shall take acceptance and pay for said license no later than 30 days after said approval by the Board or the license is considered abandoned.

(3) All charter, limousine and tour vehicle license holders shall comply with MGL c. 62C, § 49A, stating that s/he/it has complied with all laws of the Commonwealth relating to taxes prior to receiving a license from the Town Clerk.

## § 367-10. Charter, limousine or tour vehicle operators.

A. Charter, limousine and tour vehicle operator's license. **[Amended during codification]**

(1) Every operator of a charter, limousine or tour vehicle while engaged in the operation of a charter, limousine or tour vehicle licensed under these regulations shall display her/his charter, limousine or tour vehicle operator's license in a suitable frame or other device upon the interior of said charter, limousine or tour vehicle where it is in plain view and can be easily viewed by passengers riding in the rear seat of the aforesaid charter, limousine or tour vehicle.

**2. Editor's Note: See Ch. 139, Zoning, of the Code of the Town of Nantucket.**

(2) All charter, limousine or tour vehicle operator's licenses shall be affixed with a current validation sticker as issued by the Town of Nantucket. All applicants for a charter, limousine or tour vehicle operator's license shall possess a current and valid Massachusetts motor vehicle driver's license, and be at least 18 years of age.

(3) At the Town's discretion, a temporary charter, limousine or tour vehicle operator's license may be issued by the Town, provided that the applicant has provided all required information and meets all of the requirements for the issuance of a charter, limousine or tour vehicle operator's license. The temporary charter, limousine or tour vehicle operator's license is only to be issued so that the applicant may operate a charter, limousine or tour vehicle during the pendency of the applicant's fingerprint record check, and in no case shall it be valid for a period exceeding 30 days. The holder of a temporary charter, limousine or tour vehicle operator's license shall be subject to all applicable sections of these regulations.

(4) Any temporary charter, limousine or tour vehicle operator's license issued shall automatically terminate upon the expiration of the thirty-day period or shall automatically terminate after five calendar days (Saturday, Sunday and holidays included) from the date upon which the applicant is notified that his/her record check has been completed, whichever occurs first. Notification may be by message to the company owner who is listed on the application, voice message to the applicant's listed phone number, or by any other reasonable means.

B. Fee for licenses. **[Amended during codification]**

(1) The fee for a charter, limousine or tour vehicle operator's picture identification license shall be set from time to time by the Select Board. Picture identification badges shall not have to be renewed annually; however, a validation sticker shall be obtained yearly, clearly stating the expiration date of the operator's license. The fee for the validation sticker shall be set from time to time by the Select Board. If a picture identification license is lost or in need of replacement, there shall be a fee for the picture ID and for the validation sticker in amounts set from time to time by the Select Board.

(2) The fee for a temporary charter, limousine or tour vehicle operator's license shall be set from time to time by the Select Board and shall be nonrefundable.

C. Application for charter, limousine or tour vehicle operator's identification licenses. All applicants shall set forth, under the penalties of perjury, such uniform information as may be required of said applicant, in addition to the following information: name of applicant and the name of the license holder for whom the applicant will be working. **[Amended during codification]**

D. Rejection of application; suspension, revocation or nonrenewal of license. In addition to failure to meet the requirements of the preceding subsections, a decision to reject an application, or to suspend, revoke, or fail to renew a license may be based on the following:

(1) An applicant convicted of any felony or misdemeanor may be barred from receiving or holding a license for up to the following maximum periods of time:

(a) Five years after the incident leading to the applicant license holder's conviction or admission of sufficient facts or pleas of no contest for the sale or possession of a controlled substance, or for operating under the influence of an intoxicating liquor or of a controlled substance, or for assault and battery.

(b) Five years after the incident that led to the revocation, or two years after the incident which led to the suspension of a driver's license.

(c) Any conviction or finding of responsible for a moving violation. The Select Board may suspend the charter, limousine or tour vehicle operator's license for a period of time set by the Select Board that shall not exceed seven days.

(2) Notwithstanding the preceding subsections, where the evidence shows that the applicant's or license holder's other activities or condition would, if combined with the use of a charter, limousine or tour vehicle operator's license, present a danger to the health, safety, welfare or morals of the Town of Nantucket, the Select Board may reject an application, or they may suspend, revoke or fail to renew an existing license.

**§ 367-11. Prohibited practices.**

A. Designated parking areas.

(1) An operator of a tour vehicle, when occupying that part of a way designated as a tour vehicle parking area, shall not decline to accept as a passenger anyone requesting service and must thereafter depart from said parking areas without delay. No person may park or stand a vehicle other than a Town-licensed tour vehicle in a designated tour vehicle stand.

(2) No tour vehicle operator, while awaiting employment by passengers, shall allow her/his vehicle to stand or park upon any public way except at a designated tour vehicle parking area.

(3) No tour vehicle operator, while awaiting employment by passengers, shall allow her/his vehicle to stand unattended at a designated tour vehicle parking area.

(4) No tour vehicle operator shall park in a designated tour vehicle parking area while said parking area is already occupied by a vehicle owned, operated or affiliated with the operator.

(5) No limousine operator shall conduct tours of any type.

(6) No charter vehicle operator shall conduct a tour or excursion upon any way, and the charter vehicle operator shall only conduct a tour or excursion for hire upon private property with the permission of the property owner.

(7) No charter or tour vehicle shall be used in conjunction with a taxicab license.

B. Number of passengers.

(1) No owner or operator of a charter, limousine or tour vehicle shall permit, suffer or allow any charter, limousine or tour vehicle under his/her control to operate with a number of passengers greater than the number of available seatbelts. No charter, limousine or tour vehicle shall transport passengers under these regulations unless said passengers are able to occupy a seat with a seatbelt.

(2) No owner or operator of a charter, limousine or tour vehicle shall offer to provide service by means of any motor vehicle carrying more than 10 persons, including the driver, upon any way within the Town.

C. Operator/Owner conduct.

(1) Charter, limousine or tour vehicle operators shall not dress in an unprofessional manner or in any other manner not consistent with Subsection D of this section. All charter, limousine or tour vehicle operators shall wear shirts and shoes and present a neat and professional appearance at all times while awaiting a fare or operating a charter, limousine or tour vehicle.

(2) No owner or person having care of a charter, limousine or tour vehicle shall permit, suffer or allow any person other than a duly authorized operator under these regulations to operate the licensed vehicle.

(3) No charter, limousine or tour vehicle operator shall fail to produce his Massachusetts driver's license, vehicle registration or fail to stop and identify himself/herself and/or the owner of the charter, limousine or tour vehicle upon direction of a police officer.

(4) No charter, limousine or tour vehicle owner or operator shall allow a vehicle to be operated on a way if it is in violation of any of the provisions of these regulations.

(5) Charter, limousine or tour vehicle owners and operators shall at all times while operating under these regulations maintain a professional, polite and courteous demeanor.

(6) Smoking is prohibited by charter, limousine or tour vehicle operators while engaged in carrying or waiting for fares.

D. Owner/Operator dress code. The following is a minimum professional standard of dress for charter, limousine or tour vehicle operators:

(1) Pants/Skirts: clean, no holes, rips or tears. Hems must be sewn. Sweatpants are prohibited. **[Amended during codification]**

(2) Shorts: clean, no holes, rips or tears. Length must be equivalent to "Bermuda Short" type. No fringed bottoms; hems must be sewn. Athletic-type shorts are prohibited. **[Amended during codification]**

(3) Shirts: clean, with long or short sleeves, tucked neatly into pants if the shirt has tails. If the shirt has a square bottom, the shirt may be left out. No T-shirts, halter tops. Sweatshirts may be worn only as an outer garment. **[Amended during codification]**

(4) Shoes: Sneakers, loafers or docksiders are acceptable with no holes or tears. Sandals may be worn if secured around ankle and heel. **[Amended during codification]**

(5) Jackets: clean, no holes or rips. Jackets with advertising, other than of the taxicab company, are prohibited.

(6) Caps/Hats: clean, no holes, worn on the top of the head and with the brim facing forward.

(7) Grooming: Hair must be clean, neat and combed. Face must be clean shaven or beard and/or mustaches must be neat and trimmed.

### § 367-12. Rates; minimum rental. [Amended during codification]

The fee for rental of a charter, limousine or tour vehicle shall be set from time to time by the Select Board, with a hired minimum of one hour.

### § 367-13. Violations and penalties.

A. Fines. Any person, whether a charter, limousine or tour vehicle business owner or operator, found in violation of any provision of these regulations shall be punished by a fine of $100 for each offense. This penalty may be enforced by the Nantucket Police Department by means of noncriminal disposition pursuant to Chapter 1, Article II, of the Code of the Town of Nantucket. If such person has incurred, and either plead guilty, chosen not to contest or been found guilty or "responsible" after hearing of more than three violations of these regulations during a calendar year, then the penalty for the fourth and any subsequent such offenses during that calendar year shall be $300. Subsequent infractions may result in forfeiture of the vehicle license. **[Amended during codification]**

B. Suspension of license. The Chief of Police or designee may suspend, pending a hearing by the Select Board, a charter, limousine or tour vehicle operator's license or the charter, limousine or tour vehicle license of any person or charter, limousine or tour vehicle business owner found in violation of any provision of these regulations herein.

C. Revocation of license. Any violations of these regulations and rates may, after a public hearing by the Select Board, result in the suspension or revocation of the owner's license or charter, limousine or tour vehicle operator's license.

### § 367-14. Authority; enforcement; severability.

A. Authority. These rules and regulations are adopted under authority of MGL c. 40, § 22.

B. Enforcement. It shall be the duty of the Nantucket Police Department to enforce the provisions of these rules and regulations.

C. Severability. If any provisions or any portion thereof contained in these regulations is held to be unconstitutional, invalid or unenforceable, the remainder of the regulations or

portions thereof shall be deemed severable, shall not be affected and shall remain in force and effect.

# Chapter 371

# TOXIC AND HAZARDOUS MATERIALS


**§ 371-1. Purpose.**

**§ 371-2. Authority.**

**§ 371-3. Findings.**

**§ 371-4. Definitions.**

**§ 371-5. Prohibitions.**

**§ 371-6. Storage, controls, registration and inventory.**

**§ 371-7. Chemical-resistant surfaces and containment.**

**§ 371-8. Report of spill and leaks.**

**§ 371-9. Enforcement.**

**§ 371-10. Violations.**

**§ 371-11. Penalties.**

**§ 371-12. Appeals.**


**[HISTORY: Adopted by the Board of Health of the Town of Nantucket 8-22-1990, effective 8-24-1990. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Underground fuel storage tanks — See Ch. 135.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**
**Fertilizer — See Ch. 252.**
**Septic systems — See Ch. 327.**
**Underground tanks — See Ch. 363.**
**Wellhead protection district — See Ch. 382.**

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## § 371-1. Purpose.

These regulations are intended to protect the public health and general welfare by ensuring that storage and handling of toxic and hazardous materials are regulated in a manner which will protect the quality of the groundwater on Nantucket Island.

## § 371-2. Authority.

A. These regulations are adopted by the Town of Nantucket Board of Health as authorized by MGL c. 111, § 31.

B. These regulations supersede all previous regulations adopted by the Board of Health dealing with the storage and handling of toxic and hazardous materials.

## § 371-3. Findings.

The storage and handling of toxic/hazardous materials in the Town of Nantucket represents a potentially serious threat to groundwater quality. The current business and commercial areas,

some of which are located in the recharge areas for the public wells and the drainage areas to surface waters, present a threat to water quality. The Town of Nantucket finds that:

A. The groundwater underlying this Island is the sole source of its existing and future water supply, including drinking water.

B. The groundwater aquifer is integrally connected with, and flows into, the surface water, lakes, streams and marshes which constitute significant recreational and economic resources of the Island used for water-related recreation, fishing and shellfishing.

C. Accidental spills and discharges of petroleum products and other toxic and hazardous materials will likely occur by reason of increasing construction, commercial and industrial development, population and vehicular traffic on the Island of Nantucket.

**§ 371-4. Definitions.**

As used in these regulations, the following terms shall have the meanings indicated:

DISCHARGE —

A. The accidental, negligent or intentional spilling, leaking, pumping, pouring, emitting, emptying, dumping or other disposing of toxic or hazardous material upon or into any land or water on the Island of Nantucket. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems and disposal of such materials into any on-site sewage disposal system, dry well, catch basin or landfill.

B. The term "discharge," as used and applied in this regulation, does not include the following:

(1) Proper disposal of any material in a sanitary or industrial landfill that has received and maintained all necessary legal approvals for that purpose;

(2) Application of fertilizers and pesticides in accordance with label recommendations and with regulations of the Massachusetts Pesticide Board;

(3) Application of road salts in conformance with the Snow and Ice Control Program of the Massachusetts Department of Transportation; and **[Amended during codification]**

(4) Disposal of sanitary sewage to subsurface sewage disposal systems as defined and permitted by Title 5 of the Massachusetts Environmental Code and the Town of Nantucket Board of Health regulations.

OWNER OR OPERATOR — In the case of a vessel, any person owning, operating or chartering by demise such vessel; in the case of a site, any person owning or operating or in possession of such site; and in the case of an abandoned site, any person who owned, operated, or otherwise controlled activities at such site immediately prior to such abandonment. The term shall not include a person who, without participating in the management of a vessel or site, holds indicia of ownership primarily to protect his/her security interest in said vessel or site.

PERSON — Any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint-stock company, partnership, association, or other entity, and any officer, employee, or agent of such person, and any group of persons.

TOXIC OR HAZARDOUS MATERIALS —

A. Any substance or mixture of such physical, chemical, or infectious characteristics as to pose a significant actual or potential hazard to water supplies or other hazard to human health, if such substance or mixture were discharged on this Island. "Toxic or hazardous materials" include, without limitation, organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalides; and include products such as pesticides, herbicides, solvents and thinners. The following activities, without limitation, are presumed to involve the use of toxic or hazardous materials, unless and except to the extent that anyone engaging in such an activity can demonstrate the contrary to the satisfaction of the Board of Health:

(1) Airplane, boat and motor vehicle service and repair.

(2) Boat manufacturing.

(3) Chemical and bacteriological laboratory operation.

(4) Cabinet making.

(5) Dry cleaning.

(6) Electronic circuit assembly.

(7) Metal plating, finishing and polishing.

(8) Motor and machinery service and assembly.

(9) Painting, wood preserving and furniture stripping.

(10) Pesticide and herbicide application.

(11) Photographic processing.

(12) Printing.

B. The Board of Health may, consistent with this definition, and by authority of MGL c. 111, § 31, issue regulations further identifying specific materials and activities involving the use of materials which are toxic or hazardous.

**§ 371-5. Prohibitions.**

A. The discharge of toxic or hazardous materials by any person on the Island of Nantucket is prohibited.

B. Outdoor storage of toxic or hazardous materials by any person is prohibited, except in product-tight containers which are protected from the elements, leakage, accidental negligent or intentional damage and vandalism, and which are stored in accordance

with all applicable requirements of § 371-6 of this regulation. For purposes of this subsection, road salts and fertilizer shall be considered as hazardous materials.

### § 371-6. Storage, controls, registration and inventory.

A. Except as exempted below, every owner and every operator of a facility at which toxic or hazardous materials are stored in quantities totaling at any time more than 25 gallons liquid volume or 50 pounds dry weight shall register with the agent of the Board of Health the types and quantities of materials stored, location and method of storage. The Board of Health or its agent may require an inventory of such materials to be maintained on the premises and be reconciled with purchase, use, sales and disposal records on a monthly basis, in order to detect any product loss. Registration required by this subsection shall be submitted within 60 days of the effective day of this regulation, and annually thereafter. Maintenance and reconciliation of inventories shall begin with the same sixty-day period. **[Amended during codification]**

B. Exemptions. Registration and inventory requirements shall not apply to the following:

(1) Fuel oil stored in conformance with Massachusetts Fire Prevention Regulations; or

(2) The storage of toxic and hazardous materials at a single-family or two-family dwelling, except where such materials are stored for use associated with a professional or home occupation use.

### § 371-7. Chemical-resistant surfaces and containment.

Containers of toxic or hazardous materials for commercial uses are required to be stored on or above an impervious, chemically resistant surface compatible with the material being stored, and owners are required to make provisions to properly contain the product in the case of accidental spillage. For commercial uses existing prior to the effective date of this regulation, August 24, 1990, the Board of Health or its agent may require or waive such compliance to the extent permitted by the General Laws.

### § 371-8. Report of spill and leaks.

Every person having knowledge of a spill, leak or other loss of toxic or hazardous materials believed to be in excess of 10 gallons shall immediately report the spill or loss of same to the Board of Health or other public safety official.

### § 371-9. Enforcement.

A. The provisions of this regulation shall be enforced by the agent of the Board of Health. The agent of the Board of Health may, to the extent permitted by law, enter upon any premises at any reasonable time to inspect for compliance.

B. Upon request of the agent of the Board of Health, the owner or operator of any premises at which toxic or hazardous materials are used or stored shall furnish all

information required to enforce and monitor compliance with this regulation, including a complete list of all chemicals, pesticides, fuels, and other toxic or hazardous materials used or stored on the premises, a description of measures taken to protect storage containers from vandalism, corrosion and spillage and the means of disposal of all toxic or hazardous wastes produced on the site. A sample of wastewater disposed to on-site septic systems, dry wells or sewage treatment systems may be required by the agent of the Board of Health.

C. All records pertaining to storage, removal and disposal of toxic or hazardous materials shall be retained by the owner or operator for no less than three years, and shall be made available for review upon the request of the agent of the Board of Health.

D. Certification of conformance with the requirements of this regulation by the agent of the Board of Health shall be required prior to issuance of construction and occupancy permits for any nonresidential uses.

### § 371-10. Violations.

A. Violations of regulations under this chapter shall be enforced as provided in Subsection B of this section, with specific monetary penalties for violation pursuant to § 371-11 rather than as provided in the general regulations of Chapter 223, Article II, §§ 223-4 and 223-8, of the Town Regulations.

B. Written notice of any violation of this regulation shall be given to the owner and operator by the agent of the Board of Health, specifying the nature of the violation, any corrective measures that must be undertaken, including containment and cleanup of discharged materials, any preventive measures required for avoiding future violations and for a schedule of compliance. Requirements specified in such a notice shall be reasonable in relation to the public health hazards involved and the difficulty of compliance. The cost of containment and cleanup shall be borne by the owner and operator of the premises.

### § 371-11. Penalties.

The penalty for failure to comply with any provisions of this regulation shall be $200 per day of violation, after notice thereof under § 371-10B.

### § 371-12. Appeals.

Any action by the agent shall be appealable to the Board of Health in accordance with Chapter 223, Article II, § 223-7, of the Town Regulations.

# Chapter 375

# TRAFFIC


§ 375-1. Definitions.

§ 375-2. Authority and duties of police.

§ 375-3. Traffic signs, signals, markings and devices.

§ 375-4. Stopping, standing and parking in general.

§ 375-5. Stopping, standing and parking prohibited in certain places.

§ 375-6. Parking prohibitions and restrictions in certain places.

§ 375-7. Angle parking.

§ 375-8. Parking of trailers or semi-trailers.

§ 375-9. Commercial vehicles back to curb.

§ 375-10. Bus stops.

§ 375-11. Loading zones.

§ 375-12. Parking time limited.

§ 375-13. Municipal parking lots.

§ 375-14. Commercial vehicle parking.

§ 375-15. Dumpsters and roll-on/roll-off containers.

§ 375-16. Parking permits.

§ 375-17. Interpretation of posted parking restrictions.

§ 375-18. Multiple parking tickets; separate violations.

§ 375-19. One-way streets.

§ 375-20. Rotary traffic.

§ 375-21. Operation of vehicles.

§ 375-22. Exclusion of vehicles.

§ 375-23. Parades, processions and formations.

§ 375-24. Posting of temporary signs for construction or special events.

§ 375-25. Experimental rules and regulations.

§ 375-26. Violations and penalties; violation notices.

§ 375-27. Severability.

§ 375-28. Nantucket exemption.

Appendix A, One-Way Streets

Appendix B, Stop Signs

Appendix C, Yield Signs

Appendix D, Special Speed Rules and Regulations

Appendix E, School Zone Speed Restrictions

Appendix F, Horse-Drawn Carriage Restrictions

Appendix G, Heavy Commercial Vehicles Excluded

Appendix H, Commercial Vehicles Excluded

Appendix I, Exclusion of Vehicles from Public Ways

Appendix J, Schedule of Fines

Appendix K, Nantucket Exemption

Appendix L, Nantucket Parking District Map


**[HISTORY: Adopted by the Board of Selectmen (now Select Board) of the Town of Nantucket 9-10-2008, effective 11-1-2008. Amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Buses — See Ch. 27.**
**Vehicles on beaches — See Ch. 56.**
**Bicycles and mopeds — See Ch. 57.**
**Motorized passenger devices — See Ch. 98.**
**Abandoned vehicles — See Ch. 104.**

**TOWN REGULATIONS REFERENCES**

**Pedicabs — See Ch. 316.**
**Taxicabs, charter, limousine and tour vehicles — See Ch. 367.**

## § 375-1. Definitions.

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

AUTHORIZED EMERGENCY VEHICLES — Vehicles of the Fire Department, Police Department, ambulances and emergency vehicles of federal, state and municipal departments or public service corporations when the latter are responding to an emergency in relation to the Police or Fire Department, or any federal, state and municipal vehicle engaged in the repair of a public way.

BICYCLE — Every device propelled by human power upon which any person may ride, having no more than two tandem wheels, either of which is 14 inches or more in diameter.

BICYCLE PATH — Any way under the care, custody, or control of the Town of Nantucket, specifically designated and used for bicycle and/or pedestrian travel, whereupon motorized vehicles of any kind are excluded.

BOARD — The Nantucket Select Board.

BUS — Any motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons or any motor vehicle operated upon a public way for the carriage of passengers for hire in such a manner as to afford a means of transportation similar to that afforded by a railway company by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated or may be running, or for transporting passengers for hire as a business between fixed and regular termini, or transporting passengers for hire under a charter license, special service or school service permit issued by the Commonwealth of Massachusetts. When applicable, the term "bus" shall include a school bus. **[Amended during codification]**

BUS STAND — An area in the roadway, adjacent to the curb or edge of roadway, set aside for the long-term (in excess of 15 minutes) parking of any bus and confined to certain types of buses as indicated on the posted sign(s).

BUS STOP — An area in the roadway, adjacent to the curb or edge of roadway, set aside for parking of, boarding of or alighting from buses.

COMMERCIAL PARKING DISTRICT — The parking district as shown on a map entitled "Nantucket Parking Districts Map," dated May 21, 2014, as amended, and on file in the office of the Town Clerk.

COMMERCIAL VEHICLE — Any vehicle being used in the transportation of goods, wares or merchandise for commercial purposes. All commercial vehicles must permanently display on both sides of the vehicle (exclusive of windows) the vehicle owner's name, address and telephone number on at least three separate lines and bearing commercial license plates.

COMMERCIALLY REGISTERED VEHICLE — Any vehicle bearing commercial license plates.

CORE DISTRICT — The parking district as shown on a map entitled "Nantucket Parking Districts Map," dated May 21, 2014, as amended, and on file in the office of the Town Clerk.[1]

COURTESY VEHICLE — A vehicle owned, operated or hired by a commercial enterprise, to be used, or designated to be used, for the conveyance of passengers to and from the commercial enterprise without payment of a direct fee for said conveyance.

CROSSWALK — That portion of a roadway ordinarily included within the prolongation or connection of curblines and property lines at intersections, or any portion of a roadway indicated for pedestrian crossing by lines on the road surface or by other markings or signs.

DISABLED VETERAN (DV) PLATE VEHICLE — A vehicle bearing a distinctive number plate authorized by MGL c. 90, § 2.

DRIVER — A person who is in actual physical control of an operating vehicle.

FUNERAL — Any procession of vehicles properly identified as such accompanying the remains of a human body.

HANDICAP (HP) PLATE VEHICLE — A vehicle bearing a distinctive number plate authorized by MGL c. 90, § 2.

HANDICAP PLACARD VEHICLE — A vehicle properly displaying a handicap placard issued by the Registry of Motor Vehicles, Commonwealth of Massachusetts, pursuant to MGL c. 90, § 2.

HEAVY COMMERCIAL VEHICLE — Any commercial vehicle of over 2-1/2-ton capacity.

HORSE-DRAWN CARRIAGE — Any horse-drawn carriage used or kept for hire for the purpose of transporting passengers as part of sightseeing tours or used in connection with weddings.

INTERSECTING WAY — Any way which joins another way at an angle, whether or not it crosses the other.

INTERSECTION — The area embraced within the extensions of the lateral curblines, or if none, then the lateral boundary lines of intersecting ways, including divided highways. The rules and regulations herein contained governing and restricting the movement of vehicles at and near intersecting ways shall apply at any place along any way at which drivers are to be controlled by traffic control signs, whether or not such place is an intersection as herein defined.

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**1. Editor's Note: The definition of "courtesy van," which followed this definition, was repealed during codification.**

LANE — A longitudinal division of a roadway into a strip of sufficient width to accommodate the passage or parking of a single line of vehicles.

LIVERY VEHICLE — A vehicle used, or designated to be used, for the conveyance of fewer than 16 persons or passengers for hire, from place to place, except a bus, streetcar, taxi or commercial vehicle.

LOADING ZONE — That portion of a roadway adjacent to a curb or edge of the pavement reserved for commercial vehicles, as defined in this section, during the actual loading or unloading of materials, or passenger vehicles during the actual receiving or discharging of passengers, indicated by the presence of at least one regulatory sign marking the limits of the loading zone as authorized by the Town of Nantucket.

MOTORIZED BICYCLE (MOPED) — A pedal bicycle which is assisted by a motor, or a nonpedal bicycle which has a motor, with a cylinder capacity not exceeding 50 cubic centimeters, an automatic transmission, and which is capable of a maximum speed of no more than 30 miles per hour.

MUNICIPAL PARKING LOT — A parking lot owned and operated by the Town of Nantucket.

NONEMERGENCY REPAIRS — The changing of any vehicle fluid and any other repair, with the exception of minor safety-related repairs and repairs necessary for the vehicle to operate under its own power, that can be completed within 90 minutes, such as changing oil, replacing a tire, replacing a headlight or bulb, or replacing a wiper blade.

OFFICIAL STREET MARKING — Any painted line, legend, marking or marker of any description painted or placed upon any public way which purports to direct or regulate traffic and which has been authorized by the Town of Nantucket and which has the written approval of the Department of Transportation, Commonwealth of Massachusetts, if required.

OFFICIAL TIME STANDARD — Whenever certain hours are named herein they shall mean standard time or daylight-saving time.

OFFICIAL TRAFFIC SIGN — All signs, markings and devices, other than signals, not inconsistent with these rules and regulations, and which conform to the standards prescribed by the Department of Transportation of the Commonwealth of Massachusetts, and placed or erected by authority of public body or Town official having jurisdiction for the purpose of guiding, directing, warning, or regulating traffic.

PARKING — The stopping or standing of a vehicle, whether occupied or not, except when paused in compliance with the law or directions of a police officer or official traffic control device. **[Amended during codification]**

PARKING DISTRICTS MAP — A map of streets in the Town of Nantucket on file in the office of the Town Clerk which contains the geographical boundaries of the Resident Parking Permit District, the Commercial Parking District, and the Core District.

PASSENGER VEHICLE — Any vehicle registered as a passenger vehicle, including livery vehicles, and excluding buses and commercial vehicles.

PEDESTRIAN — Any person afoot or riding on a conveyance moved by human power, except bicycles.

PERSON — Any person afoot or riding on a conveyance moving by human muscular power, except bicycles or tricycles.

POLICE OFFICER or OFFICER — Any officer of the Nantucket Police Department authorized to direct or regulate traffic or make arrests for violations of these rules and regulations.

POSTED — Officially posted by the Town of Nantucket.

PRIVATE WAY OR DRIVEWAY — Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner.

PUBLIC WAY — Any road, street, way, highway, improved or unimproved road that is dedicated to public use.

RESIDENT PARKING PERMIT DISTRICT — A parking district as shown on a map entitled "Nantucket Parking Districts Map," dated May 21, 2014, as amended, and on file in the office of the Town Clerk.

ROADWAY — That portion of a public way between the regularly established curblines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.

ROTARY — A road junction formed about a central circle around which traffic moves in one direction only.

ROTARY TRAFFIC — The counter-clockwise operation of one or more vehicles around a rotary.

SAFETY ZONE — The area delineated by traffic cones, barrels or other similar objects which indicate an area of road construction, hazard or other special event where traffic control is under the direct supervision of a police officer.

SCHOOL BUS — Any vehicle used for the transporting of pupils and school personnel to and from school, or for the transportation of children enrolled in a camp or recreational program, while so used, but not including any such vehicle used for not more than five days in case of emergency, or a vehicle used for the common carriage of the public under a certificate and permit issued under MGL c. 159A, § 7 and § 8.

SEMI-TRAILER — A trailer so designed and used in combination with a tractor that some part of the weight of such trailer and that of its load rests upon and is carried by the tractor.

SIDEWALK — That portion of a public way set aside for pedestrian travel.

STAND or STANDING — The halting of a vehicle, whether occupied or not, other than for the purpose of, and while actually engaged in, receiving or discharging passengers.

STOP or STOPPING — The halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic.

TAXI — A vehicle used, or designed to be used, for the conveyance of persons or passengers for hire, from place to place, and licensed by the Town of Nantucket.

TAXI STAND — An area in the roadway in which certain taxicabs are authorized and required to park while waiting to be engaged.

TEMPORARY OR EXPERIMENTAL RULE — Rules of the Town of Nantucket regulating traffic or to test, under actual conditions, traffic signs, signals, markings, or other devices.

TOWN — The Town of Nantucket.

TRACTOR — A motor vehicle with or without a carrying capacity of its own but which is primarily designed and used for drawing another vehicle or for industrial or agricultural purposes.

TRAFFIC — Pedestrians, herded or ridden animals, vehicles, or other conveyances, either singly or together, while using any public way for the purpose of travel.

TRAFFIC ISLAND — Any area or space set aside within a public way, which is not intended for use by vehicles.

TRAILER — Any vehicle or object on wheels and having no forward movement power of its own, but which is drawn by or used in combination with a vehicle.

U-TURN — The turning of a vehicle whereby the direction of such vehicle is reversed.

VEHICLE — Every device in, upon, or by which any person or property is or may be transported or drawn upon a public way, including bicycles, when the provisions of these rules and regulations are applicable to them, except non-bicycle devices moved by human power, or horse-drawn carriages.

## § 375-2. Authority and duties of police.

It shall be the duty of police officers designated by the Chief of Police to enforce the provisions of these rules and regulations. Such officers are hereby authorized to direct all traffic either in person or by means of visible or audible signal in conformance with the provisions of these rules and regulations, provided that in the event of a fire, other emergency, or upon determination by the Chief of Police or designee, to expedite traffic or safeguard pedestrians, officers of the Police or Fire Department may direct traffic as conditions may require, notwithstanding the provisions of these rules and regulations.

A. Driver adherence to police officers. No driver of any vehicle shall fail to comply with any lawful order, signal, or direction of a police officer.

B. Police may temporarily close public way. The Chief of Police, his/her designee, or the Board is hereby authorized to close temporarily any public way in an impending or existing emergency, or for any lawful assemblage, demonstration or procession.

C. Police may temporarily prohibit parking. The Chief of Police or designee is hereby authorized to prohibit, temporarily, parking on any public way or part thereof in an impending or existing emergency or for a lawful assemblage, demonstration or procession. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

D. Exemptions. The provisions of these rules and regulations shall not apply to drivers actually engaged in work upon a public way closed to travel or under construction or repair, to officers when engaged in the performance of emergency duties nor to drivers of authorized emergency vehicles while operating in an emergency and in performance

of emergency duties when the nature of the work of any of these necessitate a departure from any part of these rules and regulations. These exemptions shall not, however, protect the driver of any vehicle from the consequences of a reckless disregard of the safety of others.

E. Removal of vehicles; liability for costs. The Police Department may remove or cause to be removed to some convenient place, including in such term a public garage, any vehicle interfering with the removal of snow or roadway maintenance, and the owner of such vehicle shall be liable for the cost of such removal and for the storage charges, if any, resulting therefrom.

**§ 375-3. Traffic signs, signals, markings and devices.**

A. Display of unauthorized signs, signals, markings, or devices prohibited. No person shall place, maintain, or display, upon or in view of any public way, any unofficial sign, signal, marking, or device which purports to be, or is an imitation of, or resembles an official traffic sign, signal, marking, or device, or which attempts to direct the movement of traffic, or which hides from view any official traffic sign, signal, marking, or device, unless otherwise authorized by the Board. The Chief of Police is hereby empowered to remove every such prohibited sign, signal, marking or device or cause it to be removed without notice.

B. Interference with signs, signals, markings, or devices prohibited. No person shall willfully deface, damage, move, obstruct, or interfere with any official traffic sign, signal, marking, or device.

C. Obedience to official traffic signs, signals, markings, or devices. The driver of any vehicle shall obey the instructions of any official traffic sign, signal, device, marking, or device, unless otherwise directed by a police officer.

D. Traffic signs, exceptions.

(1) Those provisions of these rules and regulations relating to parking or the exclusion of vehicles shall be effective only during such time as at least one official traffic sign is installed and maintained upon a public way in reasonable proximity to the area designating the provisions of such parking or vehicle exclusions.

(2) Those provisions of these rules and regulations relating to one-way streets shall be effective only during such times as at least one official traffic sign is erected and maintained at each of the exits of each one-way street.

**§ 375-4. Stopping, standing and parking in general.**

A. General prohibitions. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park in any public way under the control of the Town in violation of any provision of these rules and regulations. No driver shall stop, stand, or park a vehicle in any of the following places, except when necessary to avoid conflict with other traffic, pedestrians, or in compliance with the lawful direction

of a police officer or official traffic sign, signal, marking, or device if such stopping, standing, or parking is the result of an involuntary situation.

B. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park within an intersection, except in those areas where the parking or stopping has been permitted by the Town through the installation of designated signs or pavement markings.

C. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any sidewalk or bicycle path in such a manner as to obstruct the passage of pedestrians.

D. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any crosswalk.

E. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way within 20 feet of an intersecting way.

F. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the driveway entrance to any fire station within 75 feet opposite said driveway entrance.

G. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any roadway within 10 feet of a fire hydrant, the distance to be measured from the point of the edge or curb of said way nearest said fire hydrant.

H. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park in front of any driveway.

I. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any bridge.

J. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way, unless both wheels on the side of the vehicle adjacent to the curb are within one foot of the curb or edge of the roadway, except where angle parking is permitted or commercial vehicles, as defined in § 375-1 of these rules and regulations, are permitted to back to the curb or edge of the roadway.

K. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way where the parking of a vehicle will not leave a clear and unobstructed lane for passing traffic at least 10 feet wide on a one-way street and 20 feet wide on a two-way street.

L. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park in excess of one vehicle width from the curb or edge of a public way (double park).

M. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park at any place where at least one official traffic sign has been placed or erected prohibiting such stopping, standing, or parking.

N. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park in any taxi stand which has been officially posted as such by the Town.

O. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way or part thereof where at least one sign prohibits parking for the purpose of facilitating street cleaning or street maintenance, unless the vehicle is a passenger vehicle stopped temporarily during the actual receiving or discharging of passengers.

P. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park within a turnaround at the end of any dead-end street, provided at least one official sign is erected.

Q. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way or part thereof where at least one sign prohibits parking for the purpose of facilitating snow removal, unless the vehicle is a passenger vehicle stopped temporarily during the actual receiving or discharging of passengers or a commercial vehicle stopped temporarily during the loading or unloading of goods.

R. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way unless the vehicle is parked facing in the direction of traffic flow on that side of the street, except where angle parking is permitted or commercial vehicles are permitted to back to the curb or edge of the roadway.

S. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park at any place within the Resident Parking Permit District in excess of the posted parking restrictions unless the vehicle properly displays a valid resident parking permit sticker.

T. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way or part thereof where at least one sign is erected reserving the space for HP (handicap) or DV (disabled veteran) plate vehicles, except for disabled veteran/handicap plate/handicap placard vehicles, as defined in § 375-1 of these rules and regulations.

U. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to stop, stand, or park upon any public way in front of any curb ramp designed for use by handicapped persons.

V. No person shall allow, permit, operate or suffer any vehicle owned or registered in his/her name to stop, stand, or park upon any public way unless the vehicle displays a valid registration plate as required by MGL c. 90.

W. No person shall allow, permit, operate or suffer any vehicle owned or registered in his/her name to stop, stand, or park upon any public way unless the vehicle displays a valid certificate of inspection as required by MGL.

X. No person shall allow, permit, operate or suffer any vehicle owned or registered in his/her name to stop, stand, or park upon any public way for the purpose of performing nonemergency repairs to a vehicle.

Y. No person shall allow, permit, operate or suffer any vehicle owned or registered in his/her name to stop, stand, or park upon any public way where the vehicle is being displayed or offered for sale.

Z. No person shall allow, permit, operate or suffer any vehicle owned or registered in his/her name to be stored upon any public way. A vehicle is presumed to be stored if that vehicle is covered for more than 24 hours or the vehicle has remained in the same parking spot for over 96 hours.

AA. No person shall park or allow a motor vehicle to stand in an area which has been clearly marked with visible signs and pavement markings indicating that the area is a fire lane. Vehicles in violation of this subsection may be subject to a fine and removed by any police officer of the Town of Nantucket in accordance with MGL c. 266, § 120D, MGL c. 40, § 22, or any other enabling authority.

### § 375-5. Stopping, standing and parking prohibited in certain places.

A. No driver shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic, pedestrians, or in compliance with the lawful direction of a police officer or official traffic sign, signal, marking, or device.

B. No driver shall stand or park any vehicle where signs are posted restricting parking to certain days and/or times, on any day during the hours indicated, provided that the rules and regulations shall not apply to passenger vehicles stopped temporarily during the receiving or discharging of passengers. **[Amended during codification]**

C. No driver of a courtesy vehicle shall stand or park a courtesy vehicle in any designated parking space, loading zone, or space specifically designated as a loading area for courtesy vehicles without first having obtained a courtesy vehicle permit from the Town.

### § 375-6. Parking prohibitions and restrictions in certain places.

A. No driver shall stop, stand, or park any vehicle at any curb adjacent to the entrances of a school, church, theater, hotel, hospital, ferry terminal, public building, supermarket, or any place of public assemblage unless otherwise posted. The foregoing prohibition shall not apply to passenger vehicles stopped temporarily during the actual receiving or discharging of passengers or for commercial deliveries, including those of the Postal Service while in the process of loading or unloading.

B. No driver shall park any vehicle on any public way, or parts thereof, on any day, during the hours or days indicated, where parking is restricted or prohibited, provided that these rules and regulations shall not apply to:

(1) Passenger vehicles stopped temporarily during the actual receiving or discharging of passengers.

(2) Commercial vehicles, as defined in § 375-1 of these rules and regulations, stopped for no more than 15 minutes, unless otherwise posted, for the loading or unloading of materials.

(3) Vehicles owned and bearing the indicia of ownership by the Town, state or federal government.

(4) Vehicles involved in an emergency situation.

C. Establishment of parking districts; map.

(1) For purposes of these regulations, there are hereby established three parking districts, which are shown on a map entitled "Nantucket Parking Districts Map," dated May 21, 2014, as amended, attached hereto and on file in the office of the Town Clerk. The Nantucket Parking Districts Map, together with all explanatory matter thereon, is hereby made a part of these regulations as Appendix L.[2] The three parking districts shown on the map include a Resident Parking Permit District, a Core Parking District and a Commercial Parking District.

(2) Amendments to map.

(a) Authority. The Select Board has the authority to amend the Parking Districts Map by its own initiative or after having been presented with a petition including 51% of the owners of property located on the street or streets seeking to be added to or deleted from a parking district.

(b) Public hearing. In order to adopt such an amendment to the map, the Select Board shall hold a public hearing after having published a notice of the hearing in the newspaper of general circulation in the Town at least 21 days in advance of the hearing, and after having notified, by certified mail, all record owners of property abutting the named street or streets by advising said abutters as to the time, date, place and subject of the public hearing.

(c) Required findings. In order to adopt an amendment to the Parking Districts Map, the Select Board shall make the following findings as part of its decision:

[1] That the street is directly connected to a street which is already part of a district.

[2] That, in the case of additions to the Resident Parking Permit District, the street in question is used regularly for parking by significant numbers of persons who do not live in the immediate neighborhood, which causes a parking hardship for those living on the street during the summer.

[3] That the adoption of the amendment will further the purposes of the goals established by the Select Board as they relate to parking and the control of traffic.

**2. Editor's Note: Appendix L is included as an attachment to this chapter.**

(d) Notice to residents affected. In amendments involving changes to the Resident Parking Permit District, at least 15 days prior to becoming effective, notice shall be sent to each owner of property abutting the street or streets so affected, stating the occupants of that household are required to obtain a permit for each vehicle parking in excess of the posted time limit in the designated district and notifying the resident of the date that parking restrictions will become effective.

### § 375-7. Angle parking.

A. Where parking is not otherwise prohibited, no driver shall stand a vehicle except at an angle to the curb or edge of roadway, with the right front wheel to the curb or edge of roadway; except that in the left side of one-way roadways, no driver shall stand a vehicle except at an angle to the curb or edge of roadway, with the left front wheel to the curb or edge of roadway.

B. Where parallel parking is allowed, no driver shall stop, stand, or park a vehicle at an angle to the curb or edge of roadway unless otherwise posted.

### § 375-8. Parking of trailers or semi-trailers.

A. Except as provided in Subsection C, no person shall park or stand any trailer of any kind or semi-trailer on any part of any public way under the control of the Town, unless such trailer or semi-trailer is attached to a vehicle capable of towing it.

B. Except as provided in Subsection C, no person shall park, or shall allow to be parked, a semi-trailer (or tractor), or combination thereof, or a trailer upon any public way for a period of more than four days without approval of the Board.

C. Any area designated by the Town, upon or adjacent to any public way, for the use of boat trailers may not comply with Subsection A, but in no case shall exceed the limitations of Subsection B.

D. No person shall park or stand any trailer of any kind or semi-trailer on any part of any designated municipal parking lot under the control of the Town except in an area designated by the Town.

### § 375-9. Commercial vehicles back to curb.

Unless otherwise prohibited in these rules and regulations, the driver of a commercial vehicle, as defined in § 375-1 of these rules and regulations, may stand such vehicle with both rear wheels to the curb or edge of roadway, or with one rear wheel to the curb or edge of roadway and headed in the direction of traffic, for the purpose of and while actually engaged in the expeditious unloading and delivery or pickup and loading of materials, provided that the nature of these materials requires such rear wheel parking; and further provided that such parking will leave a clear and unobstructed roadway at least 10 feet wide for moving traffic on one-way streets and 20 feet wide for moving traffic on two-way streets.

**§ 375-10. Bus stops.**

No driver shall stop, stand, or park any vehicle other than a bus in any area designated by the Town as a bus stop.

**§ 375-11. Loading zones.**

No driver shall stop, stand, or park any vehicle in any loading zone, with the following exceptions:

A. Commercial vehicles, as defined in § 375-1 of these rules and regulations, stopped for no more than 15 minutes, unless otherwise posted, or as required for a longer period of time, for the actual loading or unloading of materials, except during the hours when stopping or standing is prohibited.

B. Passenger vehicles stopped temporarily during the actual receiving or discharging of passengers.

C. Passenger vehicles stopped temporarily in front of a hotel or guesthouse, for not more than 10 minutes continuously, or as otherwise posted, while actually engaged in receiving or discharging passengers or the expeditious loading or unloading of baggage, or while arrangements are being made for the removal of such vehicles, except during the hours when stopping or standing is prohibited.

D. Vehicles owned and bearing indicia of ownership by the Town, state or federal governments.

E. Taxis stopped for a maximum of 10 minutes continuously while in the process of making a pickup or delivery.

F. Vehicles involved in an emergency situation.

**§ 375-12. Parking time limited.**

A. No driver shall park or stand any vehicle for more than two hours continuously on any day during the hours indicated on a posted sign, provided that these rules and regulations shall not apply to commercial vehicles, as defined herein, stopped temporarily during the actual loading or unloading of materials as further defined herein.

B. This section of these rules and regulations shall not apply to vehicles bearing a resident parking permit sticker while parking within the Resident Parking Permit District.

C. This section of these rules and regulations shall not apply to vehicles bearing a temporary guest parking permit while parking within the Resident Parking Permit District.

D. This section of these rules and regulations shall not apply to vehicles bearing a temporary contractor work permit as issued herein as exempted while parking within the Core District or Resident Parking Permit District.

E. No driver shall park or stand any vehicle for more than one hour on any day during the hours indicated on a posted sign.

F. No driver shall park or stand any vehicle for more than 30 minutes continuously on any day during the hours indicated on a posted sign.

G. No driver shall park or stand any vehicle for more than 15 minutes continuously on any day during the hours indicated on a posted sign.

H. The provisions of § 375-12 of these rules and regulations shall not apply to any vehicle owned by a disabled veteran or by a handicapped person and bearing a distinctive number plate or placard or handicap placard as issued by the Town, or owned and bearing indicia of ownership by a foreign diplomatic corps or consulate.

I. For the purposes of § 375-12 of these rules and regulations, a vehicle shall be deemed to have been parked continuously if the vehicle has not been moved at least 50 feet to a different parking location upon or before the expiration of the parking time limit.

J. The Chief of Police, his/her designee, or the Board may enact temporary timed parking restrictions or relief from any timed parking restriction pursuant to these rules and regulations.

**§ 375-13. Municipal parking lots.**

A. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to park within any municipal parking lot in violation of any posted restriction, upon any traffic island or any other area not designated as a parking space.

B. No person shall allow, permit, operate or suffer any commercially registered vehicle registered in his/her name to park within any municipal parking lot between the hours of 2:00 a.m. and 4:00 a.m. without a permit issued pursuant to these rules and regulations.

C. No person shall allow, permit, operate or suffer any vehicle registered in his/her name to park within the designated Town Pier municipal parking area spaces in violation of any posted restriction without a valid permit, when required, issued pursuant to these rules and regulations. Any vehicle so parked with a Town Pier parking permit shall be exempt from the overnight parking restriction in Subsection B.

D. No driver shall park or stand within any municipal parking lot a vehicle of any type having a gross vehicle weight in excess of 12,000 pounds.

E. Except as otherwise provided in Subsection F, no person shall allow or permit any vehicle registered in his/her name to park within any designated municipal parking lot for a period of time in excess of seven consecutive days (168 hours).

F. Between the time period from the second Tuesday in October (Tuesday after Columbus Day), through the third Friday in May (Friday before Memorial Day), parking shall be allowed for a period of up to 30 consecutive days in the municipal parking lot located at the rear of 2 Fairgrounds Road, provided that a valid long-term parking permit is properly displayed. However, any vehicle so parked must be properly registered, insured and inspected.

G. No person shall allow or permit any vehicle longer than 30 feet in total length to park within any municipal parking lot except in spaces designated and posted for such vehicles.

### § 375-14. Commercial vehicle parking.

A. No driver shall park or stand any commercial vehicle or semi-trailer having a capacity of one ton or more for more than one hour between the hours of 9:00 p.m. of one day and 8:00 a.m. of the following day, or at any time on Sunday, on any part of any public way where parking or standing a vehicle is not otherwise prohibited, provided that this subsection of these rules and regulations shall not apply during the loading or unloading of materials.

B. Parking of commercially registered vehicles is prohibited in the Commercial Parking District between the hours of 2:00 a.m. and 4:00 a.m., except by permit, on any part of the way where parking or standing a vehicle is not otherwise prohibited, provided that this subsection of these rules and regulations shall not apply during the loading or unloading of materials.

### § 375-15. Dumpsters and roll-on/roll-off containers.

A. No person shall park, store or deposit upon any public way of the Town a dumpster or any roll-on/roll-off container used for the collection of refuse, debris, or for any other purpose without a permit from the Town.

B. Any dumpster or any roll-on/roll-off container allowed by permit shall be placed upon the public way so that it will leave a clear and unobstructed way at least 10 feet wide for moving traffic on one-way streets and 20 feet wide for moving traffic on two-way streets. During the hours of darkness or during hours posted, the outermost edges of such dumpster and/or container shall be clearly marked with a flashing amber light or be permanently affixed with engineer-grade reflective material which shall be visible from any public way.

### § 375-16. Parking permits.

A. The Police Department shall issue, upon submission of a proper application, submission of appropriate fees, satisfactory demonstration of qualification and after having made a determination of eligibility, the following permits: **[Amended 1-21-2009; 5-21-2014; 10-22-2014; 12-17-2014; 2-17-2016; 3-16-2016; 6-22-2016; amended during codification]**

(1) Residential parking permit. Where stopping, standing or parking is not otherwise prohibited within the Resident Parking Permit District, up to two permits shall be issued to owners of vehicles who own or rent dwellings which front on streets included in the Resident Parking Permit District or Core District, provided that fees in amounts set from time to time by the Select Board have been paid to the Town for applications submitted between January 1 and May 31 or for applications submitted between June 1 and December 31; the applicant shows

satisfactory proof that he or she lives on a public way in one of the districts during the period between June 1 and September 30 of the year for which he/she is seeking a permit by using a tax bill, executed lease with a term greater than 90 days or other acceptable documentation as proof; and a valid registration card for the vehicle to be permitted is shown. Applicants who require additional permits may be issued a permit upon completion of an application as follows: For additional permits purchased between January 1 and January 31 by a resident of the Town who is shown as a resident of the Town upon the street where such additional permits are requested as determined by the Official Street List maintained by the Nantucket Town Clerk, the fee or any such additional permit shall be set from time to time by the Select Board; for additional permits by persons who do not appear on the Official Street List of the Town, and such additional permits are purchased between January 1 and May 31, the fee for each additional permit shall be set from time to time by the Select Board; for any additional permit purchased between June 1 and December 31, the fee shall be set from time to time by the Select Board for each permit. Vehicles which are owned by a corporate entity may be issued one residential parking permit when the vehicle being registered is owned by a corporate entity rather than the applicant. Corporate vehicle owners are not eligible for any additional parking permits under this section. Denial of permits for corporate vehicles can be appealed to the Select Board.

(2) Commercially registered vehicle permit. Owners of commercially registered vehicles, registered to a Nantucket address, not a post office box, may be issued a permit that allows a commercially registered vehicle to be parked in violation of § 375-14B of these rules and regulations, upon application by the owner or his/her agent and the payment of a fee set from time to time by the Select Board per permit. Vehicles that have been issued a valid residential parking permit under Subsection A(1) of this section or a valid live-aboard parking permit under Subsection A(11) that otherwise qualify for a commercially registered vehicle permit shall have the fee waived for the commercially registered vehicle parking permit. Commercially registered vehicle permits shall be valid for the year in which they are issued only.

(3) Town Pier parking permit. Owners of vehicles that are awarded a slip on the Town Pier shall be eligible for a Town Pier parking permit. There shall be a limit of one permit per slip or one permit per family. In order to qualify for said permit, the applicant must present a completed application and a valid registration for the vehicle to which the permit will be affixed. All Town Pier rental fees must be fully paid prior to the issuance of the parking permit. The Town Pier parking permit shall be valid for the year in which it was issued. A new permit is required each subsequent year.

(4) Commercial vehicle Town lot permit. Owners of vehicles not otherwise qualified for a permit under Subsection A(2) of this section, registered to an off-Island address, shall be eligible for a commercial vehicle Town lot permit upon submission of an application and valid vehicle registration and payment of a fee set from time to time by the Select Board. Said permit is valid from the Tuesday after Columbus Day to the Friday before Memorial Day. Said permit allows the vehicle to be parked overnight in the municipal parking lots located at 37

Washington Street and Silver Street in compliance with § 375-13E of these rules and regulations.

(5) Silver Street parking permit. Owners of vehicles not otherwise qualified for a permit under Subsection A(1) who own or rent dwellings which front on West Dover Street are eligible for a permit for the purpose of parking in the Silver Street parking lot. Any vehicle so parked with a valid Silver Street parking permit shall be exempt from the overnight parking restrictions in § 375-13B.

(6) Guesthouse and hotel parking permit. Licensed guesthouses and hotels located in the Core District or Resident Parking Permit District may be issued, upon application by the owner or its agent and the payment of a fee set from time to time by the Select Board, a fixed number of reusable, transferable parking permit placards. Permit placards shall be issued at the rate of one placard for each three guest rooms, less the number of off-street parking spaces owned or leased by the guesthouse or hotel. Each placard shall be numbered and shall bear the name of the establishment. Placards shall be displayed on the dashboard of the guest vehicle above the speedometer while it is parked in the Resident Parking Permit District. Permit placards issued to the guesthouses and hotels shall only be considered valid when properly displayed in a vehicle owned or rented by a guest of the establishment and shall not be deemed valid when improperly displayed or displayed in vehicles of employees or others not temporarily residing in the guesthouse or hotel. Replacement of lost or stolen guesthouse or hotel placards shall be granted upon payment of a replacement fee set from time to time by the Select Board and upon the reporting of the number of the placard so lost or stolen.

(7) Temporary licensed contractor parking permit. Licensed contractors who are engaged in work within the Core District or the Resident Parking Permit District and who require the use of their vehicles to perform said work may be issued a temporary parking permit by the Town, provided that a fee set from time to time by the Select Board has been paid to the Town.

(8) Temporary residential parking permit. Operators of rented vehicles who own or rent dwellings which front on streets included in the Resident Parking Permit District or the Core District, and owners of vehicles who rent or hold a short-term lease for dwellings which front on streets included in the Resident Parking Permit District, may be issued a temporary residential parking permit for a period of time indicated on the permit, provided that a fee set from time to time by the Select Board has been paid to the Town; the applicant shows satisfactory proof that he/she owns or rents and resides in a dwelling which fronts on a public way in one of the districts during the period between June 1 and September 30 of the year for which the applicant is seeking a temporary permit by using a tax bill, an executed short-term lease with a term of 90 days or less, or other acceptable documentation as proof; and a valid vehicle rental/lease agreement or a valid registration card for the vehicle to be permitted is shown.

(9) Long-term parking permit. Owners of vehicles that desire to park a vehicle for longer than seven days may make application providing such information as the Town requires, for a permit to allow the long-term parking of a vehicle within a

municipal parking lot where such long-term parking is permitted. The fee for this permit shall be set from time to time by the Select Board, commencing upon the eighth day that the vehicle is permitted to park (no charge for days one through seven). A long-term parking permit shall not be valid beyond 30 days.

(10) Courtesy vehicle permit.

(a) Where stopping, standing or parking is not otherwise prohibited, permits may be, upon application, issued or reinstated to owners or operators of courtesy vehicles, subject to the following:

[1] The vehicle must be properly commercially registered and inspected in Massachusetts.

[2] The vehicle must be well maintained and in good condition.

[3] The vehicle must be clean inside and outside and be well-painted.

[4] The vehicle must have all wheels covered with hubcaps.

(b) The annual fee (January 1 through December 31) for a courtesy vehicle permit shall be set from time to time by the Select Board. Permits so issued shall be displayed pursuant to Subsection B(2). If the permit is lost or suspended pursuant to Subsection F, a replacement/reinstatement fee set from time to time by the Select Board shall apply.

(11) Live-aboard parking permit. Owners of vehicles who live full-time aboard a vessel moored on a Town-licensed mooring shall be eligible for up to three "live-aboard" parking permits under this section, provided that a fee set from time to time by the Select Board has been paid to the Town; the applicant shows satisfactory proof that he/she lives full-time on a vessel moored within the Nantucket Harbor anchorage for a minimum of 10 consecutive weeks and that the vessel is properly documented by the U.S. Coast Guard or properly registered by the Commonwealth of Massachusetts and tied to a permitted mooring during the period between June 1 and September 30 of the year for which the applicant is seeking a permit and that a valid motor vehicle registration is shown for each vehicle. The signature of the Harbormaster is required to verify proof of full-time live-aboard status. Said permit is valid only for the municipal parking lot at 37 Washington Street.

B. Proper display of permits.

(1) Adhesive stickers shall be inscribed with the license plate number of the so-permitted vehicle and shall be affixed to the left rear bumper of the vehicle so as to be easily seen.

(2) Placard permits shall be inscribed with the license plate number of the so-permitted vehicle or the name of the business or organization to which the permit is issued. Any conditions imposed on the use of the permit by the permit-issuing authority shall be clearly indicated on the permit. Said permits shall be clearly displayed on the dashboard of the vehicle above the speedometer while it is parked in the area requiring a permit. Copies of placard permits shall not be considered valid.

C. Validity. Such permits shall be valid only for the vehicle for which or organization to which it was originally issued. Permits are not transferable from one vehicle to another under any circumstances. Permits shall only be valid for the period of time indicated on the permit.

D. There must be no unpaid parking tickets issued to the registration of the vehicle to be eligible to receive any permit issued under Subsection A(2), (7), (10) and (11) of this section.

E. Misuse of parking permits. It shall be unlawful for any person to knowingly represent that he/she is entitled to a parking permit issued under this section when he/she is not so entitled. It shall also be unlawful for any person to park a vehicle displaying such permit in the Resident Parking Permit District or the Commercial Parking District when the holder of such permit is not entitled to hold it. Whenever the conditions which qualified a resident for a resident parking permit no longer exist, the owner of the vehicle so permitted shall immediately cross out his/her permit sticker with a heavy black marker so as to invalidate the permit. Whenever the conditions which qualified a holder of a temporary permit no longer exist, the permit shall be removed from the vehicle. After having crossed out or removed the permit in this manner, the vehicle may be parked in the Resident Parking Permit District or the Commercial Parking District lawfully subject to the time limits in place. Any of the above-mentioned misuse violations shall be punishable by a fine as set forth in Appendix J, Schedule of Fines,[3] each day of violation being considered a separate offense. **[Amended during codification]**

F. Courtesy vehicle operation. Operators of courtesy vehicles shall adhere to all traffic laws and regulations pertaining to the operation of motor vehicles. Such operators shall present a clean and neat appearance and not be smoking. For violations of this subsection, in addition to any penalty specified under law or these regulations, the courtesy vehicle permit may be suspended by the Police Chief or designee until payment of the reinstatement fee under Subsection A(10).

## § 375-17. Interpretation of posted parking restrictions.

Parking restrictions indicated by the presence of official traffic signs shall be interpreted in the following manner:

A. The direction to which a parking restriction applies may be indicated by the placing of arrows on the sign(s).

(1) On any public way, a sign without arrows, or a sign on which arrows are placed which point both to the left and right, shall indicate that the parking restriction applies in both directions.

(2) On a two-way street, a sign with an arrow which points to the left indicates that the parking restriction applies only to the parking from that point forward of the sign ("forward" refers to the direction of vehicle travel on that side of the street).

**3. Editor's Note: Appendix J is included as an attachment to this chapter.**

(3) On a two-way street, a sign with an arrow which points to the right indicates that the parking restriction applies only to the parking from that point backward of the sign ("backward" refers to the opposite direction of vehicle travel on that side of the street).

(4) On the right-hand side of a one-way street, a sign with an arrow which points to the left indicates that the parking restriction applies only to the parking from that point forward of the sign ("forward" refers to the direction of vehicle travel on that side of the street).

(5) On the right-hand side of a one-way street, a sign with an arrow which points to the right indicates that the parking restriction applies only to the parking from that point backward of the sign ("backward" refers to the opposite direction of vehicle travel on that side of the street).

(6) On the left-hand side of a one-way street, a sign with an arrow which points to the left indicates that the parking restriction applies only to the parking from that point backward of the sign ("backward" refers to the opposite direction of vehicle travel on that side of the street).

(7) On the left-hand side of a one-way street, a sign with an arrow which points to the right indicates that the parking restriction applies only to the parking from that point forward of the sign ("forward" refers to the direction of vehicle travel on that side of the street).

B. A parking restriction which is indicated by the placement of an official traffic sign shall continue in effect until another parking restriction is indicated by the placement of an official traffic sign.

C. Official traffic signs which indicate the existence of either "Street Cleaning" or "Snow Emergency" restrictions shall apply to the entire public way, regardless of the existence of other posted restrictions or valid parking spaces.

D. Temporary official traffic signs placed on a public way for the purposes of construction or special events shall take precedence over all other posted parking restrictions and metered spaces in the public way.

E. The placement of official traffic signs which would otherwise permit the stopping, standing or parking of vehicles shall not be construed as permission to stop, stand or park a motor vehicle in violation of any regulation which does not require the placement of an official traffic sign, including, but not limited to, the following:

(1) Parking upon any crosswalk;

(2) Parking within 20 feet of an intersecting way;

(3) Parking within 10 feet of a fire hydrant;

(4) Parking in front of any driveway; and

(5) Parking in front of a ramp designed for use by handicapped persons.

**§ 375-18. Multiple parking tickets; separate violations.**

The lapse of each posted time restriction shall constitute a separate offense. In addition, any vehicle which, while parked or standing in the same approximate location, violates a time restriction after having already received two successive time restriction violations in a given twenty-four-hour period may be towed and removed by the Nantucket Police Department.

**§ 375-19. One-way streets.**

On certain public ways or parts thereof, vehicles shall operate only in the direction as authorized by an official traffic sign. The list of public ways or parts thereof where the direction of vehicles is restricted and are designated as "one-way streets" is included in Appendix A of these rules and regulations.[4]

**§ 375-20. Rotary traffic.**

All vehicular traffic shall move in a rotary only in a counter-clockwise direction, except when otherwise directed by a police officer or an official traffic sign, signal, marking or other device, erected and maintained, or caused to be made, erected and maintained by the Town.

**§ 375-21. Operation of vehicles.**

A. Drive within marked lanes. When any roadway has been divided into lanes, the driver of a vehicle shall not drive other than entirely within a single lane, and he/she shall not move from the lane in which he/she is driving until he/she has first ascertained if such movement can be made with safety.

B. Drive on right side of street. The driver of a vehicle shall not drive other than on the right half of the roadway, except on one-way streets, where signs have been erected to the contrary, or when overtaking and passing another vehicle or when preparing for a left turn. The driver of a slow-moving vehicle shall not drive other than as closely as possible to the right-hand edge or curb of the roadway, unless it is impracticable to travel on such side of a public way. **[Amended during codification]**

C. Keep to the right of public way division. On a roadway divided by a grass plot, traffic island, walk, or other structure, the driver of a vehicle shall not drive other than to the right of such division, except on one-way streets, or when otherwise directed by a police officer or any official sign, signal, marking, or device.

D. Overtaking other vehicles. The driver of a vehicle shall not overtake and pass any other vehicle proceeding in the same direction at any intersection of public ways, except that this provision shall not apply at intersections where traffic is controlled by a police officer.

E. Overtake only when there is a space ahead. The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the roadway, except that on a one-way street drivers shall not

**4. Editor's Note: Appendix A is included as an attachment to this chapter.**

be restricted to the use of the right half of the roadway, but may have access to the entire width thereof, to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead, and without causing the driver of any vehicle to change his/her speed or alter his/her course, except as provided in Subsection F of this section.

F. Driver to give way to overtaking vehicle. Except when overtaking and passing on the right is permitted, the driver of a vehicle, when about to be overtaken and passed by another vehicle approaching from the rear, shall give way to the right when practicable in favor of the overtaking vehicle, and shall not increase the speed of his/her vehicle until completely passed by the overtaking vehicle. **[Amended during codification]**

G. Obstructing traffic.

(1) No person shall drive in such a manner as to unnecessarily obstruct the normal movement of traffic on any public way.

(2) No driver of any vehicle shall enter an intersection or a marked crosswalk unless there is sufficient space beyond the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he/she is driving without obstructing the passage of other vehicles or pedestrians.

H. Care in starting, stopping, turning, or backing. The driver of any vehicle shall not start, stop, turn from a direct line, or back his/her vehicle unless such movement can be made safely. If such movement cannot be made safely, or if it interferes unduly with the normal movement of other traffic, said driver shall wait for a more favorable opportunity to make such movement.

I. Backing around corners or into intersections prohibited. The driver of any vehicle shall not back such vehicle around a corner at an intersection or into an intersection of streets.

J. Left turns prohibited. No driver of any vehicle shall make a left turn where prohibited by an official traffic sign, signal, marking or other device erected and maintained, or caused to be made, erected and maintained, by the Town.

K. Only left turn movements permitted. No driver of any vehicle shall proceed in any direction other than to the left, at the points of intersection, where prohibited by an official traffic sign, signal, marking or other device erected and maintained, or caused to be made, erected and maintained, by the Town.

L. Right turns prohibited. No driver of any vehicle shall make a right turn where prohibited by an official traffic sign, signal, marking or other device erected and maintained, or caused to be made, erected and maintained, by the Town.

M. Only right turn movements permitted. No driver of any vehicle shall proceed in any direction other than to the right, at the points of intersection, where prohibited by an official traffic sign, signal, marking or other device erected and maintained, or caused to be made, erected and maintained, by the Town.

N. Obedience to lane control devices. Where official traffic control devices are erected directing specific vehicles to use a designated lane or lanes for traffic moving in a particular direction, regardless of the center of the roadway, or to prohibit a turn or to

make a required turn at an intersection of roadways, drivers of vehicles shall obey the direction of every such device. For example: "Right Lane Must Turn Right" and "Left Lane Must Turn Left."

O. U-turns regulated. No driver shall turn a vehicle so as to proceed in the opposite direction unless such turn can be made without backing up and without causing any approaching driver to decrease speed or change his/her course.

P. U-turns prohibited. No driver shall make a U-turn where prohibited by an official traffic sign, signal, marking or other device erected and maintained, or caused to be made, erected and maintained, by the Town.

Q. Obedience to isolated stop signs. In accordance with the provisions of MGL c. 89, § 9, as most recently amended, certain streets are designated as "stop streets." The list of streets or parts thereof where the direction of vehicles is restricted and are designated as "stop streets" is included in Appendix B of these rules and regulations.[5]

R. Obedience to yield signs. In accordance with the provisions of MGL c. 89, § 9, as most recently amended, certain public ways are designated as "yield streets." The list of streets or parts thereof where the direction of vehicles is restricted and are designated as "yield streets" is included in Appendix C of these rules and regulations.[6]

S. Driving on sidewalks or bicycle paths. The driver of a vehicle shall not drive on or over any sidewalk or bicycle path except at a permanent or temporary driveway or at an intersection of streets. The driver of a vehicle, prior to driving on or over any such driveway, shall yield the right-of-way to any pedestrian or bicycle approaching within five feet of such driveway.

T. Driving over traffic islands prohibited. The driver of a vehicle shall not drive on or over any traffic island unless directed to do so by a police officer.

U. Driving through safety zones prohibited. No driver of any vehicle shall drive into, over or through a safety zone, except on signal from a police officer.

V. Emerging from a private road or driveway. The driver of a vehicle emerging from a private way, driveway, or garage shall stop such vehicle immediately prior to driving upon the sidewalk or bicycle path area extending across the front of such driveway or garage, and where no such sidewalk exists, the stop shall be made at the building or property line as the case may be. Upon entering the roadway, the driver shall yield the right-of-way to approaching vehicles.

W. Special speed rules and regulations.

(1) In accordance with the provisions of MGL c. 90, § 18, special speed restrictions have been established on certain streets. The list of streets or parts thereof where the speed of vehicles is regulated is included in Appendix D of these rules and regulations.[7]

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**5. Editor's Note: Appendix B is included as an attachment to this chapter.**

**6. Editor's Note: Appendix C is included as an attachment to this chapter.**

**7. Editor's Note: Appendix D is included as an attachment to this chapter.**

(2) In accordance with the provisions of MGL c. 90, § 17, a special school zone speed restriction of 20 miles per hour has been established on certain public ways. The list of streets or parts thereof which have been designated as "school zones" is included in Appendix E of these rules and regulations.[8]

X. Rights and duties in funeral or other processions.

(1) It shall be the duty of each driver in a funeral or other procession to keep as near to the right edge of the roadway as is feasible to follow the vehicle ahead as closely as is practicable and safe.

(2) At an intersection where a stop sign or yield sign is located, the driver of the first vehicle in a funeral or other procession shall be the only one governed by the traffic signal indication or the stop or yield sign, and after the first vehicle enters the intersection, all other vehicles in the procession must proceed together in a group.

Y. Operation of horse-drawn carriages.

(1) No owner of a horse-drawn carriage shall begin operating a horse-drawn carriage for hire until he/she has obtained the necessary license and paid the required fee to the Town.

(2) The Town may designate an area within the roadway to serve as a stand if such space is available and practicable.

(3) Each "stand" will be designated by a minimum of two signs.

(4) No driver of any horse-drawn carriage shall operate any carriage under his/her control other than as closely as possible to the right-hand edge or curb of the roadway.

(5) No driver of any horse-drawn carriage shall operate any carriage under his/her control in violation of any of the regulations of the Town.

(6) No driver of any horse-drawn carriage shall operate any carriage under his/her control in certain public ways or parts thereof, during the hours indicated. The list of public ways or parts thereof where the operation of horse-drawn carriages is restricted and/or the hours are regulated is included in Appendix F of these rules and regulations.[9]

## § 375-22. Exclusion of vehicles.

A. Advertising vehicles excluded. No person shall drive or park in the Core District any vehicle designed or used primarily for the purpose of advertising.

B. Heavy commercial vehicles excluded. No heavy commercial vehicle shall be operated on certain public ways or parts thereof. This restriction shall not apply to authorized emergency vehicles, as herein defined in § 375-1 of these rules and regulations, to

**8. Editor's Note: Appendix E is included as an attachment to this chapter.**

**9. Editor's Note: Appendix F is included as an attachment to this chapter.**

vehicles using streets for the making of deliveries or collections or for the purpose of reaching a regular storage place located on said streets or parts thereof, to street repair vehicles of the Town, nor to any commercial vehicle equipped with pneumatic tires with a load capacity not over 2 1/2 tons and without a trailer. The list of public ways or parts thereof designated by the Town as excluding heavy commercial vehicles is included in Appendix G of these rules and regulations.[10]

C. Commercial vehicles excluded. No commercial vehicle shall be operated on certain public ways or parts thereof. This restriction shall not apply to authorized emergency vehicles, as herein defined in § 375-1 of the rules and regulations, to passenger vehicles whose gross weight is less than 5,000 pounds and which are registered for commercial use, to vehicles using public ways for the making of deliveries or collections or for the purpose of reaching a regular storage place located on said public ways or parts thereof, nor to street repair vehicles of the Town. The list of public ways or parts thereof which have been designated as excluding commercial vehicles is included in Appendix H of the rules and regulations.[11] **[Amended during codification]**

D. Exclusion of vehicles from public ways. Vehicles are excluded from certain public ways. The list of public ways or parts thereof which have been designated by the Town as excluding vehicles is included in Appendix I of these rules and regulations.[12]

### § 375-23. Parades, processions and formations.

No person shall take part in any parade, procession or other organized formation of persons or vehicles, other than a funeral procession or a picket line, in or upon any public way under the control of the Town unless the Town shall have first issued a permit for such parade, procession, or formation. The Town shall issue such permit in all cases except where the time, place, and manner are not in conformity with the provisions set forth below or where the permit would conflict as to time or place with a permit previously issued.

A. The written request for the permit shall be filed with the Town not more than 12 months or less than three business days prior to the occurrence and should include the following:

(1) The date and starting time.

(2) The name, address, and telephone number of the applicant and name of the organization involved.

(3) The formation or assembly area and time therefor.

(4) The route of the parade or motorcade and what portions of the streets traversed may be occupied by such parade, procession, or formation.

(5) The approximate number of people and vehicles in the parade or motorcade.

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**10. Editor's Note: Appendix G is included as an attachment to this chapter.**

**11. Editor's Note: Appendix H is included as an attachment to this chapter.**

**12. Editor's Note: Appendix I is included as an attachment to this chapter.**

B. No permit shall be issued authorizing a parade, procession, or formation under the following conditions:

(1) When the sole purpose is advertising any product, goods, wares, merchandise, event, or the parade, procession or formation is designed to be held for private profit.

(2) Between the hours of 10:00 p.m. to 7:00 a.m. in areas that are principally residential.

C. The Police Chief or designee may modify the requested route or time of a parade under the following conditions:

(1) When the size of the parade, based upon the expected number of participants and spectators, cannot be safely accommodated on the proposed route because of the capacity of the roadway or other conditions.

(2) When the route or time conflicts with another parade or other public event to such an extent that public order or safety is threatened. The determination shall be based upon the inability of the roadway to safely accommodate the expected number of participants and spectators; or the inability to develop safe traffic detours because of the street configuration and traffic congestion in the area.

(3) Any modification of the route or the time shall be narrowly tailored to address the conditions and shall be done in consultation with the permit applicant unless the applicant is unavailable or declines to consult with the Police Chief.

(4) Any modification to the requested route or time, or any determination by the Police Chief or designee, shall be in writing to the applicant and shall set forth a basis for such determination.

**§ 375-24. Posting of temporary signs for construction or special events.**

The posting of signs which prohibit or restrict parking due to construction or special events shall be conducted in the following manner:

A. All signs shall conform to Town specifications. The exact legend on each sign shall be determined by the Police Chief or designee.

B. All signs shall indicate the effective date and estimated completion date of the construction project or special event.

C. All signs shall be installed at locations as determined by the Police Chief or designee.

D. All signs shall indicate the effective hours of the regulation, if the regulation is not in effect 24 hours.

E. All signs shall be installed a minimum of 24 hours in commercial areas and 48 hours in residential areas before the effective date and time of the restriction.

### § 375-25. Experimental rules and regulations.

For purposes of trial, the Board may make temporary rules regulating traffic or test under actual conditions traffic signs, signals, markings, or other devices. No such temporary or experimental rule regulating traffic shall remain in effect for a period of time longer than 60 days.

### § 375-26. Violations and penalties; violation notices.

A. Penalties. Whoever violates any of the provisions of these rules and regulations, or whoever violates any temporary or experimental rule, shall be punished by a fine amount set forth in Appendix J of these rules and regulations.[13]

B. Parking violation notice. Officers empowered to enforce these rules and regulations shall use the standard town parking violation notice for said violation.

C. Noncriminal violation citation. Officers authorized to enforce these rules and regulations may use the standard Town noncriminal violation notice for violations which regulate the movement of vehicles.

### § 375-27. Severability.

The provisions of these rules and regulations are hereby declared to be severable; and if any provision of these rules and regulations is invalid, such invalidity shall not affect or impair any other provision hereof.

### § 375-28. Nantucket exemption.

The Town is authorized to regulate the weights of vehicles on Nantucket Island pursuant to Chapter 372 of the Special Acts of 1954 and the dimensions and number of certain vehicles driven or operating in the Town pursuant to Chapter 321 of the Special Acts of 1995, as set forth in Appendix K.[14]

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**13. Editor's Note: Appendix J is included as an attachment to this chapter.**

**14. Editor's Note: Appendix K is included as an attachment to this chapter.**

# Chapter 382

# WELLHEAD PROTECTION DISTRICT

**§ 382-1. Findings.**

**§ 382-2. Exempted properties.**

**§ 382-3. Flow design criteria.**

**[HISTORY: Adopted by the Board of Health of the Town of Nantucket 6-29-1995. Amendments noted where applicable.]**

**GENERAL REFERENCES**

**Zoning — See Ch. 139.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**

**Wells — See Ch. 386.**

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## § 382-1. Findings. [Amended during codification]

In order to protect the perceived development rights of properties located within the proposed expansion of the Aquifer Protection District, the Board of Health of the Town of Nantucket hereby adopts the below-noted Board of Health regulation in accordance with current nitrogen loading sciences.

## § 382-2. Exempted properties. [Amended during codification]

A. "Exempted properties" shall be defined as undeveloped properties located outside the currently sewered areas, and within the Wellhead Protection District Expansion Area as defined by Article 45 of the 1995 Annual Town Meeting.

B. This exemption shall not apply to those lots governed by other private restrictions, or restrictions by a bona fide government authority, which are not immediately evident at this time.

## § 382-3. Flow design criteria.

A. Lots within the Aquifer Protection District containing less than 30,000 square feet of area shall be entitled to a maximum septic system design capacity of 330 gallons per day.

B. Lots within the Aquifer Protection District containing 30,000 square feet or more of area shall be entitled to a septic system design capacity of 110 gallons per 10,000 square feet of property area. **[Amended during codification]**

C. Areas designated as wetlands shall not be considered when calculating square footage of property areas for lots subject to Subsection B.

# Chapter 386

# WELLS

ARTICLE I
**Private Wells**

**§ 386-1. Purpose and authority.**

**§ 386-2. Definitions.**

**§ 386-3. Permit required.**

**§ 386-4. Private well protection zones.**

**§ 386-5. Well design, construction and requirements.**

**§ 386-6. Sampling and testing.**

**§ 386-7. Relief procedure; preexisting lots.**

**Private Well Protection Zones**

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

**TOWN CODE REFERENCES**

**Underground fuel storage tanks — See Ch. 135.**

**Zoning — See Ch. 139.**

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**TOWN REGULATIONS REFERENCES**

**Administration and enforcement of Board of Health regulations; definitions — See Ch. 223.**

**Subdivisions — See Ch. 358.**

**Underground tanks — See Ch. 363.**

**Wellhead Protection District — See Ch. 382.**

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ARTICLE I

## Private Wells

**[Adopted by the Board of Health 8-22-1990, effective 8-24-1990]**

### § 386-1. Purpose and authority.

A. Purpose. These regulations are intended to protect the public health and general welfare by ensuring that private wells are constructed in a manner which will protect the quality of the groundwater derived from private wells.

B. Authority. These regulations are adopted by the Nantucket Board of Health, as authorized by MGL c. 111, § 31.

C. These regulations supersede all previous regulations adopted by the Board of Health pursuant to the construction of private wells.

### § 386-2. Definitions.

As used in these regulations, the following terms shall have the meanings indicated:

PRIVATE WELL — Any dug, driven, or drilled hole with a depth greater than its largest surface diameter developed to supply water intended and/or used for human consumption and not subject to regulation by 310 CMR 22.00.

**§ 386-3. Permit required.**

A. The property owner or his/her designated representative shall obtain a permit from the Health Agent prior to the commencement of construction of a private well. Permits must be obtained for any well that is deepened, reconstructed or repaired for maintenance or other needs. Emergency repairs can be made subject to obtaining the necessary permit at the earliest practicable time. The fee may be waived by the Agent for repairs or maintenance.

B. Each permit application to construct a well shall include the following:

(1) The property owner's name and address.

(2) The well driller's name and proof of valid state registration.

(3) A plan with a specified scale, signed by a registered surveyor or engineer, showing the location of the proposed well in relation to existing or proposed aboveground or below-ground structures.

(4) A description and location of visible prior and current land uses within 400 feet of the proposed well location which represent a potential source of contamination, including but not limited to the following:

(a) Existing and proposed structures.

(b) Subsurface sewage disposal systems.

(c) Subsurface fuel storage tanks.

(d) Public ways.

(e) Utility rights-of-way.

(f) Any other potential sources of pollution.

(5) Proof that the owner of any property within 400 feet of the applicant's well site has been notified, by certified mail, return receipt requested, of the applicant's intention to install a well.

(6) A permit fee set from time to time by the Board of Health. **[Amended during codification]**

C. The permit shall be on site at all times that work is taking place. Each permit shall expire one year from the date of issuance unless revoked for cause. Permits may be extended for one additional six-month period, provided that a written request is received by the Agent prior to the one-year expiration date. No additional fee shall be charged for a permit extension, provided there is no change in the plans for the proposed well.

D. Well construction permits are transferable.

E. Such permits shall be granted of right by the Agent without a hearing upon satisfaction of all rules, obligations and conditions as set forth in these private well regulations. A grant or denial of a permit by the Agent shall be appealable to the Board in accordance with Chapter 323, Article II, of the Town Regulations.

## § 386-4. Private well protection zones.

A. In locating a private well, the applicant shall identify all potential sources of contamination which exist or are proposed within 400 feet of the site. When possible, the well shall be located upgradient of all potential sources of contamination and shall be as far removed from potential sources of contamination as possible, given the layout of the premises.

B. Each private well shall be accessible for repair, maintenance, testing, and inspection. The well shall be completed in a water-bearing formation that will produce the required quantity of water under normal operating conditions.

C. No on-site private well permit application shall be approved if the private well is to be within a one-hundred-foot separation distance from existing and proposed leaching facilities and a three-hundred-foot separation distance in a downgradient groundwater flow direction from existing or proposed leaching facilities (see attached diagram[1]).

D. Groundwater flow directions will be determined using Water Table Map #2 prepared by HWH, Inc. as part of its Nantucket Water Resources Management Plan, March 1990, or field data submitted by the applicant (herein incorporated by reference and attached hereto), Board of Health or its agent by measuring the site-specific flow conditions using at least three observation wells in which water table elevations will be measured.

E. All wells located in the "dome" areas shown on Map #2, HWH Water Management Report, March 1990, on file with the Board of Health ("HWH Map #2") shall be exempt from the three-hundred-foot separation distance in a downgradient groundwater flow direction from existing or proposed leaching facilities but shall maintain a one-hundred-foot separation distance from said facilities. A "dome" is defined as the area within the highest hydrological regional contour line. There are seven "dome" areas on Nantucket.

F. The Board reserves the right to impose minimum lateral distance requirements from other potential sources of contamination not listed above. All such special well location requirements shall be listed, in writing, as a condition of the well construction permit.

## § 386-5. Well design, construction and requirements.

A. Pursuant to 313 CMR 46.00, no person in the business of digging or drilling shall be hired to construct a private well unless such person is registered with the Department of Environmental Management/Division of Water Resources. Any work involving the connection of the private well to the distribution system of the residence must conform

1. **Editor's Note: The diagram is included as an attachment to this chapter.**

to the local plumbing code. All electrical connections between the well and the pump controls and all piping between the well and the storage and/or pressure tank in the house must be made by duly licensed installers, including the installation of the pump and appurtenance in the well or house. **[Amended during codification]**

B. Well drillers shall notify the Nantucket Board of Health when a well has been installed and cleared. At this time, the well driller will furnish the Board with a locus map or Nantucket Tax Assessor's Map and parcel plan and/or a copy of the state Water Well Completion Report. A well location diagram, also showing proper dimensions required to locate the well, shall be filed with the Inspector of Buildings.

C. Abandoned wells, test holes, and borings shall be decommissioned so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.

(1) The owner of the private well shall decommission the well if the well meets any of the following criteria:

(a) Construction of the well is terminated prior to completion of the well.

(b) The well owner notifies the Board that the use of the well is to be permanently discontinued.

(c) The well has, after extended use, been out of service for at least three years.

(d) The well is a potential hazard to public health or safety and the situation cannot be corrected.

(e) The well is in such a state of disrepair that its continued use is impractical.

(f) The well has the potential for transmitting contaminants from the land surface into an aquifer or from one aquifer to another and the situation cannot be corrected.

(2) The property owner shall be responsible for ensuring that all abandoned wells and test holes or borings associated with private well installation are properly plugged. Only registered well drillers may plug abandoned wells, test holes, and borings.

## § 386-6. Sampling and testing.

A. The applicant shall submit to the Board a pumping test report, which shall include the name and address of the well owner, well location, referenced to at least two permanent structures or landmarks, date the pumping test was performed, depth at which the pump was set for the test, location of the discharge line, static water level immediately before pumping commenced, discharge rate and, if applicable, the time the discharge rate changed, pumping water levels and respective times after pumping commenced, maximum drawdown during the test, duration of the test, including both the pumping time and the recovery time during which measurements were taken, recovery water levels and respective times after cessation of pumping, the reference point used for all measurements.

B. Additional pump testing. Private wells proposed to be located seaward of the four-foot water table contour line as delineated on HWH Map #2 will require completion and recordation of the results of a four-hour pump test at a minimum pumping rate of seven gallons per minute and a maximum pumping rate of 10 gallons per minute; to determine (for public information purposes) the potential for saltwater intrusion or other existing contamination sources. The pump test shall be conducted during high tide conditions.

C. A water sample will be taken by an agent of the Board of Health or its designee. The well will be pumped until specific conductance readings have stabilized (or at the end of the four-hour pump test in the case of the wells downgradient from the four-foot water table contour).

D. The water sample will be secured with a bailer of a peristaltic pump to minimize aeration of the sample.

E. Specific conductance and pH will be measured in the field.

F. Samples will be preserved with ice and will be delivered to a state-certified water quality laboratory within 24 hours. Samples will be analyzed for and meet water quality standards for coliform bacteria, nitrate-nitrogen, iron, sodium, chlorides and, where the Board of Health deems necessary, additional analyses such as volatile organic compounds (VOCs) and EPA Methods 624, 625. The Board of Health shall make the judgment for the inclusion of VOC analyses based upon potential contamination sources and presumed groundwater flow directions (utilizing HWH water resources maps and other more recent available information). For example, a proposed private well to be located downgradient of a mapped underground storage tank or an industrial land use should be tested for VOCs.

G. The quality of the drinking water must meet accepted current Massachusetts Drinking Water Standards, Department of Environmental Protection. This requirement may be met by the installation of filters or softeners. **[Amended 8-29-1990; amended during codification]**

H. The Board of Health reserves the right to inspect the water systems utilized for supplying and/or furnishing water which is located between the well and the building structure or area to be served anytime during construction, installation or yield test of the well.

I. Following a receipt of the water quality test results, the applicant shall submit a water quality report to the Board which includes:

(1) A copy of the certified laboratory's test results.

(2) The name of the individual who performed the sampling.

(3) Where in the system the water sample was obtained.

J. The Board reserves the right to require retesting of the above parameters, or testing for additional parameters, when, in the opinion of the Board, it is necessary due to local conditions or for the protection of the public health, safety, and welfare. All costs and laboratory arrangements for the water testing are the responsibility of the applicant.

**§ 386-7. Relief procedure; preexisting lots.**

A. Whenever a person has submitted a subdivision or preliminary subdivision plan followed within seven months by a definitive plan, or a plan referred to in MGL c. 41, § 81P, as the case may be, the land shown on such plan shall be governed by the provisions of the State Environmental Code and Board of Health regulations, if any, which differ from the code which are in effect at the time of first submission of the plan. Such provisions shall apply while the plan is processed until rejected, or if approved, until three years from the date of filing pursuant to MGL c. 111, § 127P.

B. Any lot not covered by Subsection A which is shown or referred to in a deed or shown on a plan duly recorded at the Nantucket Registry of Deeds, or filed in the Land Registration Office before the effective date of this regulation, August 24, 1990, shall comply with § 386-4A of the regulation to the maximum extent possible, meaning that wells shall be located as close to the regulation distance requirements as lot size and contours permit. As a minimum requirement, said lot shall comply with current State Sanitary Code regulations and local regulations in effect prior to August 24, 1990. In the event that a preexisting lot cannot comply with the three-hundred-foot separation requirement set forth in § 386-4A, then, in that event, the Board of Health, or its agent, shall in any case grant to said lot an exemption from the three-hundred-foot separation requirement upon the following conditions:

(1) The applicant shall submit to the Board of Health a design plan stamped by a professional engineer or land surveyor showing the location of the proposed well, the proposed or existing leaching facilities on said lot, locations of all wells and leaching facilities within 400 feet of the proposed well, or as far from the locus as deemed necessary to determine that compliance with this section cannot be met, and the groundwater gradient and direction of flow for said lot (as determined by Map #2, HWH Water Management Report, March, 1990 on file with the Board of Health).

(2) For preexisting, vacant lots being held in contiguous ownership prior to the effective date of this regulation, the applicant shall also file a stamped plan with such design and location information showing maximum compliance with the three-hundred-foot separation requirement for contiguous lots abutting the subject lot.

(3) Failed leaching facilities on an improved lot shall, if necessary, be relocated on said lot to the maximum separation distance attainable at the time the facilities are replaced up to 300 feet.

(4) Adjustments of preexisting lot lines shall not subject said lot to compliance with the three-hundred-foot separation requirement on the condition that such adjustments do not create an additional "buildable" lot and the distance between the well and leaching facility on said lot is not diminished.

# Chapter 390

# WETLANDS PROTECTION


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**[HISTORY: Adopted by the Conservation Commission of the Town of Nantucket 2-25-1988, as amended 7-1-2013. Subsequent amendments noted where applicable.]**

**TOWN CODE REFERENCES**

**Protection of coastal areas and open spaces — See Ch. 66.**
**Wetlands — See Ch. 136.**
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**TOWN REGULATIONS REFERENCES**

**Beaches — See Ch. 216.**
**Fertilizer — See Ch. 252.**

## ARTICLE I
## General Provisions, Definitions and Procedures

### § 390-1. Introduction and purpose.

A. Introduction. These regulations are promulgated by the Town of Nantucket Conservation Commission (hereinafter referred to as the "Commission") pursuant to the authority granted to it under Chapter 136, Wetlands, § 136-7, of the Code of the Town of Nantucket (hereinafter referred to as the "Bylaw"). The regulations should be read together with the Bylaw, which has many important provisions not to be repeated in these regulations. These regulations shall be used to enforce and implement the Bylaw, and shall have the force of law upon their effective date. These regulations supersede all existing rules and practices previously applicable to procedures and proceedings before the Commission.

B. Purpose. The purpose of these regulations is to establish definitions, design standards, and uniform procedures by which the Nantucket Conservation Commission is to carry out its responsibilities under the Bylaw.

### § 390-2. Definitions.

The definitions in this § 390-2 are for terms as used in the Bylaw and for terms as used in these regulations. To the extent not defined herein or in the Bylaw, words used in the Bylaw or in the regulations shall have the definitions contained in the Massachusetts Wetlands Protection Act (MGL c. 131, § 40) and the rules and regulations promulgated thereunder.

ABUTTER — An owner of land in any direction sharing a common boundary with the site of the proposed activity, including any land located directly across a street, way, stream, pond, or diagonally across from an intersection of roads. A landowner more than 300 feet across a pond shall not be considered an abutter.

ACTIVITY — Same as the definition of "work." **[Amended during codification]**

ADVERSE IMPACT — A greater-than-negligible change in the resource area or one of its characteristics, functions or factors that diminishes the value of the resource area to one or more of the specified interests in Chapter 136, Wetlands, of the Code of the Town of

Nantucket, as determined by the Commission. "Negligible" means small enough to be disregarded and shall be defined in relation to the wetland resource areas impacted.

AGRICULTURAL PRACTICES —

A. LAND IN AGRICULTURAL USE — Any qualifying wetland within a farm which is qualified or eligible to be qualified under the Farmland Assessment Act, MGL c. 61A § 1 through § 5.

B. QUALIFYING WETLAND — Only inland freshwater areas which are seasonally flooded basins or flats or inland fresh meadows.

C. NORMAL MAINTENANCE OR IMPROVEMENT OF LAND IN AGRICULTURAL USE —

(1) Shall mean only:

(a) Tilling practices customarily employed in the raising of crops.

(b) Pasturing of animals, including such fences and protective structures as may be required.

(c) Use of fertilizers, pesticides, herbicides and similar materials, subject to local, state and federal regulations covering their use. **[Amended during codification]**

(d) Construction, grading or restoring of field ditches, subsurface drains, grass waterways, culverts, access roads and similar practices to improve drainage, prevent erosion, provide more effective use of rainfall and improve equipment operation and efficiency in order to improve conditions for the growing of crops.

(2) "Improvement of land in agricultural use" may also include more extensive practices such as the building of ponds, dams, structures for water control, water and sediment basins and related activities, but only where a plan for such activity is approved by the Conservation District of the Soil Conservation Service is furnished to the Conservation Commission prior to the commencement of work. All such activity shall subsequently be carried out in accordance with said plan. In the event that the work is not carried out in accordance with the required plan, the Conservation Commission may place a stop order on said work and have recourse to such measures as if the plan were an order of conditions.

ALTER — Includes, without limitation, the following actions when undertaken in areas subject to these regulations: removal, excavation or dredging of soils, sand, gravel, or aggregate materials of any kind; changing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, and flood-retention characteristics; drainage or other disturbances of water level or the water table; dumping, discharging, or filling with any materials which may degrade water quality; driving of piles or erection of buildings or structures of any kind; placing of obstructions, whether or not they interfere with the flow of water; destruction of plant life, including cutting trees; changing of water temperature, biochemical oxygen demand, or other physical or chemical disturbances of the water; placing of fill, or removal of material, which would alter elevation; any activity, changes, or work which causes or contributes to the pollution of a body of water or

groundwater; application of herbicides or fertilizers other than in agricultural use; incremental activities which have a cumulative adverse impact on the interests protected by these regulations.

APPLICANT — The individual filing the Nantucket notice of intent, or Nantucket request for determination of applicability or other request for action and/or permit or permit modification with the Commission.

AQUATIC VEGETATION — Any rooted or free-floating plant that spends a portion of its life cycle either immersed or submersed by water.

AREAS SUBJECT TO PROTECTION — Land areas and/or water bodies subject to protection under the Bylaw, as set forth in Chapter 136, Wetlands, § 136-3, of the Code of the Town of Nantucket.

BANK (COASTAL) — The seaward face or side of any elevated land form, other than a coastal dune, which lies at the landward edge of a coastal beach, coastal dune, land subject to tidal action or coastal storm flowage, or other coastal wetland. Any minor discontinuity of the slope notwithstanding, the top of the bank shall be the first significant break in slope as defined by site-specific topographic plan information, site inspection, wetland habitat evaluation, geologic origin, and/or relationship to land subject to coastal storm flowage. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone, or sand. A bank may be created by man and/or made of man-made materials. A bank may or may not contribute sediment to coastal dunes, beaches and/or to the littoral drift system. A bank may be significant as a major source of sediment, as a vertical buffer, for wildlife habitat and for wetland scenic views.

BANK (INLAND) — The portion of land surface that normally abuts or confines a water body. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel, stone, or sand. The physical characteristics of a bank, as well as its location, are critical to the protection of wetland interests. The upper boundary of a bank is the first observable break in slope above the ten-year flood level. The lower boundary of a bank is the annual high water elevation of the water body. A bank may be created by man and/or made of man-made materials.

BEACH — Unconsolidated sediment subject to wave, tidal, or storm action which forms the gently sloping shore of a body of water, including land which is separated from other land by a body of water or a marsh system. Beaches extend from the mean low water line landward to the dune line, bank line, or the edge of existing man-made structures, when these structures replace one of the above lines, whichever is closest to the defining water body.

BEST AVAILABLE MEASURES — The most up-to-date technology or the best designs, measures, or engineering practices that have been developed and that are commercially available.

BEST PRACTICAL MEASURES — Technologies, designs, measures, or engineering practices that are in general use to protect similar interests.

BOATHOUSE — Any structure on or near the water used exclusively for the storage and maintenance of boats, with related items. A boathouse may not contain habitable space. Boathouses shall not be used for storage or maintenance of boats trailered to or from off-site.

BOG — Areas where evidence of depth to high groundwater is within 18 inches of the ground surface during a normal growing season, and/or where soils exhibit hydric characteristics, and/or where a plant community has a significant portion of the groundwater or water surface covered with Sphagnum moss (Sphagnum) and where the plant community is made up of a significant portion of one or more, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (Aster nemoralis), azaleas (Rhododendron canadense and R. viscosum), bog cotton (Eriophorum), cranberry (Vaccinium macrocarpon), high-bush blueberry (Vaccinium corymbosum), laurels (Kalmia augustifolia and K. polifolia), leatherleaf (Chamaedaphne calyculata), orchids (Arethusa, Calopagon, Pagonia), pitcher plants (Sarracenia purpurea), sedges (Cyperaceae), sundews (Droseracae), and sweet gale (Myrica gale).

BORDERING — Touching at any point.

BOUNDARY — The boundaries of an area subject to protection under the Bylaw.

BUILDING UPON — Construction of any kind of structure, whether on land or in water; placing of obstructions or objects in water (other than boats, moorings, fish or shellfish traps, pens or trays used in conjunction with aquaculture, or aids to navigation).

BYLAW or WETLANDS PROTECTION BYLAW — Chapter 136 of the Code of Nantucket Bylaws, entitled "Wetlands."

CERTIFICATE OF COMPLIANCE (NANTUCKET) — A written determination by the Commission that the proposed work or portion thereof has been completed as required by a permit. In some instances, a certificate of compliance may also be issued stating that no work has been undertaken or completed within the time frame allowed by the permit issued.

COASTAL DUNE — Any hill, mound, ridge, or field of ridges, hills, or mounds, composed of sediment, any portion or component of which, over the course of a year, touches upon, exchanges sediment with, and is landward of a coastal beach deposited by wind action, storm overwash, and/or is man-made.

COASTAL DUNE FIELD — An assemblage or grouping of coastal dunes, at least a portion of which over the course of a year touches upon, exchanges sediment with, and is landward of a coastal beach, that may or may not be oriented parallel to the shoreline or in response to a dominant wind direction but has been deposited by wind action, wave action, and/or by storm overwash.

COASTAL WETLAND — Any bank, beach, dune, estuary, marsh, swamp, meadow, flat, or other lowland subject to tidal action or coastal storm flowage from the ocean or an estuary.

COMMISSION or CONSERVATION COMMISSION — The Nantucket Conservation Commission as a body of members lawfully appointed pursuant to MGL c. 40, § 8c.

CONDITIONS — Those requirements set forth in a written permit issued by the Commission for the purpose of permitting, regulating, or prohibiting any activity that alters an area or adversely impacts an interest subject to protection under the Bylaw.

CREEK — Same as a stream.

DATE OF ISSUANCE — The date the permit, determination, or a certificate of compliance is mailed, as evidenced by a postmark, or the date it is hand-delivered.

DEPARTMENT — Massachusetts Department of Environmental Protection (DEP).

DEPTH TO GROUNDWATER — Shall be determined by best information available, including but not limited to the methods listed below:

A. Direct observation of highest groundwater elevation (including seasonal and perched groundwater).

B. Direct observation of mottling (redoximorphic features).

C. By calculation using the USGS Frimpter high groundwater adjustment method.

DETERMINATION OF APPLICABILITY (NANTUCKET) — A written finding by the Commission as to whether the Bylaw is applicable to any work, as permitted in Chapter 136, Wetlands, § 136-3D, of the Code of the Town of Nantucket.

DREDGE — To deepen, widen, or excavate, either temporarily or permanently.

DUNE — Any hill, mound, or ridge of sediment landward of a coastal beach deposited by wind action, storm overwash, or man-made. Coastal dunes are significant for flood control, as a sediment supply to down drift coastal resource areas, for rare/significant habitat, for recreation, and for wetland scenic views.

ELEVATED WALKWAY — Any structure that ends landward of mean high water, used for pedestrian access over a salt marsh, coastal dune, coastal dune fields, coastal banks, bordering vegetated wetlands, filled and flowed tidelands. This definition includes beach stairs.

ENGINEERING STRUCTURE — Any bulkhead, revetment, wall, rip-rap, groin, jetty, plastic sheeting, or other structure intended or constructed so as to prevent, alter, alleviate, or contribute to storm damage or modify wave action, littoral flow, erosion, surface water pollution, or groundwater quality or flow.

ERODING SHORELINE — Any beach, coastal bank, or dune, the waterside edge of which has undergone a net retreat due to water and wave action over a six-year period ending on the date on which an application is filed.

EROSION CONTROL — The prevention or reduction of the detachment or movement of soil or rock fragments by water, wind, ice, and/or gravity.

ESTUARY — Any area or partially enclosed coastal body of water where freshwater and saltwater meet and mix and where tidal effects are evident.

EXISTING — Begun or completed prior to the effective date of these regulations, or in accordance with permits issued under these regulations.

EXTENSION PERMIT — A written extension of time within which the authorized activity shall be completed, as permitted by Chapter 136, Wetlands, § 136-4B, of the Code of the Town of Nantucket.

FILL — To deposit any material so as to change any grades or raise an elevation, either temporarily or permanently.

FISHERIES — All species of freshwater and saltwater finfish, including the nutrient sources and habitat in which they live all or part of their life cycles.

FLAT — Any nearly level part of a shoreline or coastal beach that usually extends from the extreme low-water line landward to the more steeply sloping face of a coastal beach or bank. The flat may be separated from the beach by land under the ocean.

FLOOD CONTROL — The prevention or reduction of flooding and flood damage.

FRESHWATER WETLAND — A wet meadow, freshwater marsh, swamp, bog, pond, lake, creek, or stream; an area of low topography where groundwater, flowing water, standing surface water, or ice provides a significant part of the supporting substrate for a plant community for at least five months of the year; characterized by emergent and submergent plant communities in inland waters; and/or where depth to high groundwater is within 18 inches of the ground surface, and/or exhibits hydric soil characteristics and includes that portion of any inland bank which touches any freshwater wetland. Freshwater wetlands are not defined to include drainage facilities constructed to include wetland vegetation as treatment from stormwater runoff.

GRANDFATHERING/PREEXISTING USE —

A. Allows that the use and normal maintenance of any structure or alteration of land, within wetland resource areas and their buffers, existing at the time of enactment of MGL c. 131, § 40 (effective date 1972) or the Town of Nantucket Wetlands Protection Bylaw (effective date 1983), or subsequent revisions, may be continued, subject to the following:

    (1) Existing structures, uses and/or alterations of land may not be extended and/or modified unless such extension or modification is permitted by a finding of the Commission that such alteration or modification shall have no adverse impact on the resource areas and interests protected by the Town of Nantucket Wetlands Protection Bylaw.

    (2) Existing structures, uses and/or alterations of land which have been abandoned for five years or more shall not be reestablished, and any future use shall conform with then-current provisions of the Town of Nantucket Wetlands Protection Bylaw, as appropriate.

B. Maintenance and/or repair to existing on-site sewage disposal systems and wells is excluded from this definition.

GROUNDWATER — Water below or seeping from the earth's surface in the zone of saturation.

HABITABLE SPACE — Space in a structure for living, sleeping, eating, or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

HABITAT — Where wildlife find what they need to survive: food, water, cover from predators and weather, breeding and rearing areas, and over-wintering areas.

A. Habitat includes any portion of any wetland resource area:

    (1) Within which are located any species (plant or animal) recognized as significant by the Commission following a public hearing thereon.

(2) Which falls within any of the most recent state-estimated habitat maps, adopted by the Commission following a public hearing thereon.

B. All flora and fauna listed by the Massachusetts Natural Heritage and Endangered Species Program and their environs shall be considered significant to the interests of the Town of Nantucket Wetlands Protection Bylaw.

C. "Vernal pool habitats," regardless of whether the site has been certified by the Massachusetts Natural Heritage and Endangered Species Program, are defined as confined basin depressions which, at least most years, hold water for a minimum of two continuous months during the spring and/or summer, and which are free of adult fish populations. Areas within 100 feet of the mean annual boundaries of such depressions, to the extent that such habitat is within an area subject to protection under the Town of Nantucket Wetlands Protection Bylaw as specified in Chapter 136, Wetlands, § 136-3, of the Code of the Town of Nantucket, are deemed essential breeding habitat, and provide other extremely important habitat functions during the nonbreeding season as well, for a variety of amphibian species, and are important habitat for other wildlife species, and shall be considered significant to the interests of the Town of Nantucket Wetlands Protection Bylaw. The Commission must determine, in the case that a vernal pool has not been certified by the Massachusetts Natural Heritage and Endangered Species Program, that it has successfully been identified as eligible for certification by its consultants or a professional wildlife biologist or other expert.

INTERESTS PROTECTED BY THE BYLAW — The wetland values either singly or collectively specified in Chapter 136, Wetlands, § 136-2, of the Code of the Town of Nantucket.

LAKE — Any open body of freshwater or saltwater, either naturally occurring or man-made by impoundment, which is never without standing water due to natural causes except during periods of extended drought, and the land under the water body. Basins or lagoons which are part of wastewater treatment plants shall not be considered ponds, nor shall swimming pools, man-made water bodies that are not hydrologically connected to adjacent water bodies, groundwater (including perched groundwater), or other impervious man-made retention basins.

LAND SUBJECT TO COASTAL STORM FLOWAGE — Land subject to any inundation caused by coastal storms up to and including that caused by the one-hundred-year storm, surge of record, or storm of record, whichever is greater.

LAND SUBJECT TO FLOODING — An area of low, flat topography, or a depression or basin either 1) hydrologically directly connected with a water body, extending from the banks or the upland edge of the vegetated wetlands surrounding this water body, or 2) an isolated depression or basin which on the average at least every five years confines standing water over an area of at least 1,000 square feet as observed under conditions of average rainfall. The boundary of land subject to flooding which is hydrologically connected to a water body is the estimated lateral extent of the flooding, which shall be based on the one-hundred-year storm event during a year of average rainfall, or by actual record if that is higher. Constructed drainage facilities and/or swales will not be considered as land subject to flooding for the purposes of the Nantucket Wetlands Protection Bylaw.

MARSH (FRESHWATER) — Areas where a plant community exists in standing or running water during the growing season, and/or where depth to high groundwater is within 18 inches of the surface and/or where soils exhibit hydric characteristics, and where a significant part of the plant community is composed of, but not limited to nor necessarily including all, the following plants or groups of plants: arums (Araceae), bladder worts (Utricularia), bur reeds (Sparganiaceae), button bush (Cephlanthus occidentalis), cattails (Typha), duck weeds (Lemnaceae), eelgrass (Vallisneria), frog bits (Hydrocharitaceae), horsetails (Equisetaceae), hydrophilic grasses (Graminae), leatherleaf (Chamaedaphne calyculata), pickerel weeds (Pontederiaceae), pipeworts (Eriocaulon), pond weeds (Pontederiaceae), rushes (Juncaceae), sedges (Cyperaceae), smartweeds (Polygonum), sweet gale (Myrica gale), water milfoil (Haloragaceae), water lilies (Nympheacea), water starworts (Callitrichaceae), or water willow (Decodon verticillatus).

MARSH (SALTWATER) — A coastal wetland that extends from the ocean landward up to the highest spring tide line, where soils exhibit hydric characteristics, and where a significant part of the plant community is composed of, but not limited to nor necessarily including all, the following plants or groups of plants: salt meadow cord grass (Spartina patens), salt marsh cord grass (Spartina alterniflora), spike grass (Distichlis spicata), sea lavender (Limonium nashii), seaside plantagao (Plantagao juncoides), aster (Aster subulatus), sea-blite (Suaeda maritima), black-grass (Juncus gerardi), samphire (Salicornia europaea), glasswort (S. begelovii), reed (Phragmites communis), saltmarsh bulrush (Scirpus robustus), or cattails (Typha spp.).

MEADOWS (WET) — Areas where groundwater is at the surface for a significant part of the growing season, and/or where depth to high groundwater is within 18 inches of the surface, and/or where soils exhibit hydric characteristics including mottling within 18 inches of the ground surface, and where a significant part of the plant community is composed of various grasses, sedges, and rushes, made up of, but not limited to nor necessarily including all, the following plants or groups of plants: blue flag (Iris), vervain (Verbena), thoroughwort (Eupatorium), dock (Rumex), false loosestrife (Ludwigia), hydrophilic grasses (Graminae), loosestrife (Lythrum), marsh fern (Dryopterus thelypteris), rushes (Juncacea), sedges (Cyperaceae), sensitive fern (Onoclea sensibilis), smartweed (Polygonum), or jewelweed (Impatiens capensis).

MEPA — The Massachusetts Environmental Policy Act, MGL c. 30, § 62 through § 62H, and regulations promulgated pursuant thereto, 310 CMR 10.00 et seq. **[Amended during codification]**

MINIMIZE (NO SIGNIFICANT IMPACT) — To achieve the least amount of adverse impact that can be attained through siting or using best available measures or best practical measures, as deemed appropriate by the Commission.

NANTUCKET NOTICE OF INTENT (NNOI) — The written application filed by any person intending to alter an area subject to protection under the Nantucket Wetlands Bylaw, as described in Chapter 136, Wetlands, § 136-3C, of the Code of the Town of Nantucket.

NANTUCKET REQUEST FOR DETERMINATION OF APPLICABILITY (NRDA) — The written request filed by any person seeking the Commission's determination as to whether the Bylaw applies to any area or work thereon.

NOTICE OF INTENT — The written notice filed by any person intending to alter an area subject to protection under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40.

PERMIT — The document issued by the Commission containing conditions that regulate or prohibit an activity under the Bylaw.

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

PIER — Any structure, floating or fixed, attached or adjacent to land, and placed in or and extending into coastal inland waters (in the case of tidal waters, seaward of the mean high tide line), which is designed, or is suitable for use, for access to vessels, or for swimming or any other similar recreational, commercial, or educational purpose.

POLLUTION — Contamination of land, or surface water or groundwater with materials not normally present in those waters, or with elevated levels of naturally occurring materials.

POND, FRESH OR SALT — Any open body of water, either naturally occurring or man-made by impoundment, which is never without standing water due to natural causes except during periods of extended drought, and the land under the water body. Basins or lagoons which are part of wastewater treatment plants shall not be considered ponds, nor shall swimming pools, man-made water bodies that are not hydrologically connected to adjacent water bodies, groundwater (including perched groundwater), or other impervious man-made retention basins.

PRIVATE WATER SUPPLY — Any source or volume of surface water or groundwater to be in private use or demonstrated to have a potential for private use, including drinking water supply, irrigation, or for fire protection.

PROJECT — A proposal to do work or the performance of such work; an undertaking.

PUBLIC WATER SUPPLY — Any source or volume of surface water or groundwater demonstrated to be in public use for drinking water or fire protection, or approved for water supply pursuant to MGL c. 111, § 160 by the Division of Water Supply of the DEP, or demonstrated to have a potential for public use as a drinking water supply or for fire protection.

RECREATION — Activities of individuals done for relaxation carried out in resource areas of the Bylaw, which include but are not limited to swimming, picnicking, walking, hunting, fishing, and boating.

REMOVE — To take away any type of material, including vegetation, or thereby change an elevation, either temporarily or permanently.

RIVER — Any natural flowing body of water that empties to any ocean, lake, pond, or other river, and which flows throughout the year.

SHELLFISH — Aquatic mollusks and crustaceans: bay scallop (Argopecten irradians), blue mussel (Mytilus edulis), ocean quahog (Arctica islandica), American oyster (Crassostrea virginica), quahog (Mercenaria merceneria), razor clam (Ensis directus), surf clam (Spisola

soldissma), sea scallop (Placopecten magellamicus), soft-shell clam (Mya arenaria), lobster (Homarus americanus), and blue crabs (Callinectes sapidus), knobbed whelk (Busycon carica), waved whelk (Buccinum undatum), and channel whelk (Busycon canaliculatum). The term "shellfish" also shall include horsehoe crab (Limulus polyphemus).

SOIL TEMPERATURE — The temperature of the soil four inches below the surface grade as taken by a soil thermometer.

STORM DAMAGE PREVENTION — The prevention of damage caused by water from storms, including, but not limited to: erosion and sedimentation; damage to vegetation, property, or buildings; or damage caused by flooding, waterborne debris, or waterborne ice.

STREAM — A body of running water, and the land under the water, which includes brooks, creeks, and man-made watercourses, which moves in a defined channel or swale due to hydraulic gradient. A stream may be intermittent, that is, it does not flow throughout the year.

STRUCTURE — A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, platform, bin, radio antenna mast, or the like. The term "structure" may also be applied to appurtenances that are constructed of impervious surfaces, such as but not limited to swimming pools, recreational playing courts, roads, parking areas, parking lots, driveways, etc. Drainage basins, split-rail fences, septic tanks, subsurface propane tanks, and signs are not structures. The word "structure" shall be construed, where the context requires, as though followed by the words "or part or parts thereof."

STRUCTURE, COASTAL ENGINEERING — Any structure intended or constructed so as to prevent or alleviate storm damage, or modify tidal action, wave action, littoral flow, or erosion. Examples of these structure may include but are not limited to any bulkhead, revetment, seawall, rip-rap, groin, jetty, artificial seaweed, geotextile fabric, plastic sheeting, multiple rows of fencing or other as determined by the Commission.

SUBSTANTIALLY IMPROVED — Cumulative expansion of habitable space greater than 20%.

SWAMPS — Areas where depth to high groundwater is within 18 inches of the surface, and/or where runoff water from surface drainage frequently collects above the soil surface, and/or where soils exhibit hydric characteristics, and where a significant portion of the plant community is made up of, but not limited to nor necessarily including all, the following plants or groups of plants: alders (Alnus), ashes (Fraxinus), azaleas (Rhododendron canadense and R. viscosum), black alder (Ilex verticillata), button bush (Cephalanthus occidentalis), highbush blueberry (Vaccinium corymbosum), poison sumac (Toxicodendron vernix), red maple (Acer rubrum), sphagnum mosses (Sphagnum), black gum tupelo (Nyssa sylvatica), sweet pepper bush (Clethra alnifolia), willow (Salicaceae), and common reed (Phragmites communis).

WATER-DEPENDENT USES — Projects which require direct water access for their intended use and therefore cannot be located out of the area subject to protection under the Bylaw. Examples include, but are not limited to: docks, piers, boat landings, boathouses, marinas, stairs to beaches, and boardwalks over wetland vegetation. Projects which benefit from wetlands access but which do not require it are not water-dependent uses. Examples include: restaurants, dwellings, and commercial enterprises servicing marine-related uses, such as fish markets, repair facilities, ships' chandleries, and general use recreational trails.

WETLAND SCENIC VIEWS — Those areas which provide important visual linkage for the public with scenic wetlands that are vistas typical of and serve to define the unique Nantucket environment. Scenic wetlands include but are not limited to the following features: expansive open space, significant habitat areas, large areas of natural features, placement and sizing of both natural and man-made features, or mix of colors and textures created by interactions among water, sand, and different types of vegetation. Visual linkage for the public is not restricted to views from public ways, but also encompasses views from areas used by the public, such as private and public conservation land, dirt "moor" roads, major private ways intensively used by the public, great ponds, beaches, banks (eroding and noneroding, coastal and inland), Nantucket's harbors, and the ocean.

WILDLIFE — All nondomesticated mammals, birds, reptiles, amphibians, fishes, or invertebrates which are dependent upon a wetland resource defined by the Bylaw for any part of their life cycle. Special consideration shall only be given to members of the class Insecta if they are rare or endangered as defined by the Massachusetts Natural Heritage Program or its successor, or if they are a major food source for other wildlife, but not if the insect species is determined by the Commission and/or the Board of Health to constitute a pest whose protection under the Bylaw would be a health risk to humans at the proposed project site.

WORK — All activities set forth in the Bylaw, Chapter 136, Wetlands, § 136-3A, of the Code of the Town of Nantucket, including altering, removing, filling, dredging, or building upon.

## § 390-3. Procedures.

A. Where the Bylaw states that the Commission is to receive a request or notice, such request or notice shall be given in writing to the Commission office, or in the case of emergency, the request can be made directly to the Commission's Chairperson.

B. Nantucket notice of intent (NNOI).

(1) Any person who proposes to remove, fill, dredge, alter, or build upon any area subject to protection under the Bylaw, or within 25 feet or 50 feet of any area subject to protection (as deemed necessary), shall submit a Nantucket notice of intent (NNOI) and other application materials in accordance with the submittal requirements set forth on the NNOI form. Such submission shall not be required for use and normal maintenance as defined under "grandfathering/preexisting use" in § 390-2, Definitions, above.

(2) The Commission may accept plans filed with a notice of intent under the Wetlands Protection Act, MGL c. 131, § 40, as plans under the Bylaw. The NNOI shall be filed concurrently with a notice of intent under the Wetlands Protection Act. This provision shall also apply to any amended order of conditions request, abbreviated notice of resource area delineation or request for determination of applicability.

(3) When a person filing an application is other than the owner, the findings and decision of the Commission shall be sent by the Commission to the owner as well as to the person filing the application, and the applicant shall supply the Commission with the name and current address of the owner.

(4) The Commission shall give the NNOI the same file number as the accompanying notice of intent from the DEP when joint filings under MGL c. 131, § 40 (the State Wetlands Protection Act) and Chapter 136, Wetlands, of the Code of the Town of Nantucket are made. The Commission shall follow this provision to include amended orders of conditions, abbreviated notices of resource area delineation and requests for determination of applicability. When a filing is only required under the provisions of the Town of Nantucket Wetlands Protection Bylaw, a separate bylaw file number will be assigned.

(5) In the event that only part of the work proposed lies within an area subject to protection under the Bylaw, all aspects of the work shall be briefly described on the NNOI form. Only those work components that lie within areas subject to jurisdiction shall be conditioned.

C. Public hearings by Conservation Commission.

(1) The Commission in an appropriate case may combine its hearing under the Bylaw with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40.

(2) When a person filing a NNOI is not the owner, notice of the time and place of a hearing shall be given to the owner, by the Commission, at the address supplied to the Commission by the applicant.

(3) Any changes in the plans or the proposed work made by the applicant during the course of the public hearings shall be made in writing and shall be filed by the applicant with the Commission. Such changes must be filed prior to the close of the public hearing on that NNOI, unless otherwise specified by the Commission during a public hearing.

D. Extensions of permits.

(1) The Commission may extend a permit as provided by Chapter 136, Wetlands, § 136-4B, of the Code of the Town of Nantucket.

(2) All requests for an extension shall be in writing.

(3) The Commission shall not deny a request for an extension unless it finds by a preponderance of the evidence any one of the following:

(a) No work has begun on the project; unless the failure to begin work is due to an unavoidable delay in obtaining other necessary state or municipal approvals, permits, or variances, such as in the event other approvals, permits, or variances are appealed;

(b) New information, not available at the time the permit was issued, indicates that the permit is not adequate to protect the interests identified in the Bylaw;

(c) Incomplete work is causing damage to the interests identified in the Bylaw;

(d) Work has been done in violation of the Bylaw, these regulations, or conditions in the permit; or

(e) The extension request is not timely. An extension request shall be timely if received by the Commission a minimum of 30 days prior to the expiration of the permit.

(4) If issued, an extension permit shall be signed by a majority of the Commission.

E. Nantucket certificates of compliance.

(1) Upon written request by the applicant, a Nantucket certificate of compliance may be issued by the Commission, which shall certify that the conditions required by the permit as of the date of the application for a Nantucket certificate of compliance have been completed in compliance with the permit. If issued by the Commission, the certificate of compliance shall be signed by a majority of the Commission.

(2) If a project has been completed in accordance with plans stamped by a registered professional engineer, architect, landscape architect, or land surveyor, a written statement by such a professional person certifying substantial compliance with the plans and setting forth any deviation that exists from the plans approved in the order shall accompany the request for a certificate of compliance. The required as-built plan shall show all wetland areas, buffer zones, topography, other landscape features relevant to the project and any differences to the approved project.

(3) Prior to the issuance of a certificate of compliance, the Commission may make a site visit, in the presence of the applicant or, if the applicant so desires, in the presence of the applicant's agent.

(4) Partial certificates of compliance will not be issued by the Commission, except for rare and extenuating circumstances. The burden of proof to substantiate these circumstances shall be with the applicant.

F. Waivers of requirements.

(1) All requests for waivers shall be in writing.

(2) The Commission may, in its discretion, for good cause shown, grant waivers from the operation of one or more of these regulations pursuant to this subsection. Such waivers shall be granted only in accordance with the provisions of this subsection.

(3) A waiver shall be granted only for the following reasons and upon the following conditions:

(a) The Commission may grant a waiver from these regulations when the Commission finds that, given existing conditions, the proposed project will not adversely impact the interests identified in the Bylaw and there are no reasonable conditions or alternatives that would allow that project to proceed in compliance with the regulations. The burden of proof to show no adverse impact to the interests identified in the Bylaw, Chapter 136, Wetlands, § 136-2, of the Code of the Town of Nantucket, shall be the responsibility of the owner/applicant. The burden of proof to show no reasonable alternative shall be the responsibility of the owner/applicant and

shall consist of a written alternatives analysis detailing why the proposed project cannot otherwise proceed in compliance with the performance standards in these regulations, with an explanation of why each is not feasible. It shall be the responsibility of the applicant to provide the Commission with any information which the Commission may request in order to enable the Commission to ascertain such adverse effects. The failure of the applicant to furnish any information which has been so requested may result in the denial of a request for a waiver pursuant to this subsection.

(b) The Commission may grant a waiver from these regulations when portions of the buffer zone between the proposed project and adjacent resource area are previously altered and are not within the control of the project owner/ applicant, such as public or semi-public pedestrian and vehicular accessways.

(c) The Commission may grant a waiver from these regulations when the Commission finds that a project will provide a long-term net benefit/ improvement to the resource area, provided any adverse effects are minimized by carefully considered conditions. However, no such project may be permitted which could have an adverse effect on rare wildlife species.

(d) The Commission shall grant a waiver from these regulations when the work proposed is grandfathered and qualifies as a preexisting use, as defined in § 390-2 of these regulations.

(4) The Commission may impose additional conditions in granting a permit pursuant to this section, including imposing limits on project size or effect or requiring other compensatory measures, such as wetland replication.

G. Fees.

(1) Fees for the following, set from time to time by the Conservation Commission and payable to the Town of Nantucket, must be paid under the provisions of the Bylaw (and in addition to the fees required by MGL c. 131, § 40) before the pertinent application can be accepted by the Commission. **[Amended during codification]**

(a) Request for determination of applicability.

(b) Notice of intent.

(c) Certificate of compliance.

(d) Extension permit.

(e) Minor modification.

(f) Amended order of conditions.

(2) When the Town or County of Nantucket is the applicant, the fee will be waived.

H. Recording of documents. The following documents issued by the Commission are required to be properly recorded in the Registry of Deeds or the Land Court, within the chain of title of the affected property:

(1) Order of conditions.

(2) Amended order of conditions.

(3) Extension permit.

(4) Certificate of compliance.

I. Additional information.

(1) Additional information to be provided with filings.

(a) In addition to information already required by the Commonwealth of Massachusetts, the following information is required with each notice of intent filed with the Commission:

[1] Two sets of notices of intent with all supportive plan, maps, and documents.

[2] Filing costs as separate checks for:

[a] Town share of state filing fee.

[b] Town Bylaw fee.

[c] Advertising fee.

[d] Cost and expense of technical consultants.

[3] Supportive plans, maps and documents shall include, at a minimum:

[a] DEP wetland delineation forms for all vegetated wetland resource areas (two completed forms required to show boundary, one wetland and one upland).

[b] Locus map.

[c] Project plans shall include:

[i] Assessor's reference numbers.

[ii] Book and page number of deed or certificate of title number.

[iii] Current certificate of title or deed.

[iv] Appropriate FEMA floodplain reference.

[v] Erosion control measures for proposed site work.

[vi] Work limit line.

[vii] USDA/NRCS soils map information.

[viii] All wetland and/or habitat restriction information.

[ix] All wetland flagging location numbers placed in field for resource delineation.

[x] Fifty-foot and one-hundred-foot setbacks from all wetland resource areas

[xi] Two-foot interval contours based on mean sea level.

[xii] Appropriate professional stamp and signature (engineer, land surveyor, architect, sanitarian, etc.).

[xiii] All other necessary information to describe proposed project, including standard plan requirements for title block, scale, direction, etc.

[4] Additional information will be required as deemed necessary on a project -specific basis in accordance with the general filing requirements established by the Commission for notices of intent revised June 15, 1994.

(b) In addition to information already required by the Commonwealth of Massachusetts, the following information is required with each request for a determination of applicability filed with the Commission:

[1] Two sets of RDA with all supportive plans, maps and documents.

[2] Filing costs as separate checks for:

[a] Town Bylaw fee.

[b] Advertising fee.

[c] Cost and expense of technical consultants.

[3] Supportive plans, maps and documents shall include, as a minimum.

[a] DEP wetland delineation forms for all vegetated wetland resource areas.

[b] Nantucket Assessor's reference numbers.

[c] Locus map.

[d] Project plans and/or narrative with sufficient information to evaluate wetland resource and buffer zone impact. (Upon staff review of filing, additional project-specific information may be required.)

(2) Additional Information to be provided before field viewings.

(a) On-site requirements to be in place before the field inspection:

[1] DEP wetland delineation forms filed for all vegetated wetland resource areas present on or affecting the project site.

[2] Edges of wetland resource areas within 100 feet of proposed work must be flagged and numbered before the field inspection.

[3] Corners of proposed structures must be staked (flagged) and clearly labeled before field inspection.

[4] Property boundaries must be staked before field inspection.

[5] A project representative should be present for field inspection.

(b) Failure to have the lot properly staked may result in non-review.

(c) Action on a project by the Commission indicates that the above filing requirements have been met.

**§ 390-4. Severability.**

The invalidity of any section of these regulations shall not invalidate any other section or provision, nor shall it invalidate any permit or determination which previously has been issued.

**§ 390-5. When effective; applicability.**

The effective date of these regulations shall be the date on which these regulations are approved by vote of the Conservation Commission. These regulations shall apply to all NNOI or NRDA's filed after that date.

## ARTICLE II
## Regulations for Coastal Wetlands

**§ 390-6. Land under ocean.**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving land under the ocean are necessary and proper for the following reasons: Land under the ocean provides feeding areas, spawning and nursery grounds, and shelter for many coastal organisms related to marine fisheries and wildlife. Destruction of eelgrass beds (Zostera marina) will harm scallop production. Nearshore areas, and in some cases offshore areas, of land under the ocean help reduce storm damage, erosion, and flooding by diminishing and buffering the high-energy effects of storms. Submerged sand bars dissipate wave energy. Such areas provide a source of sediment for seasonal rebuilding of coastal beaches and dunes. The bottom topography and sediment type of nearshore areas of land under the ocean are critical to erosion control, storm damage protection, and flood control. Water circulation and flushing rates, distribution of grain size, water quality (including but not limited to turbidity, temperature, nutrients, pollutants, salinity, and dissolved oxygen), and the habitat of wildlife, finfish, and shellfish are all factors critical to the protection of significant wildlife habitat and marine fin and shell

fisheries. Land under the ocean in an unobstructed state is important to recreational swimming, fishing, and shellfishing, to recreational boating and sailing, to commercial fishing and shellfishing, and to wetland scenic views.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon land under the ocean, the Commission shall find that such land is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, significant wildlife habitat, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that the land under the ocean does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Land under the ocean shall be presumed significant to an interest protected by the Bylaw as referenced in Subsection A; therefore, the following regulations apply:

(1) Dredging shall be designed and carried out using the best available measures as determined by the Commission so as to have the least possible adverse effects or changes in marine productivity caused by changes in, or resulting from suspension or transport of pollutants, sediment transport, smothering of bottom organisms, accumulation of pollutants by organisms, destruction of habitat or nutrient source areas, or changes in water circulation and water quality.

(2) All dredging shall use best available measures to minimize adverse effects caused by changes in bottom topography resulting in an increase in height and velocity of waves hitting the shore, localized changes in circulation patterns or in changes in sediment transport which affect natural replenishment of beaches or maintenance of channels.

(3) Residential piers shall be constructed so as not to change shoreline movement of sediment, harm shellfish resources, obstruct commercial shellfishing, or obstruct the reserved public rights of fishing, fowling, navigation, or passage. Residential piers shall not displace public moorings without written approval from the Harbormaster. No solid-fill piers shall be permitted.

(4) Construction of commercial piers shall be in compliance with Chapter 139, Zoning, of the Code of the Town of Nantucket and shall not affect sediment transport, and shall not destroy or pollute fisheries and shellfish habitat or nutrient source areas for those resources. No solid-fill piers shall be permitted.

(5) Best available measures, as determined by the Commission, shall be used to minimize adverse effects of a commercial or residential pier on the interests protected by the Bylaw.

(6) Aquaculture projects shall be undertaken pursuant to such means as may be established by the Commission so as to have the least possible adverse effect on wildlife, erosion control, storm damage prevention, flood control, recreation or public access. No destruction of habitat or areas where shellfish feed, or change in water quality or circulation in any manner which adversely affects productivity of marine fisheries or shellfish beds shall be permitted.

(7) No new bulkheads or coastal engineering structures shall be permitted to protect structures constructed or substantially improved after August 1978. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including, in appropriate cases, the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to September 1978, but not substantially improved, from imminent danger.

(8) Water-dependent projects shall be designed and performed so as to cause no adverse effects on wildlife, erosion control, marine fisheries, shellfish beds, storm damage prevention, flood control, recreation, and aquatic vegetation.

(9) No activity on land under the ocean which is not water-dependent shall be permitted by the Commission, except activity allowed pursuant to a waiver from these regulations, as set forth in § 390-3F.

(10) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-7. Coastal beaches (and tidal flats).**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving coastal beaches and tidal flats are necessary and proper for the following reasons: Coastal beaches and tidal flats aid in storm damage prevention, erosion and flood control; serve as a source of sediment for downdrift coastal resource areas; serve to provide wildlife habitat to rare, endangered, and otherwise significant wildlife; serve to protect and provide habitat for marine fisheries and shellfish; and serve to provide important wetland scenic views and recreation. Coastal beaches dissipate wave energy by their gentle slope, their permeability, and their granular nature, which permit changes in beach form in response to changes in wave conditions. Coastal beaches serve as a sediment source for dunes and subtidal areas. Steep storm waves cause beach sediment to move offshore, resulting in a gentler beach slope and greater energy dissipation. Less steep waves cause an onshore return of beach sediment, where it will be available to provide protection against future storm waves. A coastal beach at any point serves as a sediment source for coastal areas downdrift from that point. The oblique approach of waves moves beach sediment alongshore in the general direction of wave action. Thus, the coastal beach is a body of sediment which is moving along the shore. Coastal beaches serve the purpose of storm damage prevention, erosion control, and flood control by dissipating wave energy, by reducing the height of storm waves, and by providing sediment to supply other coastal features, including coastal dunes, land under the ocean, and other coastal beaches. Interruptions of these natural processes by man-made structures and/or activities reduce the ability of the coastal beach to perform these functions. Tidal flats are important to the protection of marine fisheries because they provide habitats for marine organisms, such as polychaete worms and mollusks, which in turn are food sources for fish. Tidal flats are also sites where organic and inorganic materials are entrapped and

then returned to the photosynthetic zone of the water column to support algae and other primary producers of the marine food web. Coastal beaches and flats serve as important habitats for a wide variety of wildlife, including but not limited to coastal birds, turtles, shellfish and finfish. In particular, they are used by coastal birds for feeding areas and nesting sites. The natural erosional and depositional cycles, sediment grain size, water quality (including but not limited to turbidity, temperature, nutrients, pollutants, salinity, and dissolved oxygen) and circulation, and elevation of the land surface are all features of wildlife habitat which are critical characteristics for the protection of wildlife. Characteristics of coastal beaches and flats which are critical to the protection of marine fisheries, and shellfish and their habitat include: distribution of sediment grain size, movement of sediment, water quality (including the characteristics given above) and circulation, and beach relief and elevation. Characteristics of coastal beaches and flats which are critical to storm damage prevention, erosion control, or flood control include sediment volume and form, their ability to respond to wave action, natural erosional and depositional cycles, and wave intensities. Characteristics of coastal beaches and flats which are critical to recreation are topography, sediment grain size, water quality (including the characteristics given above), water circulation rates and patterns, unobstructed access along shore, natural erosional and depositional cycles, and wave intensity. Characteristics of coastal beaches which are critical to wetland scenic views are natural erosion and deposition cycles, relief and elevation, sense of openness, and solitude. Land within 100 feet of a coastal beach or tidal flat is considered to be important to the protection and maintenance of coastal beaches and tidal flats, and therefore to the protection of the wetland values which these areas contain.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon a coastal beach or flat, the Commission shall find that the beach or flat is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, fisheries, shellfish, wildlife, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that the beach or flat does not play a role in protecting any of the interests given above and upon only a specific written determination to that effect by the Commission.

B. Performance standards. A coastal beach, tidal flat or land within 100 feet of a coastal beach or tidal flat shall be presumed significant to the interests protected by the Bylaw, as referenced in Subsection A; therefore, the following regulations shall apply:

(1) The provisions of § 390-6B(1) through (8) (regarding land under the ocean) shall apply to coastal beaches and tidal flats.

(2) No new bulkheads or coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after August 1978. Bulkheads may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including, in appropriate cases, the moving of the threatened building. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure built prior to September 1978, and not substantially improved, from imminent danger.

(3) Dredging projects in flats must be done in accordance with such procedures as the Commission determines would disturb the absolute minimum amount of habitat possible for both the borrow site and the area in which spoils are placed.

(4) Clean fill of compatible grain size may be used on a coastal beach but not on a tidal flat, only if the Commission authorizes its use, and only if such fill is to be used for a beach or dune nourishment project. All possible mitigation measures shall be taken, as determined by the Commission, to limit the adverse effects of the fill.

(5) No part of any septic system shall be placed in shifting sands or on a coastal beach. The septic leach facility shall be at least 100 feet from the spring high tide line.

(6) All work on projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a coastal beach. All structures which are not water-dependent shall be at least 50 feet from a coastal beach.

(7) In areas of eroding shoreline, the distance from all buildings to the coastal beach shall be at least 20 times the average annual shoreline erosion or 100 feet, whichever is less. The average annual shoreline erosion rate shall be determined by averaging the annual erosion rate over a one-hundred-fifty-year period ending the date the NNOI was filed or, if no NNOI was filed, the date construction began. If erosion data are not available for the one-hundred-fifty-year period, the Commission shall determine the average annual erosion rate from such lesser time period for which erosion data is available. In cases where documentation can be provided to show that the use of the one-hundred-fifty-year period is inappropriate to existing shoreline characteristics and trends, alternate shoreline change rates may be used when based on a preponderance of credible evidence.

(8) Vehicular access for existing houses or for recreational use shall be as unpaved ways and shall be done in accordance with such procedures as the Commission determines will minimize any adverse effect on the beach and the interests of the Bylaw.

(9) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[1]).

(10) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## § 390-8. Coastal dunes.

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving coastal dunes are necessary and proper for the following reasons: Coastal dunes,

1. **Editor's Note: Appendix A is included as an attachment to this chapter.**

including coastal dune fields, aid in storm damage prevention, erosion and flood control; protect land in coastal areas from storm damage and flooding; serve as a sediment source for beach and intertidal areas; serve to provide wildlife habitat to rare, endangered, and otherwise significant wildlife; and serve to provide important wetland scenic views and recreation. Coastal dunes aid in storm damage prevention, erosion control, and flood control by supplying sand to coastal beaches. Coastal dunes do not significantly inhibit transport of pollutants into groundwater. Coastal dunes protect inland coastal areas from storm damage and flooding by storm waves and elevated sea levels because such dunes are higher than the coastal beaches which they border. Vegetated cover contributes to the growth and stability of coastal dunes by providing conditions favorable to sand deposition. On retreating shorelines, the ability of coastal dunes bordering a coastal beach to move landward at a rate of shoreline retreat allows these dunes to maintain their form and volume. Characteristics of coastal dunes which are critical for storm damage prevention, flood control, and erosion control include: ability of the dune to erode and change in response to coastal beach conditions; dune volume, sediment grain size, and slope; dune form, which can change with wind and natural water flow; amount, continuity, and density of vegetative cover; wildlife habitat and ability of a dune to move landward and laterally. Coastal dunes are important habitats for a wide variety of wildlife, particularly turtles and birds for feeding and nesting areas. The amount of vegetation, dune height and slope, sediment grain size, and degree of isolation from human-caused disturbances are all features of dunes which are critical characteristics for the protection of wildlife. Characteristics of coastal dunes which are critical to wetland scenic views are dune form, slope, elevation, size of dunefield, proportion and scale of dunes in relationship with other land forms. Land within 100 feet of a coastal dune is considered to be significant to the protection and maintenance of coastal dunes, and therefore to the protection of the wetland values which these areas contain.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon a coastal dune, the Commission shall find that the dune is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, prevention of pollution, wildlife, and wetland scenic views. These findings may be overcome only upon a clear showing that the dune does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. A coastal dune, coastal dune field, or land within 100 feet of a coastal dune or coastal dune field shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) No coastal revetments or coastal engineering structures of any type shall be constructed, rebuilt, or repaired.

(2) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a coastal dune. All structures which are not water-dependant shall be at least 50 feet from a coastal dune.

(3) No excavation or disturbance of vegetative cover shall be allowed on a coastal dune unless the area is completely restored, replanted, and stabilized to its original form and volume.

(4) Fill may be used only if the Commission authorizes its use and only if such fill is to be used for beach and dune nourishment projects.

(5) No part of any septic system shall be placed in shifting sands or on or in a coastal dune. The septic leach facility shall be at least 100 feet from the upland edge of a coastal dune or coastal dune field.

(6) Any activity allowed on a coastal dune or within 100 feet of a dune shall be restricted to such activity that is determined by the Commission not to have any adverse effect on the dune by altering the ability of wind or waves to remove sand from or deposit sand on a dune; by disturbing vegetative cover in a manner sufficient to destabilize the dune; by causing any modification of the dune form and slope which would increase the potential for erosion, storm or flood damage; by interfering with landward or lateral movement of the dune; or by causing the rate of sand removal to increase through man-made means or structures.

(7) No activity shall be permitted, other than the maintenance and repair of a structure existing on the effective date of these regulations, that will result in construction of a building upon a coastal dune or within 50 feet of any coastal dune.

(8) Any pedestrian or elevated walkway must be designed as determined by the Commission so as to minimize disturbances of vegetative cover.

(9) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island" (a copy of which is attached to these regulations as Appendix A[2]).

(10) Vehicular access for existing homes or recreational use shall be as unpaved ways and shall be done in accordance with such procedures as the Commission determines will minimize any adverse effect on the dune and the interests of the Bylaw.

(11) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## § 390-9. Barrier beaches.

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving barrier beaches are necessary and proper for the following reasons: Barrier beaches are composed of tidal flats, beaches, and dunes. As such, barrier beaches perform the same functions and are critical to the same interests as referenced in § 390-7 and § 390-8 of these regulations and therefore these provisions shall also apply to

2. **Editor's Note: Appendix A is included as an attachment to this chapter.**

barrier beaches. Barrier beaches protect landward areas from flooding and erosion because they provide a buffer to storm waves and to sea levels elevated by storms. Barrier beaches protect from wave action such highly productive areas as dunes, tidal flats, salt marshes, estuaries, lagoons, harbors, salt ponds, and freshwater marshes and ponds, which are in turn important to fisheries, shellfish and wildlife habitat. Barrier beaches are maintained by the alongshore movement of beach sediment caused by wave action. The coastal dunes, beaches, and tidal flats of a barrier beach are made up of sediment supplied by wind action, storm wave overwash, and tidal inlet deposition. Barrier beaches in Massachusetts undergo a landward or alongshore migration caused by the landward and alongshore movement of sediment by wind, storm waves, and tidal current processes. The continuation of these processes maintains the volume of the landform which is necessary to carry out its storm and flood buffer functions. The ability of barrier beaches to respond to wave action, including storm overwash sediment transport, is critical to the protection of wetlands values of barrier beaches.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon a barrier beach, the Commission shall find that the barrier beach is significant to the protection of the following interests: flood control, erosion control, water pollution, storm damage prevention, fisheries, shellfish, wildlife habitat, recreation, and wetland scenic views. Barrier beaches shall be found significant to private water supply and groundwater if there are existing houses with wells on or near the barrier beach or if the barrier beach abuts, creates, or protects a swamp, freshwater marsh, or pond. These findings may be overcome only upon a clear showing that the barrier beach does not play a role in protecting any of these interests given above and only upon specific written determination to that effect by the Commission.

B. Performance standards. A barrier beach or land within 100 feet of a barrier beach shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) No coastal revetments or coastal engineering structures of any type shall be constructed, rebuilt, or repaired.

(2) Fill may be used only if the Commission authorizes its use and only if such fill is to be used for beach or dune nourishment projects.

(3) No septic system or buildings shall be constructed on a barrier beach. Buildings which pre-exist these regulations may be maintained and repaired. Existing septic systems may be maintained, repaired and upgraded to the best available measures. No expansion of septic systems shall be permitted. **[Amended during codification]**

(4) Excavation of sand around existing houses may be permitted, but no new projects shall be permitted which will require periodic sand removal for maintenance. All disturbed areas (including blowouts) shall be stabilized through planting of vegetation. The evacuated sand must be retained in the area and be part of the barrier beach.

(5) Vehicular access for existing houses or for recreational use shall be unpaved roads and shall be done in accordance with such procedures as the Commission determines will minimize any adverse effect on the barrier beach.

(6) No excavation or disturbance of vegetation shall be permitted on a barrier beach unless the area is completely restored, replanted, and stabilized to its original form and volume.

(7) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[3]).

(8) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## § 390-10. Coastal banks.

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving coastal banks are necessary and proper for the following reasons: Coastal banks may serve as a source of sediment for other coastal landforms, including beaches, dunes, tidal flats, barrier beaches, and land under the ocean; act as a vertical buffer which protects upland areas from storm damage, erosion, and flooding; provide wildlife habitat to common as well as rare, endangered, and otherwise significant wildlife; and serve to provide important wetland scenic views. Coastal banks composed of unconsolidated sediment and exposed to wave action serve as a major source of sediment for other coastal landforms, including beaches, dunes, and barrier beaches. The supply of sediment is removed from banks by wave action. It is a naturally occurring process necessary to the continued existence of coastal beaches, coastal dunes, and barrier beaches. These areas dissipate storm wave energy, thus protecting structures and coastal wetlands landward of them from storm damage, erosion, and flooding. Coastal banks, because of their height and stability, may act as a buffer or natural wall, which protects upland areas from storm damage, erosion, and flooding. While erosion caused by wave action is an integral part of shoreline processes and furnishes important sediment to downdrift landforms, erosion of a coastal bank by wind and rain runoff, which plays a minor role in beach nourishment, should not be increased unnecessarily. Disturbances to a coastal bank which reduce its natural resistance to wind and rain erosion cause cuts and gullies in the bank, and decrease its value as a buffer. Vegetation tends to stabilize a coastal bank and reduce the rate of erosion due to wind and rain runoff. Vegetated banks are critical to reducing wind and rain erosion and for providing important habitat and biodiversity. A particular coastal bank may serve both as a sediment source and as a buffer or it may serve only one role. Coastal banks provide habitat for wildlife, particularly nesting birds. Characteristics of coastal banks which are critical to wildlife are bank steepness, height, stability, soil size and compaction, and vegetative cover and diversity.

3. **Editor's Note: Appendix A is included as an attachment to this chapter.**

Characteristics of coastal banks that are critical to wetland scenic views are bank form, slope, elevation, proportion and scale in relationship to other landforms, vegetative characteristics and diversity, wildlife and habitat, and a sense of presence and solitude. All coastal banks are defined as primary coastal banks for the purposes of Town of Nantucket bylaws.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon a coastal bank, the Commission shall find that the bank is significant to the protection of the following interests: flood control, erosion control, storm damage prevention, wetland scenic views, and wildlife. These findings may be overcome only upon a clear showing that the coastal bank does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Coastal banks or land within 100 feet of a coastal bank shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) No new bulkheads, coastal revetments, groins, or other coastal engineering structures shall be permitted to protect structures constructed, or substantially improved, after August 1978 except for public infrastructures. Bulkheads and groins may be rebuilt only if the Commission determines there is no environmentally better way to control an erosion problem, including, in appropriate cases, the moving of the threatened buildings and/or public infrastructure. Other coastal engineering structures may be permitted only upon a clear showing that no other alternative exists to protect a structure that has not been substantially improved or public infrastructure built prior to September 1978 from imminent danger.

(2) Piers shall be constructed in compliance with Chapter 139, Zoning, of the Code of the Town of Nantucket using procedures determined by the Commission to be the best available measures to minimize adverse effects on interests protected by the Bylaw.

(3) All projects shall be restricted to activity as determined by the Commission to have no adverse effect on bank height, bank stability, wildlife habitat, vegetation, wetland scenic view, or the use of a bank as a sediment source.

(4) Elevated walkways designed not to affect bank vegetation shall be required for pedestrian passage over a bank.

(5) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a coastal bank. All structures which are not water-dependant shall be at least 50 feet from a coastal bank.

(6) The septic leach facility of a septic system shall be constructed at least 100 feet from the top of the coastal bank and shall not be located within the face of the coastal bank.

(7) In areas of an eroding coastal bank, the distance from all new structures to the coastal bank shall be at least 20 times the average annual erosion rate or 100 feet, whichever is less. The average annual erosion rate shall be determined by

averaging the annual erosion over a one-hundred-fifty-year period ending with the date the NOI was filed or, if no NOI was filed, the date construction began. If erosion data are not available for the one-hundred-fifty-year period, the Commission shall determine the average annual erosion rate from such lesser time for which erosion data is available. In cases where documentation can be provided to show that the use of the one-hundred-fifty-year period is inappropriate to existing coastal shoreline characteristics and trends, alternate shoreline change rates may be used with the approval of the Commission.

(8) All permits issued for the substantial improvement of an existing building or new construction of buildings under the Bylaw within 100 feet landward of the top of a coastal bank shall contain the specific condition that no coastal engineering structure of any kind shall be permitted on an eroding bank in the future to protect the project allowed by this permit, except those coastal engineering structures allowed by a waiver issued pursuant to § 390-3F of these regulations.

(9) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-11. Salt marshes.**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving salt marshes are necessary and proper for the following reasons: Salt marshes serve to support marine organisms, including finfish and shellfish; serve to provide critical wildlife habitat; serve to remove pollutants from surrounding waters; serve to aid in erosion control and storm damage prevention; and are important to fishing, shell fishing, recreation, and wetland scenic views. A salt marsh produces large amounts of organic matter. A significant portion of this material is exported as detritus and dissolved organics to estuarine and coastal waters, where it provides the basis for a large food web that supports many marine organisms, including finfish and shellfish. Salt marshes also provide spawning and nursery habitat for several important estuarine forage finfish. Salt marsh plants and substrate remove pollutants from surrounding waters. The network of salt marsh vegetation roots and rhizomes binds the sediments together. The sediments absorb chlorinated hydrocarbons and heavy metals such as lead, copper, and iron. The marsh also helps retain nitrogen and phosphorous compounds which can cause algal blooms and changes in ocean plankton and plant communities, particularly eelgrass. The underlying peat serves as a barrier between fresh groundwater landward of the marsh and the ocean, thus helping to maintain the level of the groundwater. Salt marsh cord grass and underlying peat are resistant to erosion and dissipate wave energy, thereby providing a buffer that reduces wave damage and coastal erosion. A saltmarsh is an important feeding and spawning area for many types of fish and aquatic and terrestrial wildlife. The marsh, including its creeks and open water, also provides important shelter for many aquatic and migratory birds. Marshes help absorb pollutants, but there is a careful balance of nutrients and pollutant input which, if exceeded, will result in accumulation of pollutants and/or changes in the marsh community. Because the marsh is the basis for such a large food

web, bioaccumulations of pollutants and toxins can mean that relatively low levels of pollutants may be detrimental. Some of the characteristics of salt marshes which are critical to their health and ability to protect wetland values include: the growth, composition, and distribution of salt marsh vegetation; the amount of flow and level of both tidal and fresh water; the water quality (including but not limited to turbidity, temperature, nutrients, pollutants, salinity, and dissolved oxygen) of both tidal and fresh water; the presence and depth of peat; rate of marsh productivity; and the diversity of the animals and plants making up the marsh community. Salt marshes provide excellent areas for bird watching, canoeing, and hunting. Characteristics of salt marshes that are critical to wetland scenic views are water quality, vegetative characteristics, and a sense of presence, expanse and biodiversity.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon a salt marsh, the Commission shall find that the salt marsh is significant to the protection of the following interests: groundwater, erosion control, storm damage prevention, water pollution prevention, fisheries, shellfish, wildlife, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that the salt marsh does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Salt marshes or land within 100 feet of salt marshes shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Salt marshes shall not be filled.

(2) Salt hay may be harvested from a salt marsh only if performed in a manner which does not disturb the marsh substrate.

(3) No proposed project in a salt marsh, or in lands within 100 feet of a salt marsh, shall destroy any portion of the salt marsh, change species composition of the marsh, have any adverse effect on salt marsh productivity, pollute the salt marsh, or adversely affect water quality.

(4) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a salt marsh. All structures which are not water-dependant shall be no closer than 50 feet to a salt marsh, and all structures shall maintain an undisturbed two-foot separation to high groundwater. Fifty percent of the area between the twenty-five-foot buffer and the fifty-foot buffer shall not be altered. Additional soils and groundwater information may be required for applications in areas of high ground water.

(5) The septic leach facility of a septic system shall be at least 100 feet from the salt marsh.

(6) Piers shall be constructed and maintained using procedures determined by the Commission to be the best available measures to minimize adverse effects on the interests protected by the Bylaw.

(7) Elevated walkways shall be designed not to affect marsh vegetation or existing water circulation patterns.

(8) Materials cannot be stored or deposited on a salt marsh.

(9) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[4]).

(10) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-12. Salt ponds.**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to the activities involving salt ponds are necessary and proper for the following reasons: Salt ponds provide excellent wildlife habitat. The high productivity of plants and phytoplankton provides food for shellfish, crustaceans, and juvenile fish. The bottom sediments and shallow water provide habitat for many bivalves. The ponds also serve as spawning and nursery areas for crabs and fish. The productivity of salt ponds and the food web they support provide ideal habitat for many types of wildlife, particularly various ducks and shore birds. The enclosed nature of the ponds also provides shelter for wildlife. Salt ponds and the area around them provide the public many recreational opportunities and wetland scenic views, including: shellfishing, fishing, sailing, swimming, hunting, and wildlife observation. Because of their semi-enclosed nature, salt ponds are sensitive to pollution or nutrient inputs. These inputs can change the plant and animal species composition of the pond, and thus can be detrimental to fish, shellfish and wildlife. Bioaccumulation through food webs can also create dangerous levels of pollutants or toxins for wildlife and humans. Characteristics of salt ponds which are critical to various wetland values include water circulation, distribution of sediment grain size, amount of freshwater and saltwater inflow, productivity of plants, and water quality (including but not limited to amounts of dissolved oxygen, nutrients, temperature, turbidity, pollutants, and salinity). Land within 100 feet of a salt pond is considered to be significant to the protection and maintenance of a salt pond and the land beneath it and therefore to the protection of the wetlands values of the pond.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon a salt pond, the Commission shall find that the salt pond is significant to the protection of the following interests: fisheries, shellfish, wildlife, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that the salt pond does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

**4. Editor's Note: Appendix A is included as an attachment to this chapter.**

B. Performance standards. A salt pond or land within 100 feet of a salt pond shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) The work shall be done in accordance with procedures determined by the Commission to have no adverse effect on wildlife, fisheries, shellfish, existing water quality, recreation, or wetland scenic views and so as not to pollute the pond or alter the critical characteristics of salt ponds.

(2) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a salt pond. All structures which are not water-dependent shall be at least 50 feet from a salt pond, and all structures shall maintain an undisturbed two-foot separation to high groundwater. Fifty percent of the area between the twenty-five-foot buffer and the fifty-foot buffer shall not be altered. Additional soils and groundwater information may be required for applications in areas of high groundwater.

(3) The septic leach facility of a septic system shall be at least 100 feet from a salt pond.

(4) Projects designed to enhance a particular fishery or shellfish shall be designed in accordance with such procedures as the Commission determines will minimize adverse ecological effects on the salt pond, including adverse effects on plants and animals which are not the species targeted for management. If such management projects have adverse effects on any of the protected interests of the Bylaw, such projects shall be permitted only pursuant to a waiver, as set forth in § 390-3F of these regulations.

(5) Piers shall be constructed and maintained using procedures determined by the Commission to be the best available measures to minimize adverse effects on the interests protected by the Bylaw.

(6) Elevated walkways shall be designed not to affect vegetation or existing water circulation patterns. Elevated walkways shall be required to allow for pedestrian passage over the salt pond and fringing bordering vegetated wetlands.

(7) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[5]).

(8) The Commission may impose such additional requirements as are necessary to protect the Interests protected by the Bylaw.

## § 390-13. Land containing shellfish.

A. Characteristics and protected interests.

(1) The Commission finds that the regulations applicable to activities involving land containing shellfish are necessary for the following reasons: Shellfish are one of

5. **Editor's Note: Appendix A is included as an attachment to this chapter.**

the interests protected by the Bylaw. Land containing shellfish is found within many of the areas protected by the Bylaw. In addition to the regulations for those resource areas as given above in these regulations, this section discusses additional protection for shellfish. Land containing shellfish and its habitat is important to the protection of marine fisheries in addition to the protection of shellfish. Shellfish on Nantucket are a very important recreational and commercial natural resource. Bay scallops, in particular, are an important economic resource on Nantucket. Shellfish used as a human food resource, as they are on Nantucket, need very clean, uncontaminated water, since they have the ability to concentrate very low levels of pollutants. Shellfish are a valuable renewable resource. The maintenance of productive shellfish beds not only assures the continuance of shellfish themselves but also plays a direct role in supporting fish stocks by providing a major food source. Characteristics of land containing shellfish which are critical to the protection of shellfish include, but are not limited to: wildlife habitat, water circulation patterns, rates of water flow, and amounts of water; the relief and elevation, distribution, grain size, and pollutant load of the sediments; and water quality (including turbidity, temperature, pollutants, nutrients, salinity, and dissolved oxygen).

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon land containing shellfish or the water over land containing shellfish, the Commission shall find that the land containing shellfish is significant to the protection of the following interests: shellfish, fisheries, and recreation. These findings may be overcome only upon a clear and convincing showing that land containing shellfish does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Land containing shellfish or land within 100 feet of land containing shellfish shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Projects shall not adversely affect water quality (including but not limited to changes in turbidity, temperature, salinity, dissolved oxygen, and additional nutrients and pollutants), water circulation, aquatic vegetation, or natural drainage from adjacent land.

(2) Land containing shellfish shall not be compacted by vehicular traffic or other means. The land's elevation and sediment grain size shall also not be altered.

(3) Projects shall not obstruct the ability of the public to gather shellfish recreationally or the ability of commercial fishermen to harvest shellfish.

(4) Any project which may release pollutants shall utilize the best available measures to remove pollutants or prevent risk of pollution. **[Amended during codification]**

(5) All septic leach facilities shall be at least 100 feet from land containing shellfish.

(6) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[6]).

(7) No project detrimental to scallops shall be permitted, except activity allowed pursuant to a waiver from these regulations, as set forth in § 390-3F.

(8) Piers shall be constructed and maintained using the best available measures to minimize adverse effects on the interests protected by the Bylaw.

(9) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-14. Anadromous/Catadromous fish runs, banks along and lands under fish runs.**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving fish runs are necessary and proper for the following reasons: Fisheries are one of the protected interests under the Bylaw, Chapter 136, § 136-2, of the Code of the Town of Nantucket. Anadromous and catadromous fish are renewable protein resources that provide recreational and commercial benefits. In addition, throughout their life cycle such fish are important components of freshwater, estuarine, and marine environments and are food sources for other organisms. Fish runs provide habitats for other fish and shellfish. Characteristics of fish runs which are critical to the protection of anadromous/catadromous fish include: accessibility and location of spawning and nursing grounds, volume and rate of water flow in both migratory and spawning areas, water quality (including turbidity, temperature, pollutants, nutrients, salinity, and dissolved oxygen) and sediment and erosion control. Fish runs are important for wildlife habitat, recreation, and wetland scenic views.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon a fish run, the Commission shall find that the fish run is significant to the protection of the following interests: fisheries, wildlife, sediment and erosion control, water quality, wetland scenic views, and recreation. These findings may be overcome only upon a clear showing that the fish run and the land under a fish run does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Fish runs or land within 100 feet of a fish run shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Proposed projects shall not be permitted to fill a fish run, impede the migration of fish, or change the volume, rate, or quality of water flow in a fish run.

**6. Editor's Note: Appendix A is included as an attachment to this chapter.**

(2) Proposed projects shall not use procedures which the Commission determines are detrimental to spawning or nursery habitats necessary to sustain the various life stages of the fish.

(3) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to a fish run. All structures which are not water-dependent shall be at least 50 feet from a fish run.

(4) The septic leach facility of a septic system shall be at least 100 feet from the fish run.

(5) All work in a fish run shall be prohibited between March 15 and June 15 in any year.

(6) All projects, including road maintenance, shall use procedures the Commission determines will minimize the siltation of a fish run.

(7) Elevated walkways designed not to affect water quality, sunlight penetration, water volume, or wetland scenic views shall be required for pedestrian passage over a fish run.

(8) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-15. Land subject to coastal storm flowage.**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving land subject to coastal storm flowage are necessary and proper for the following reasons: Land subject to coastal storm flowage (the coastal floodplain) buffers and protects upland areas from severe storm conditions. Since the floodplain contains areas where the water table is close to the surface (as well as other wetland resource areas), pollutants in a floodplain, including contents of septic systems and fuel tanks, may affect private water supply, groundwater quality, wildlife, fisheries and shellfish during a storm. Direct and collateral damage to man-made structures in the floodplain are caused by wave impacts and inundation by floodwaters and storm-driven debris. Desires of property owners to protect themselves from the effects of storms can lead to pressure on the Town and its regulatory bodies to erect engineering structures in wetlands which can have a detrimental effect on wetland values and public health and safety.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon land subject to coastal storm flowage, the Commission shall find that the land is significant to the protection of the following interests: flood control, erosion control, and storm damage prevention, water quality, erosion and sediment control, wildlife habitat. These findings may be overcome only upon a clear showing that land subject to coastal storm flowage does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Land subject to coastal storm flowage or land within 100 feet of land subject to coastal storm flowage shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply (Specific resource areas that lie within the area of land subject to coastal storm flowage, and the wetland values they protect, are otherwise addressed elsewhere in these regulations. The regulations concerning those areas are in addition to the regulations set forth in this section.):

(1) The work shall not reduce the ability of the land to absorb and contain floodwaters, or to buffer inland areas from flooding and wave damage.

(2) Projects shall not cause groundwater, surface water, or saltwater pollution triggered by coastal storm flowage. All septic tanks and leach facilities shall be located outside the one-hundred-year floodplain.

(3) All private underground fuel tanks shall be outside the one-hundred-year floodplain. Commercial tanks shall be outside the one-hundred-year floodplain, or if the Commission determines this is not practicable, the commercial tanks shall be secured so that they cannot float loose.

(4) Building upon areas subject to coastal storm flowage in locations where such structure would be subject to storm damage may not be permitted. If permitted, all construction must be in compliance with state and local building code regulations for flood hazard areas.

(5) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[7]).

(6) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## § 390-16. Estimated habitat for rare/significant wildlife and rare/significant flora and fauna (for coastal wetlands).

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving estimated habitat for rare/significant wildlife and rare/significant flora and fauna for coastal wetlands are necessary and proper for the following reasons: Any coastal resource area identified in Chapter 136, Wetlands, § 136-3, of the Code of the Town of Nantucket within which is found any state rare species (plant or animal) officially listed by the Massachusetts Division of Fisheries and Wildlife, or in which is found any species (plant or animal) the Commission has recognized as significant under the Bylaw, or any coastal resource area falling within any of the most recent Estimated Habitat Maps of the Massachusetts Natural Heritage and Endangered Species Program, shall be considered rare/significant species habitat, as defined in § 390-2 of these regulations. Rare/Significant species habitat preservation is important in order to maintain healthy ecosystems, wetland

7. **Editor's Note: Appendix A is included as an attachment to this chapter.**

resources and biodiversity, and is important for protecting recreational interests, and in protecting wetland scenic views.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building within areas of estimated habitat for rare/significant wildlife and rare/significant fauna for coastal wetlands, the Commission shall find that such land is significant to the protection of the following interests: fisheries, shellfish, wildlife, biodiversity, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that these estimated habitat areas do not play a role in protecting any of the interests given above and only upon a specific determination to that effect by the Commission.

B. Performance standards. Estimated habitat areas shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) No activity shall be permitted that alters existing vegetation within 25 feet of verified rare/significant species habitat.

(2) No activity shall be permitted that results in the construction or enlargement of a structure within 50 feet of verified rare/significant species habitat.

(3) No alteration of topography (filling or cutting) and/or drainage characteristics shall be permitted within 50 feet of verified rare/significant species habitat.

(4) No new construction or enlargement of drainage facilities within 25 feet of verified rare/significant species habitat shall be permitted.

(5) No part of any septic system shall be placed within 50 feet and no leaching facility shall be placed within 100 feet of a verified rare/significant species habitat.

(6) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## ARTICLE III
## Regulations for Inland Wetlands

### § 390-17. Inland banks and beaches.

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving inland banks and beaches are necessary and proper for the following reasons: Inland banks and beaches aid in flood prevention; serve to provide, protect, and enhance habitat for rare, endangered, and significant wildlife and fauna; and serve to provide important wetland scenic views and recreation. Banks are areas where groundwater discharges to the surface and where, under some circumstances, surface water recharges the groundwater. Where banks are partially or totally vegetated, the vegetation serves to maintain the bank's stability, which in turn protects water quality by reducing erosion and siltation. Banks act to confine

floodwaters during most storms, preventing the spread of water to adjacent land. Alterations which permit water to frequently and consistently spread over a larger and more shallow area increase the amount of land routinely flooded and elevate water temperatures. Land within 100 feet of a bank is likely to be significant to the protection and maintenance of the bank, and therefore to the protection of the interests which these resource areas serve to protect. Banks may provide shade that moderates water temperatures as well as providing breeding habitat, escape cover, and feeding areas, all of which are important for the protection of fish. Banks may also help channel water and thus maintain a water depth which helps keep the water temperatures cool in warm weather, thus providing habitat necessary for both fish and the food sources for fish. Inland banks may act as a sediment source for inland beaches. By confining floodwaters, banks decrease the erosion of topsoil from adjacent land surfaces and help prevent flood and storm damage to buildings and roads. Confining floodwaters also decreases water pollution by preventing floodwaters from mixing with many contaminants found on roads, near and in dwellings, from fertilized soil, and from septic tanks. Banks may provide nesting habitat for some species of birds. Banks and particularly beaches provide wildlife and human access to water bodies. Characteristics that are critical to recreation are topography, vegetative cover, wildlife habitat, and access to and along the shore. Characteristics that are critical to wetland scenic views are relief and elevation; plant and animal habitat and diversity; and solitude.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon an inland bank or beach, the Commission shall find that the bank or beach is significant to the protection of the following interests: groundwater, flood control, erosion control, storm damage prevention, water pollution, fisheries, scenic views, and wildlife. These findings may be overcome only upon a clear showing that the inland bank or beach does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Inland banks and beaches or land within 100 feet of an inland bank and beach shall be presumed significant to the interests protected by the bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Projects shall be permitted only where no adverse effect exists on bank stability, groundwater and surface water quality, the water-carrying capacity of an existing channel within a bank, bank height, and the capacity of the bank to provide habitat for fisheries and/or wildlife.

(2) Elevated walkways designed not to affect bank vegetation shall be required for pedestrian passage over an inland bank (but not an inland beach that is gently sloping).

(3) All projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to an inland bank or beach. All structures which are not water-dependent shall be at least 50 feet from an inland bank or beach.

(4) The septic leach facility of a septic system shall be at least 100 feet from the seasonal highest documented water line of the water body.

(5) No structure of any kind shall be permitted on an eroding bank to protect any building built pursuant to a permit granted after the effective date of these regulations.

(6) Piers shall be constructed and maintained using procedures determined by the Commission to be the best available measures to minimize adverse effects on interests protected by the Bylaw.

(7) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-18. Vegetated wetlands (meadows, marshes, swamps, and bogs).**

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving vegetated wetlands are necessary and proper for the following reasons: Vegetated wetlands serve to support rare/significant species (plant and animal); serve to provide rare/ significant species (plant and animal) habitat; serve to remove pollutants from surrounding waters; serve to aid in the prevention of flooding and are important to fishing, shellfishing, recreation, and wetland scenic views. The plant communities, soils, and associated low, flat topography of vegetated wetlands remove or detain sediments, nutrients (such as nitrogen and phosphorous) and toxic substances (such as heavy metal compounds) that occur in run-off and floodwaters. Some nutrients and toxic substances are retained for years in plant root systems or in the soils. Others are held by plants during the growing season and released as the plants decay in the fall and winter. This latter phenomenon delays the effect of nutrients and toxins until cold-weather periods, when the release of these materials is less likely to reduce water quality. Vegetated wetlands are areas where groundwater discharges to the surface and where, in some circumstances, surface water discharges to the groundwater. The profusion of vegetation and the low, flat topography of vegetated wetlands slow down and reduce the passage of floodwaters during periods of peak flows by providing temporary floodwater storage, and by facilitating water removal through evaporation and transpiration. This reduces downstream flood crests, erosion, and resulting damage to private and public property. During dry periods the water retained in vegetated wetlands is essential to the maintenance of base flow levels in streams or into the groundwater which in turn is important to the protection of water quality, water supplies, and wildlife. Wetland vegetation provides shade that moderates water temperatures important to fish life. Vegetated wetlands that are always wet or that are flooded by adjacent water bodies and waterways provide food, breeding habitat, and cover for fish. Fish populations in the larval stage are particularly dependent upon food provided by these wetlands since they provide large quantities of microscopic plant and animal food material. Wetland vegetation provides habitat for a wide variety of insects, reptiles, amphibians, mammals, and birds. Many of these, particularly insects, are food sources for fish. Vegetated wetlands, together with land within 100 feet of a vegetated wetland,

serve to moderate and alleviate thermal shock and pollution resulting from runoff from impervious surfaces which may be detrimental to wildlife, fisheries, and shellfish downstream of the vegetated wetland. The maintenance of base flows by vegetated wetlands is significant to the maintenance of a proper salinity ratio in estuarine areas downstream of the vegetated wetland. A proper salinity ratio, in turn, is essential to the ability of shellfish to spawn successfully and therefore to provide for the continuing procreation of shellfisheries. A proper salinity ratio is also important for many species of fish. Vegetated wetlands are excellent places for birdwatching and hunting. Some vegetated wetlands, particularly bogs, provide habitat for rare plants and animals. Vegetated wetlands along pond edges can prevent erosion by wind-driven waves and serve to provide storage for floodwaters. Characteristics of vegetated wetlands that are critical to wetland scenic views are water quality, vegetative characteristics, habitat, and a sense of presence, expanse and biodiversity. Land within 100 feet of a vegetated wetland is considered to be significant to the protection and maintenance of vegetated wetlands, and therefore to the protection of the interests which these resource areas serve to protect.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building upon a vegetated wetland, the Commission shall find that the vegetated wetland is significant to the protection of the following interests: public and private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution, fisheries, shellfish, wildlife, scenic views, and recreation. These findings may be overcome only upon a clear showing that the vegetated wetland does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Vegetated wetlands or land within 100 feet of vegetated wetlands shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Proposed projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to vegetated wetlands. All structures which are not water-dependent shall be at least 50 feet from a vegetated wetland, and all structures shall maintain an undisturbed two-foot separation to high groundwater. Fifty percent of the area between the twenty-five-foot buffer and the fifty-foot buffer shall not be altered. Additional soils and groundwater information may be required for applications in areas of high groundwater.

(2) Proposed projects shall not use procedures that the Commission determines changes the flood protection function (leveling out of storm surges by storing and slowly releasing water) of vegetated wetlands by significantly changing the rate of water flow through the wetlands (by channelization or other means).

(3) No permit shall be issued which authorizes the destruction of forested swamps. The Commission may authorize the excavation of other vegetated wetlands to create ponds or clear the edge of a pond if the project is designed to increase wildlife habitat diversity and to minimize groundwater or surface water loss.

(4) The septic leach facility of a septic system shall be at least 100 feet from the vegetated wetland.

(5) Piers shall be constructed and maintained using procedures determined by the Commission to be the best available measures to minimize adverse effects on interests protected by the Bylaw.

(6) Elevated walkways determined to be water-dependent designed not to affect existing vegetation shall be required for pedestrian passage over vegetated wetlands.

(7) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[8]).

(8) The Commission may impose such additional requirements as are necessary to protect the interests protected under the Bylaw.

## § 390-19. Inland water bodies (lakes, creeks, streams, ponds, ditches and flats).

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving inland water bodies are necessary and proper for the following reasons: Where land under water bodies is composed of pervious material, such land represents a point of exchange between surface water and groundwater. Depending upon the hydrological conditions and water levels at a given point in time, these areas may serve as exchange or discharge points, or both, with groundwater. An area may serve as recharge area at one season and a discharge point at another time. This allows pollutants and nutrients easy access into private wells or the general groundwater supply. The physical nature of land under water bodies is highly variable, ranging from deep organic and fine sedimentary deposits to gravel and large rocks. The organic soils and sediments play an important role in the process of detaining and removing dissolved and particulate nutrients from surface water above. These also serve as traps for toxic substances (such as heavy metal compounds). Land under water bodies, in conjunction with banks, serves to confine floodwater within a definite channel during the most frequent storms. Filling within this channel blocks flows which in turn causes backwater and overbank flooding during such storms. An alteration of land under water bodies that causes water to frequently spread out over a large area at lower depth increases the amount of property that is routinely flooded. Additionally, it results in an elevation of water temperature and decrease in wildlife habitat in the main channel, both of which are detrimental to fisheries, particularly during periods of warm weather and low flows. It may also flood waterfowl nesting sites which otherwise would not be disturbed. Land under ponds and lakes is vital to a large assortment of warm water fish during spawning periods. Species such as large-mouth bass (Micropterus salomoides), small-mouth bass (Micropterus dolomieui), blue gills (Lepomis macrochirus), pumpkinseeds (Lepomis gibbous), black

8. **Editor's Note: Appendix A is included as an attachment tot his chapter.**

crappie (Pomoxis nigromaculatus), and rock bass (Ambloplites rupestris) build nests on the lake and bottom substrates within which they shed and fertilize their eggs. Land within 100 feet of any bank abutting land under a water body is significant to the protection of the interests which these water bodies serve to protect. Characteristics of water bodies which are critical to wildlife, wildlife habitat, and fisheries include water circulation and flushing rates, distribution of sediment grain size, and water quality (including amounts of dissolved oxygen, nutrients, and pollutants). Leaving ponds and the land bordering ponds in an unobstructed state may be important to recreational swimming, fishing, and boating. Water bodies and the area around them also provide other recreational opportunities such as hunting and wildlife observation. Cattail borders or other vegetated borders of large ponds are important in reducing shoreline erosion and storm damage by dissipating the high energy of storm waves and by anchoring the sediments. Water bodies provide important feeding and/or drinking areas for many types of aquatic wildlife, birds, and animals. Ponds and other water bodies produce insects that hatch and are used as food by several species of birds, particularly swallows. Ducks, geese, swans, and herons all use water bodies and surrounding borders for feeding, shelter, and/or nesting areas. Many other birds, animals, reptiles, and amphibians use land under water bodies, water bodies, and the borders of water bodies for various parts of their life cycles. Changes in sediments, water quality, water level, or species composition of food sources or ground cover may be detrimental to any of the above wildlife and wildlife habitat. Ponds and the land surrounding them often form important wetland scenic views. The enclosed area and the limited size of most freshwater bodies on Nantucket make them particularly sensitive to pollution or nutrient inputs. These inputs can change the plant and animal species composition of the water body and thus can be detrimental to fish and wildlife. Bioaccumulation of pollutants through food webs can also create dangerous levels of pollutants or toxins for wildlife and humans.

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering or building upon water bodies or the land beneath them, the Commission shall find that water bodies and the land beneath them are significant to the protection of the following interests: public and private water supply, groundwater, flood control, erosion control, storm damage prevention, water pollution, fisheries, wildlife, scenic views, and recreation. These findings may be overcome only upon a clear showing that the water body or the land beneath it does not play a role in protecting any of the interests given above and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Inland water bodies or land within 100 feet of inland water bodies shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) No proposed project shall use procedures that the Commission determines have an adverse effect on significant wildlife habitat, wildlife, fisheries, existing water quality, recreation, wetland scenic views, or alter the critical characteristics of an inland water body.

(2) Proposed projects which are not water-dependent shall maintain at least a twenty-five-foot natural undisturbed area adjacent to land under a water body. All structures which are not water-dependent shall be at least 50 feet from land under a water body, and all structures shall maintain an undisturbed two-foot separation to high groundwater. Fifty percent of the area between the twenty-five-foot buffer and the fifty-foot buffer shall not be altered. Additional soils and groundwater information may be required for applications in areas of high groundwater.

(3) The septic leach facility of a septic system shall be at least 100 feet from the water body and/or its bordering vegetated wetland, whichever results in the greater separation. Septic leach facilities shall be separated from each other by 200 feet if the lot containing one of them contains a water body or fronts on a water body and the septic location is within the jurisdiction of the Bylaw.

(4) There shall be no filling of a water body, except as allowed pursuant to a waiver from these regulations as set forth in § 390-3F.

(5) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[9]).

(6) Boat piers shall be constructed using those procedures that the Commission determines to be the best available measures to minimize adverse effects on the interests protected by the Bylaw.

(7) The Commission may impose such additional requirements as are necessary to protect the interests protected under the Bylaw.

## § 390-20. Land subject to flooding (both bordering and isolated areas).

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving land subject to flooding are necessary and proper for the following reasons: Bordering land subject to flooding provides a temporary storage area for floodwater which has overtopped the bank of the main channel of a creek, river, or stream or the basin of a pond or lake. During periods of peak runoff, floodwaters are both retained (i.e., slowly released through evaporation and percolation) and detained (i.e., slowly released through surface discharge). Over time, incremental filling of these areas causes displacement of flooding effects and increases in the extent and level of flooding by eliminating flood storage volume or by restricting flows, and, thereby, increases in damage to public and private properties. Pollutants or contaminants located on bordering land subject to flooding may be washed into surface waters and from there to groundwater, or percolate directly into groundwater. Sources of pollutants within these areas thus have widespread effects on interests protected by the Bylaw. Bordering land subject to flooding provides an important source of microscopic plant and animal material which enriches the nearby water body, may serve as significant wildlife habitat, and can

**9. Editor's Note: Appendix A is included as an attachment to this chapter.**

serve as the basis for a food web which supports many fish or wildlife. Bordering land provides important wildlife habitat and wildlife access to surface water resources. Bordering land subject to flooding is often low and level and thus helps prevent erosion of soil into water bodies by surface water runoff. The topography and location of bordering land subject to flooding is critical for protection of flood control capabilities. Isolated land subject to flooding provides a temporary storage area where run-off and high groundwater collect and slowly evaporate or percolate into the ground. These areas, even though small, usually are numerous and thus very important in preventing more serious flooding somewhere else. Filling causes lateral displacement of ponded water or increased run-off onto contiguous properties, which may result in damage to those properties and others which were not previously affected as much. The additive nature of the flood protection provided by these isolated areas and the fact that filling one may redirect water so as to radically change watershed sizes means that small changes in one area may have large effects in another area. Isolated land subject to flooding helps prevent erosion by breaking up watersheds so that run-off does not become so great as to have enough force to erode soil. Areas where the isolated land subject to flooding is pervious are likely to serve as significant recharge points to the groundwater aquifer. Contamination in the area may find easy access into groundwater and neighboring wells. Isolated land subject to flooding which is covered by a mat of organic peat or muck may help remove contaminants before the floodwater enters the groundwater. Isolated land subject to flooding may provide important wildlife habitat for amphibians, particularly during their breeding period, and some rare plants. It also may provide important wildlife habitat for several species of birds, including ducks.

(2) For the foregoing reasons, whenever a proposed project involves removing, filling, dredging, altering, or building upon land subject to flooding, the Commission shall find that the land is significant to protection of the following interests: private water supply, groundwater, flood control, erosion control, and water pollution. These findings may be overcome upon a clear showing that the land subject to flooding does not play a role in protecting any of the interests given above, and only upon a specific written determination to that effect by the Commission.

B. Performance standards. Isolated land subject to flooding or land within 100 feet of isolated land subject to flooding shall be presumed significant to the interests protected by the Bylaw as referenced in Subsection A; therefore, the following regulations shall apply:

(1) Work on isolated wetlands and small ponds is subject to the regulations set forth in § 390-19 (ponds) and § 390-18 (vegetated wetlands).

(2) Projects on land subject to flooding shall be permitted only in connection with such procedures determined by the Commission as not having the effect of reducing the ability of the land to absorb and contain floodwaters.

(3) If such a site is available on the applicant's land, all septic tanks and leach facilities shall be located outside the one-hundred-year floodplain.

(4) Underground fuel oil or gasoline tanks, or tanks designed to hold any hazardous substance, shall not be permitted on land subject to flooding.

(5) Proposed projects shall employ such safeguards as determined by the Commission to preclude groundwater or surface water pollution triggered by flooding.

(6) The Commission may require compensating or greater flood storage capacity in the same watershed if it permits any filling of land subject to flooding, and all filling of areas subject to flooding shall be strictly minimized. Except as stated in the preceding sentence, no proposed projects shall be permitted to displace or direct floodwaters, through fill or other means, to other areas.

(7) Building upon areas subject to flooding shall be in compliance with appropriate state and local building code requirements.

(8) Proposed projects in land subject to flooding shall use such procedures as the Commission determines will minimize their effect on wildlife.

(9) Fertilizers shall be used in accordance with the Best Management Practices for Landscape Fertilizer Use on Nantucket Island (a copy of which is attached to these regulations as Appendix A[10]).

(10) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

## § 390-21. Estimated habitat for rare/significant wildlife and rare/significant flora and fauna (for inland wetlands).

A. Characteristics and protected interests.

(1) The Commission finds that regulations applicable to activities involving estimated habitat for rare/significant wildlife and rare/significant flora and fauna for inland wetlands are necessary and proper for the following reasons: Any inland resource area as defined in Chapter 136, Wetlands, § 136-3, of the Code of the Town of Nantucket within which any state rare species (plant or animal) officially listed by the Massachusetts Division of Fisheries and Wildlife; any area defined as a vernal pool in § 390-2 of these regulations[11]; any species (plant or animal) the Commission has recognized significant as defined in Chapter 136, Wetlands, § 136-1, of the Code of the Town of Nantucket; or any inland wetland resource area falling within any of the most recent Estimated Habitat Maps of the Massachusetts Natural Heritage and Endangered Species Program shall be considered rare/significant species and habitat, as defined as "habitat" in § 390-2 of these regulations. Rare/Significant species and habitat preservation is important in order to maintain healthy ecosystems, wetland resources and biodiversity; important for protecting recreational interests, and important in protecting wetland scenic views.

**10. Editor's Note: Appendix A is included as an attachment to this chapter.**

**11. Editor's Note: See the definition of "habitat" in § 390-2.**

(2) In view of the foregoing, whenever a proposed project involves removing, filling, dredging, altering, or building within areas of estimated habitat for rare/ significant wildlife and rare/significant flora and fauna for inland wetlands, the Commission shall find that such land is significant to the protection of the following interests: fisheries, shell fisheries, wildlife, biodiversity, recreation, and wetland scenic views. These findings may be overcome only upon a clear showing that these estimated habitat areas do not play a role in protecting any of the interests given above and only upon a specific determination to that effect by the Commission.

B. Performance standards. Estimated habitat areas shall be presumed significant to the interests protected by the Bylaws as referenced in Subsection A; therefore, the following regulations apply:

(1) No activity shall be permitted that alters existing vegetation within 50 feet of verified rare/significant species habitat, including certified vernal pools, and vernal pools defined in § 390-2.

(2) No activity shall be permitted that results in the construction or enlargement of a structure within 75 feet of verified rare/significant species habitat, including certified vernal pools, and vernal pools defined in § 390-2.

(3) No alteration of topography (filling or cutting) and/or drainage characteristics shall be permitted within 50 feet of verified rare/significant species habitat, including certified vernal pools, and vernal pools defined in § 390-2.

(4) No new construction or enlargement of drainage facilities within 50 feet of verified rare/significant species habitat, including certified vernal pools, and vernal pools defined in § 390-2, shall be permitted.

(5) No part of any septic system shall be placed within 50 feet and no leaching facility shall be placed within 100 feet of a verified rare/significant species habitat, including certified vernal pools, and vernal pools defined in § 390-2.

(6) The Commission may impose such additional requirements as are necessary to protect the interests protected by the Bylaw.

**§ 390-22. Riverfront area.**

A. The Commission finds that regulations applicable to activities within the riverfront area (except as these activities are located within other wetland resource areas) are not appropriate for the following reasons:

(1) A riverfront area is the area of land between a river's mean annual high water line and a parallel line measured horizontally outward to a distance of 200 feet. The riverfront area may include or overlap other wetland resource areas or their buffer zones. The riverfront area does not have a buffer zone. Rivers begin at the point an intermittent stream becomes perennial, discharging throughout the year.

(2) Based on direct observation, periodic monitoring and inventory data and testimony provided by and to the Commission, rivers, as defined in § 390-2 of

these regulations and as defined in 310 CMR 10.58(2) of the State Wetlands Protection regulations, do not exist within the Town of Nantucket. Existing water bodies on Nantucket that contain flowing water that empties into fresh and/or salt surface water bodies are intermittent, man-made canals or mosquito ditches, or exhibit dominant characteristics of tidally influenced flow.

B. Therefore, for the purposes of these regulations, the Commission finds that no riverfront area wetland resource areas exist on Nantucket.

## ARTICLE IV
## Activities in Buffer Zone

### § 390-23. Findings; RDA or NOI required.

Since 1983, the Massachusetts Department of Environmental Protection and the Town of Nantucket Conservation Commission have determined that activities within the one-hundred-foot buffer zone pose a significant risk to the health of wetland resource areas. Therefore, a request for determination of applicability or notice of intent must be filed for all activities proposed within the buffer zone to these resource areas.

### § 390-24. Significance of buffer zones.

The role that a protective buffer zone plays in the maintenance of healthy resource areas has been discussed in scientific literature for decades. Documentation exists that shows (Omernik 1977) a direct relationship in increased nitrogen and phosphorous loading to wetlands and water bodies as their adjacent watersheds are cleared. Water quality can be better maintained if undisturbed protective buffer strips are maintained and preserved along surface water bodies. Adverse impacts from sediment erosion and transport are also minimized with the maintenance of an undisturbed buffer between the site development and the wetland resource area. Further, the transitional assemblage of trees, shrubs, and ground cover found in undisturbed buffer zones has been found significant to the support of a greater number of native wildlife species and fauna (biodiversity) in the interior of resource areas which they border.

### § 390-25. Measuring cumulative impact.

Although the Town of Nantucket Wetlands Protection Bylaw (Chapter 136, Wetlands, of the Code of the Town of Nantucket) defines significant cumulative effects as criteria for denying a project, permit-level activities (i.e., site disturbance) are difficult to measure on a scale of cumulative impacts (watersheds). Cumulative effects result from individually minor but collectively significant actions taking place over a period of time. The level of information required and techniques employed for individual permit review are generally not sufficiently definitive to accurately assess potentially significant cumulative impacts, even though it may be clear that the collective impact of many such activities could adversely affect a wetland resource area. The best protection against cumulative impacts is the maintenance and preservation of an undisturbed buffer zone.

**§ 390-26. Filing requirements and buffer zone setbacks.**

A. Based on available information, the Commission has determined that, generally, maintenance of a twenty-five-foot undisturbed vegetative buffer zone and a fifty-foot structure-free buffer zone will serve to protect most wetland resource areas from adverse impacts related to development elsewhere within the buffer zone.

B. Work proposed within 50 feet of a wetland resource area shall require the filing of a notice of intent. Work proposed outside of the fifty-foot setback may be eligible for a negative determination of applicability, provided the proposed work does not fall within an area mapped as rare or significant habitat or as a vernal pool by appropriate state and/or local agencies or departments; does not border on an outstanding resource area; provides erosion and sediment controls; and establishes a work limit at or greater than 50 feet from any wetland resource area, exclusive of land subject to coastal storm flowage.

C. It sometimes is necessary to impose additional restrictions on activities within the one-hundred-foot buffer zone to prevent potential adverse effects on resource areas.

## ARTICLE V
## Activities to Enhance Wetland Resource Health and Function

**§ 390-27. Invasive exotic plants.**

A. The Commission defines "exotic invasive plants" as nonnative species that have spread into native or minimally managed plant systems in Nantucket, causing economic or environmental harm by developing self-sustaining populations and becoming dominant and/or disruptive to those systems. On Nantucket, this may include species that are native to the mainland, but do not occur naturally on the Island. Invasive plants are those species that spread widely beyond the location of initial establishment, become locally abundant, or spread into natural areas. Invasive species may cause net harm to the economy, environment and human health. While native species may be "invasive" in certain habitats, this section is concerned with invasive-exotic plant species, which will henceforth be abbreviated as "invasive" plants or species. Invasive plants often possess some of the following characteristics that increase their ability to replace native species: rapid growth and maturation; abundant seed set and/or asexual reproduction; rapid rates of spread; and few, if any, natural enemies. Invasive plants are often difficult to control and may form monocultures over large areas.

B. Invasive plant incursions can result in significant alteration to natural resource systems, including wetlands and wetland buffers. Invasive plants may alter habitats sufficiently to reduce or eliminate less competitive plant species and/or wildlife dependent on specific habitats, resulting in reduced biodiversity. In addition, invasive plants may increase the rate of wetland eutrophication, reduce wetland area, and decrease pollutant attenuation. Effective management of invasive plants in wetlands and wetland buffers is critical to insuring and promoting healthy, diverse, and properly functioning wetland resources.

C. Determining the point and extent at which a resource or plant community has become adversely impacted by invasive species is dependent upon local conditions. Natural

resource managers, landowners and natural resource beneficiaries on Nantucket recognize invasive plants to be a problem that currently exists within our wetland resources and buffers. In addition, it is widely recognized that early detection and intervention make control of invasive species easier, with fewer environmental impacts. The process and regulations outlined below are set forth to define, guide and permit the management of invasive plants adversely impacting wetlands and wetland buffers within the jurisdiction of the Commission.

## § 390-28. Control and mitigation of invasive plant species.

A. Invasive-exotic plant species.

(1) The following list includes plants recognized as invasive in Massachusetts; importation and propagation of these species is currently prohibited within the State of Massachusetts. The entire current list of Massachusetts Prohibited Plants is available at the Massachusetts Department of Agricultural Resources, or may be accessed online at: http://www.mass.gov/eea/agencies/agr/farm-products/plants/massachusetts-prohibited-plant-list.html. The original Massachusetts prohibited plants list went into effect January 1, 2006. Certain species were subject to a phase-out period that expired on January 1, 2009. As of this date, the sale, trade, purchase, distribution and related activities for the species on the list are not allowed. See Appendix B for the list.[12]

(2) See Appendix C for plants currently recognized by the Invasive Plant Species Committee of the Nantucket Biodiversity Initiative as invasive or at high risk of becoming invasive to native plant communities on Nantucket.[13]

(3) The following marine algae are currently recognized by the Nantucket Conservation Commission as invasive in Nantucket waters.

| Scientific Name | Common Name |
|---|---|
| Anabaena subcylindrica | |
| Asterionella formosa | |
| Chaetoceros elmorei | |
| Chlorella vulgaris | |
| Cladophora glomerata | |
| Codium fragile | Oyster thief |
| Enteromorpha linza | Maiden hair |
| Lyngbya birgei | |
| Nitzschia bilobata | |

12. **Editor's Note: Appendix B is included as an attachment to this chapter.**

13. **Editor's Note: Appendix C is included as an attachment to this chapter.**

| Scientific Name | Common Name |
|---|---|
| Oscillatoria rebescens | |
| Ulva lactuca | Sea lettuce |

B. Control and mitigation strategies.

(1) Appropriate and effective techniques to control invasive plants are species- and location-dependent. In developing a strategy to mitigate and/or control invasive plants, the following information is necessary:

(a) Identification of invasive species to be "controlled."

(b) Justification for identifying a plant as invasive.

(c) Delineation of geographic occurrence.

(d) Identification of best management practice or practices to be used for treatment/eradication, including plant disposal.

(e) Ongoing management strategy, including revegetation with appropriate species when required.

(2) Identification of invasive species to be "controlled." All plant species listed in Subsection A(1) through (3) shall be considered to be invasive on Nantucket. The Commission may also consider plant species not on these lists to be invasive in certain habitats or under certain circumstances. All invasive species listed in Subsection A(1) through (3) are subject to control through the processes and regulations indicated in Article V. Plant species listed as "Prohibited in Massachusetts" in Subsection A(1) and/or as "highly invasive" in Subsection A(2) shall not be planted within any wetland resource area or its protective buffer. The Commission recognizes that certain species act as invasive only in specific habitats. Therefore, the Commission may grant permission to plant species listed as invasive on Nantucket, with the exception of plant species listed as "Prohibited in Massachusetts" in Subsection A(1) and/or as "highly invasive" in Subsection A(2) under certain circumstances, provided that the applicant can provide substantial evidence that the plants under consideration pose no threat to the resource area in question.

(3) Delineation of geographic occurrence. Delineation of geographic occurrence of invasive species shall be provided by outline on aerial photographs of known scale and date; on GIS maps provided by the Town of Nantucket or appropriate land survey professionals; by plans drawn and stamped by professional land surveyors; and/or by other appropriately scaled and stamped base sheet references. Documentation shall include but not be limited to:

(a) Measured and/or calculated percentage of ground/canopy cover (dominance) based on specific site grid data.

(b) Graphic representation of aerial extent using specific site references such as aerial photographs, vista photographs, topographic and/or plot plans, etc.

(c) Scientific and/or historic/anecdotal information as to invasive species impact to plant and animal biodiversity to the site and site environs.

(4) Identification of best management practice or practices to be used for treatment/ eradication.

(a) Best management practices for treatment and/or eradication of invasive plant species include:

[1] Manual/Mechanical removal;

[2] Chemical control (broadcast and direct plant application);

[3] Biological control; and/or

[4] A combination of all of the above.

[5] Proper disposal.

(b) For purposes of these regulations, best management practices for the treatment and/or eradication of invasive plant species shall be those practices deemed both effective and with minimal environmental impacts, including impacts to other plants or animals within or near the infestation. Ranking of best management practices shall be species- and habitat-specific and based on best available information from local, state and federal environmental agencies experienced with such efforts, such as, but not limited to, the Massachusetts, Connecticut and New Hampshire Departments of Environmental Protection; the Vermont Agency of Natural Resources, Water Quality Division; the Massachusetts Division of Fisheries and Wildlife; the USDA/Natural Resources Conservation Service; the Environmental Protection Agency; the United States Fish and Wildlife Service; the Nantucket Conservation Commission; the Nantucket Parks and Recreation Commission; the Nantucket Coastal and Marine Department; the New England Wild Flower Society; and the Nantucket Invasive Plant Species Committee. Management protocols developed by the Nantucket Invasive Plant Species Committee for commonly treated invasive species are available from the Town Natural Resources Department or from the Nantucket Biodiversity Initiative website.

(c) Any herbicide application shall be performed by or under the supervision of a licensed applicator. Techniques that minimize the amounts of herbicide used and that restrict herbicide application to the target species to the extent possible to still be effective are encouraged. Given the inherent risks associated with biological control techniques, the Commission will consider such methods only when other methods have failed or cannot be used in a given situation. Before a biological control technique can be employed, it must be proven to be effective and to pose no risk to non-target plants on the Island as a whole.

(d) The seeds, propagules, and vegetative portions of some invasive plant species can survive indefinitely, even after removal from the soil, and initiate new infestations if not disposed of properly. Therefore, best

management practices must also include the proper disposal of such species.

(5) Ongoing management strategy.

(a) Treatment, control, and/or eradication of invasive species often require more than one year of treatment and must include ongoing maintenance practices that serve to enhance the biodiversity and health of the wetland resource area and its environs. For the purposes of these regulations, best management practices that serve to advance these interests include:

[1] Integrated management practices that incorporate mechanical, chemical and/or biological control measures as appropriate, including an estimate of the time required to effect control or elimination and any changes in treatment that may occur over time.

[2] Effective erosion control measures.

[3] Competitive plantings and/or revegetation with appropriate native species. For small or scattered occurrences within intact native plant communities it may be appropriate to allow for natural revegetation.

[4] Wildlife management practices.

(b) Prior to issuance of a decision to allow work to go forward, the Nantucket Conservation Commission shall require a written management plan that addresses Subsection B(5)(a)[1] through [4] above, as appropriate to specific site conditions.

**§ 390-29. Permitting requirements.**

A. Under the provisions of these regulations, alteration within a resource area and of vegetation within 25 feet of a wetland resource area requires an order of conditions from the Commission.

B. The Nantucket Conservation Commission has determined that appropriate treatment of invasive species within wetland resource areas and environs serves to enhance the functioning of the wetland resource area. Therefore, the Commission encourages, and will assist as appropriate, responsible invasive species management activities within its jurisdiction. In general, the Commission encourages early detection and control of invasive plants as removal is then often simpler, with fewer environmental impacts.

C. Toward that end, the Commission herein grants waivers to provisions within these regulations that require a twenty-five-foot undisturbed buffer to wetland resource areas and/or the filing of a notice of intent to alter existing vegetation within those geographic areas. Any work to be undertaken within the buffer zone relative to invasive species management/control shall require the filing of a request for determination of applicability. Any work to be undertaken within a wetland resource area or within a wetland buffer that is known to support any species listed as endangered, threatened, or special concern by the Massachusetts Natural Heritage and Endangered Species Program shall require an order of conditions or amended order of conditions resulting

from public hearing review of a notice of intent. The applicant, landowner, and/or land manager shall provide for Commission review and approval of all the information necessary to describe proposed invasive plant mitigation and control as required in § 390-28B(5)(a)[1] through [4].

# Chapter DLR

# TOWN REGULATIONS DISPOSITION LIST

**§ DLR-1. Disposition of legislation.**

**[The following is a chronological listing of new and amended regulations adopted since the 2020 codification of the Town regulations.]**

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**§ DLR-1. Disposition of legislation.**

| Enacted by | Adoption Date | Subject | Disposition |
|---|---|---|---|
| | | | |