

# BY-LAWS

## TOWN OF NEW MARLBOROUGH

### MASSACHUSETTS



First Settled	1739
Incorporated	June 15, 1759
Area	28,046 acres
Population (Town Census)	1301
Road Mileage	90
Elevation	1200 feet

## **SECTION 1**

### **TOWN MEETINGS**

- 1.1** All Town Meeting and Elections shall be called in the manner required by law and attested copies of the warrant for the same shall be posted in five (5) public places or more to include the Transfer Station and Town Website, within the Town, at least seven (7) days before the time of holding said meetings. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937; Amended STM 10.09.07 Approved AG 11.14.07)
- 1.2** The Annual Town Meeting shall be held on the first Monday in May. The Annual Town Election shall be held on the second Monday in May, the polling hours to be set by the Selectmen. (Adopted Town Meeting 05.09&11.1977, Approved AG 08.08.1977)
- 1.25** The location of the Annual Town Meeting, Special Town Meetings, and any other meetings of the Town, excluding any portions of said meetings relating to elections, may be held outside of the geographic limits of the Town at the discretion of the Board of Selectmen provided that the alternate location be in an adjoining Town. (Adopted Town Meeting 05.07.18, Approved AG 08.28.18)
- 1.3** All articles submitted to the Selectmen, by petition or otherwise, for insertion in the Annual Warrant, shall be presented to the Selectmen at least forty-five (45) days prior to the Annual Town Meeting. (Adopted Special Town Meeting 11.19.1973, Approved AG 12.06.1973)
- 1.4** The Moderator shall decide all votes. If a two-thirds (2/3) vote is required, the Moderator may declare and record the vote as meeting the requirements; providing however, that if a vote so declared is immediately questioned by three (3) or more voters, the Moderator shall verify the vote by polling the voters. (Adopted ATM 05.07.07; Amended and Approved by AG 09.05.07)

## **SECTION 2**

### **TOWN REPORTS**

- 2.1** The Selectmen shall cause their own report to the Town, together with the reports of all the other officers and committees, to be printed and left at the Town Office, at least seven (7) days before the Annual Town Meeting, where they can be obtained by any voter, resident taxpayer or distributed by the Town Clerk. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

## **SECTION 3**

### **PURCHASING MATERIALS**

- 3.1**
  1. All purchases will be in compliance with MGL Chapter 30B as amended.
  2. All purchases less than \$5,000.00 will require the use of sound business practices.

3. All purchases in excess of \$5,000.00 will require the signature of the Procurement Officer.
4. All purchases in excess of \$5,000.00 will require written verbal quotes from a minimum of three (3) vendors.
5. All purchases in excess of \$25,000.00 will be in the form of a sealed bid.
6. In an emergency such purchases may be made without bid, provided it is approved by the Board of Selectmen.  
(Amended ATM 05.07.07, Approved by AG 09.05.07)

#### **SECTION 4            PROFESSIONAL SERVICES**

- 4.1    In all cases where the Town votes one hundred (100) dollars or more for professional services, there shall be a written contract drawn stating in full all conditions relative thereto. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

#### **SECTION 5            CARE OF TOOLS**

- 5.1    All small tools shall be stamped with name or initials to identify them as the property of the Town of New Marlborough.
- 5.2    All small tools, when not in use, shall be stored in a suitable place provided for such purpose.
- 5.3    No small tools that carry the Town stamp shall be sold or given to anyone to use, but may be sold by the Selectmen for junk purposes, provided their value for future use has been destroyed.
- 5.4    It shall be the duty of the Selectmen to see that all sections of this By-law are enforced (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

#### **SECTION 6            LICENSING PEDDLERS**

- 6.1    Non-residents, without State or County license, shall not be allowed to retail from a wagon, truck or other vehicle within this Town without obtaining a license from the Board of Selectmen. Non-residents engaged in the purpose of agriculture are exempt from the above licensing. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

#### **SECTION 7            CODIFICATION OF VOTES**

- 7.1    All votes of the Town which have continuing force, year after year, shall be brought together in one code and all such future votes shall be added thereto. (Adopted 03.15.1937, Approved AG 04.09.1937)

#### **SECTION 8            FINANCE COMMITTEE**

- 8.1** That there be a Finance Committee consisting of seven (7) elected members, two to be elected annually for a term of three (3) years, two to be elected annually for a term of three (3) years and three to be elected annually for a term of three (3) years with terms to be staggered such that no more than three (3) members shall be elected in any year. (Approved AG 07.31.15)
- 8.2** That the Finance Committee meet annually at a public place, prior to the Annual Meeting of the Town, for the purpose of inquiring into the financial needs and requirements of the Town for its ensuing fiscal year. And the Selectmen shall furnish said committee with certified copies of all articles to be inserted in the warrant involving the raising and appropriation of monies, which the committee shall investigate the subject matters thereof, in the respect of the needs and amounts thereof, and report its recommendations to the Selectmen who shall cause the same to be published in the Town Report. Public notice of the time and place of such meeting shall be given.
- 8.3** That certified copies of all articles in warrants calling Special Town Meetings, involving the raising the raising and appropriation of monies, shall be submitted to the Finance Committee by the Selectmen, which said committee shall investigate the subject matters thereof in respect to the needs and amounts thereof and report its recommendations to the Town Clerk, who shall cause the same to be made available at such Town Meetings. (Adopted Town Meeting 03.15.1937, Approved AG 04.09.1937)

## **SECTION 8A CAPITAL PLANNING COMMITTEE**

- 8A.1** The Town shall have an appointed Capital Planning Committee consisting of five members with staggered three year terms. In the first year of appointments, two terms shall be for three years, two terms shall be for two years, and one term shall be for one year. All subsequent terms shall be for three years. Appointments shall be made by the Board of Selectmen. The positions shall be filled from among volunteers who are members of the Town and have financial planning knowledge and experience. Current members of the Finance Committee and Board of Selectmen may serve as non-voting, ex-officio members of the Committee and shall not count towards a quorum.
- 8A.2** The Committee will annually review, develop, and maintain a multi-year Capital Improvement Plan that identifies and balances the Town's capital infrastructure needs with controlled tax growth and available funding sources. For the purpose of this bylaw, "A Capital Improvement" is defined as any acquisition or lease, tangible asset, or project that costs at least \$10,000 and has a useful life equal to or greater than five years as determined by the Committee. The Committee will also review proposals for the construction of municipal buildings and acquisition of land or personal property.

**8A.3** The Committee shall consider all available funding sources and make recommendations or offer guidelines as to which sources to use and under what circumstances to best meet the capital infrastructure needs of the Town. In doing so the Committee shall look forward at least five years in developing its plan.

**8.4**     **8A.4** The Committee will develop an Annual Capital Funding Plan for the next fiscal year for presentation to the Finance Committee and Board of Selectmen by January 15<sup>th</sup> of each year. The Committee will publish an annual report to be included in the Town's Annual Report. (Adopted Town Meeting 05.22.2021, Approved AG 09.21.2021)

## **SECTION 9                      UNREGISTERED AND DILAPIDATED MOTOR VEHICLES**

**9.1**     Upon complaint, in writing, and signed by six (6) or more persons who own land in the Town of New Marlborough, to the Selectmen or Chief of Police the owner of the premises upon which unregistered and dilapidated motor vehicles and/or parts thereof has been allowed to stand thereon shall remove said unregistered and dilapidated motor vehicles and/or parts within four (4) weeks of being informed of said complaint by the Selectmen or the Chief of Police from any premises unlicensed under Chapter 140, Section 57, of the Massachusetts General Laws. The Selectmen's judgment shall be final as to determine whether or not a motor vehicle is junked or dilapidated.

**9.2**     Whoever violates any of the provisions of this By-law shall pay a fine not to exceed ten (10) dollars for each offense. Each dilapidated motor vehicle or part thereof that has been allowed to stay on the premises beyond the four (4) week period may constitute a separate offense for vehicle or part, and each continuing day of such violation may also be considered a separate offense. (Adopted Special Town Meeting 07.29.1966, Approved AG 09.08.1966)

## **SECTION 10                    PROTECTIVE BY-LAW**

(Separate booklet filed with the Town Clerk; Effective 10.07.1966; amended 12.14.1987; corrective amendment 06.30.1994; amended 05.05.03; amended 08.25.08; amended 04.13.18; amended 05.07.18; amended 05.06.19; amended 05.22.21; amended 05.02.22)

## **SECTION 11                    ENTERTAINMENT LICENSE**

**11.1**     No person shall offer to view, set up, set on foot, maintain or carry on a theatrical exhibition, public show, concert, dance hall exhibition of any description, or any entertain activity, or public amusement of any type, without first having obtained a license to do so from the Board of Selectmen, and without having complied with the provisions of Chapter 140 of the General Laws as amended, and that in all cases in which a crowd of one thousand (1000) or more persons is anticipated,

and including in an application for such license information on traffic, security, parking, sanitation, food to be served, beverages to be served, and suitable provision for cleaning the area at the conclusion of its use and making suitable arrangements to pay the cost of any special Town services which will be needed in the opinion of said Board. The applicant shall also be required to obtain a policy of public liability insurance of at least twenty-five thousand (25,000) dollars to pay and judgments rendered against such license in favor of patrons or others to recover damages resulting from negligence of the licensee, together with a bond running to the Town for faithful performance of the conditions of such license. The applicant shall be subject to such penalties of non-compliance as provided by law. (Adopted Town Meeting 05.01.1978, Approved AG 1978)

## **SECTION 12 COUNCIL ON AGING**

- 12.1** The Board of Selectmen shall annually appoint three (3) registered voters of the Town as a Council on Aging under the provisions of Section 8B of Chapter 40 of the General Laws. The members so appointed shall serve without compensation and shall designate by their vote a chairman and secretary who shall be members of the Council.
- 12.2** The purpose of the Council shall be to coordinate or carry out programs designed to meet the problems of the aging in coordination with the programs of the Department of Elder Affairs.
- 12.3** The Council shall submit an annual report to the Town and shall send a copy thereof to the Department of Elder Affairs. Said Department shall from time to time review and evaluate such reports and make recommendations as to any required or needed changes in said local programs.
- 12.4** The Council may appoint such clerks and other employees with the approval of the Board of Selectmen and as may be provided for by appropriation of the Town Meeting. (Adopted Town Meeting 05.02.1983, Approved AG 10.17.1983)

## **SECTION 13 RECYCLING**

- 13.1** The Town, in order to recycle as much as possible of the solid waste generated within the Town, authorizes the Board of Selectmen to adopt rules and regulations to require everyone disposing of solid waste at a Town Facility to separate recyclable material from their solid waste and to dispose of such recyclable material in the designated areas so that it may be recycled.
- 13.2** For the purpose of this by-law the term “recyclable” shall mean: glass, paper and metal, as well as any other material the Selectmen may determine can be recycled. The Selectmen shall have the authority to add, alter or delete items to be separated as markets for recycled goods change.

- 13.3** The Selectmen may set a fine not to exceed \$50.00 (fifty dollars) for each violation of this by-law.
- 13.4** All by-laws, rules, regulations or other documents inconsistent with the provisions of this by-law are hereby repealed to the extent of such inconsistency.
- 13.5** This by-law and the various parts, sentences and clauses thereof are hereby declared to be severable. If any part, sentence or clause is adjudged invalid, it is hereby provided that the remainder of this by-law shall not be affected thereby. (Adopted STM 12.04.89; approved by AG)

## **SECTION 14**

### **HUNTING**

- 14.1** No person shall hunt on any Town owned or private property in the Town of New Marlborough without written permission of the owner of the land upon which hunting will take place. The written permission must be carried while hunting and renewed on an annual basis.
- 14.2** Fine for the first offense will be \$100.00, second-time offenders will be fined a minimum of \$100.00 up to \$300.00. This by-law shall be enforced by all State and Local law enforcement officials and shall be administered by Massachusetts General Laws, Chapter 40, Section 21d, on a non-criminal disposition

## **SECTION 15**

### **RIGHT TO FARM**

#### **15.1 Purpose and intent**

The Town of New Marlborough finds that farming is an essential and valued activity, which provides fresh food, clean-air, economic diversity, local employment, and open spaces to all the citizens of our town. This by-law is intended to encourage the pursuit of agriculture, promote agricultural-based economic and employment opportunities, and protect farmland within the Town of New Marlborough. The purpose is to allow agricultural uses and related activities to function in harmony with the community, town agencies and others. This by-law shall apply to all jurisdictional areas with the Town.

#### **15.2 Definitions**

**“Farm”** shall include any parcel or contiguous parcels of and or water bodies used for the primary purpose of commercial agriculture, or accessory thereto. Commercial shall be defined by the minimum acreage requirement or the gross sales and program payment requirement specified in Massachusetts General Law Chapter 61A Section 3, as amended. **“Farm”** shall include, any agricultural use as

defined by the Town of New Marlborough Protective Bylaw, Section 2.2 and any youth related agricultural activities, such as but not limited to 4-H, irrespective of minimum acreage or gross sales and program payment requirements.

**“Farming”** or “agriculture” shall include, but not be limited to the following:

- Farming in all its branches and the cultivation and tillage of the soil
- dairying;
- orchards
  
- production, cultivation, growing, and harvesting of any agricultural, aquaculture, floricultural, viticulture, or horticultural commodities;
- growing and harvesting of forest products upon forest land and any other forestry or lumbering operations;
- raising of livestock including horses;
- keeping of horses as a commercial enterprise; and
- keeping and raising of poultry, sheep, goats swine, cattle, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

**“Farming”** shall encompass activities including, but not limited to, the following:

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



### **15.3 Right to Farm Declaration**

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

### **15.4 Notification to Real Estate Buyers**

In order to allow prospective purchasers to make informed decisions prior to a real estate transaction and to promote harmony between farmers and their new neighbors after a transaction, the Town of New Marlborough requests selling landholders and/or their agents (and assigns) provide written notice to prospective purchasers substantially as follows:

“It is the policy of the Town of New Marlborough to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers that the property they are about to acquire lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Purchasing, and henceforth occupying land within New Marlborough means that one should expect and accept such conditions as a norm and necessary aspect of living in New Marlborough.”

Written notification may occur in one of several ways including but not limited to a disclosure form, addendum to a Purchase and Sale Agreement and should include an acknowledgement by the buyer that they have received notification.

Within 30 days after this by-law becomes effective the Board of Selectmen shall make available for use by selling landowners or their agents (and assigns) copies of exemplified written notifications.

Within 30 days after this by-law becomes effective the Board of Selectmen shall prominently place in the Town Hall the above disclosure.

Within 30 days after this becomes effective the Tax Collector shall include a copy of the above disclosure with responses to request for Municipal Lien Certificates.

#### **15.5 Resolution of Complaints**

Any person having a complaint about a farm activity or practice is encouraged to seek an amicable resolution to the complaint, including talking directly with the involved farmer. Such person may, notwithstanding pursuing any other available remedy, request resolution assistance from the Board of Selectmen. Such a request does not suspend the time within which to pursue any other available remedies. The Board of Selectmen may appoint a panel of at least three (3) individuals, to include representation from farmers, or refer such request to a New Marlborough Agricultural Commission, should one exist. Said panel or Agricultural Commission shall review and facilitate the resolution of such a request and report its recommendations to the Board of Selectmen within the agreed upon time frame.

#### **15.6 Severability Clause**

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

### **SECTION 16**

#### **DENIAL OF LICENSES TO DELINQUENT TAXPAYERS**

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

**16.2** The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished *licensing authority from the tax collector*

*with the respect to any activity*, event or matter is which is carried out or exercised or is to be carried out or exercised on or about real estate owned by any party whose name appears on said list furnished to the licensing authority from the tax collector; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial revocation or suspension of said license or permit to any party. The tax collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purpose of such proceeding at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments, or other municipal charges, payable to the municipality as the date of issuance of said certificate.

- 16.3** Any party shall be given an opportunity to enter into a payment agreement, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- 16.4** The board of selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.
- 16.5** This section shall not apply to the following licenses and permits: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes, section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage licenses, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty. (STM 03.02.11; AG 04.07.11)

## SECTION 17

### 17.1 Dog Control

No owner or keeper of a dog shall permit such dog, whether licensed or unlicensed, to run-at-large within the town. No person shall permit such dog beyond the confines of the property of the owner or keeper unless such dog is on a leash and under physical control of said owner or keeper.

This bylaw shall not apply to private property for which the owner or keeper of a dog has permission to have such dog off-leash, provided the dog is under the direct supervision of a person who has the ability to properly control the dog's actions.

A dog that is working, hunting or at such events as field trails or training is exempt from this bylaw for the period of time the dog is engaged in the work, hunting or event, provided the dog is under the direct supervision of a person who has the ability to properly control the dog's action.

This bylaw shall not apply to property owned and/or controlled by the Commonwealth of Massachusetts where a separate set of rules regulations apply.

**17.2** The Animal Control Officer shall enforce the provisions of this bylaw. Violators **Section 17.1** shall be fined Twenty-Five Dollars (\$25) for the first offense and Thirty-Five (\$35) for the second and each subsequent offense. (ATM 05.04.15) (AMEMED ATM 05.22.2; Approved AG Office 09.21.21)

**17.3** The Animal Control Officer shall enforce all applicable sections of MGL c. 140. Except as specifically modified in this article, the provisions of the applicable sections of MGL c. 140 shall be incorporated into and apply to this article, as well as any other section of Massachusetts General Laws referenced herein. (Adopted ATM 05.22.21; Approved AG Office 09.21.21)

## SECTION 18:

### Revolving Funds

**18.1** There are hereby established in the Town of New Marlborough pursuant to the provisions of General Law chapter 44, §53E½, the following Revolving Funds, from which the specified department head, board, committee, or officer may incur liabilities against and spend monies from without appropriation in accordance with the limitations set forth in this by-law.

- 18.2** Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
- 18.3** No liability shall be incurred in excess of the available of the fund.
- 18.4** The total amount spent during a fiscal year shall not exceed the amount authorized by Annual Town Meeting or any increase therein as may later be authorized by the Board of Selectmen and Finance Committee in accordance with G.L. c.44, §53E½.
- 18.5** Interest earned on monies credited to a revolving fund established by this by-law shall be credited to the General Fund.

**18.6** Authorized Revolving Funds

<b>REVOLVING FUND PROGRAM OR PURPOSE</b>	<b>DEPARTMENT RECEIPTS TO BE CREDITED TO FUND</b>	<b>REPRESENTATIVE OR BOARD ENTITY AUTHORIZED TO SPEND</b>
<i>Plumbing Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of plumbing systems and installations	Fees for permits and inspections	Town Treasurer
<i>Gas Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of gas systems and installations	Fees for permits and inspections	Town Treasurer
<i>Electrical Inspector</i> to pay costs of plan review, engineering services and related expenses for permitting and inspection of electrical systems and installations	Fees for permits and inspections	Town Treasurer
<i>Board of Health</i> to pay costs of plan review, engineering services and related expenses for inspection and permitting of septic systems, food establishments, housing, and other properties and establishments subject to Board of Health jurisdiction	Fees for reviews, permits, and inspections	Town Treasurer
<i>Tax Title Fees</i> to pay for costs arising from title review registry recording, attorney fees, and related expenses	Fees and other receipts collected in connection with tax title processing	Tax Collector/Treasurer

- 18.7** Procedures and Reports. Except as provided in General Laws Chapter 44, §53E½ and this by-law, all applicable state and local laws and regulations that govern the receipt, custody, expenditure and payment of town funds shall apply to the use of revolving funds established and authorized by this by-law. (Adopted ATM 05.01.17; Approved AG 05.18.17)

## **SECTION 19**

### **ALARM REGULATIONS**

- 19.1** Definitions: As used in this section, the following terms shall have the meanings indicated: Alarm System—Any alarm or device which automatically dials the emergency telephone number of the Police, Fire Department, or other emergency service to alert that an emergency exists or that the services of that department are needed or which transmits an alarm to the town’s alarm monitoring system. “Alarm system” shall also mean any alarm device which automatically emits an audible, visual, or other response upon the occurrence of the hazard or emergency and is intended to alert persons outside the building and/or any person who in turn notifies the Police and/or Fire Department to the existence of said hazard or emergency.  
Dial Alarm or Dialing Device—Any fire, police, or emergency alarm device which is a telephone device or telephone attachment which automatically or electronically selects a telephone line connected to the Police, Fire Department, or dispatch center and reproduces a rerecorded message to report a criminal act or emergency requiring police, fire, or emergency response.  
False Emergency Alarm—Any signal actuated by an emergency alarm to which the Police or Fire Department responds which is not the result of an emergency.  
Emergency Number—Any telephone number designated by the Police or Fire Chief as a telephone number through which members of the public may report an emergency or request police assistance.
- 19.2** Dialing Devices Restriction/Compliance
- 19.2.1** All dialing devices operated by automatic means shall transmit messages only to such numbers as may be designated for that purpose by the Police and/or Fire Department of the town.
- 19.2.2** After six (6) months following the effective date of this section, no person shall use, operate, or install any device which will, upon activation by automatic means, initiate the dialing, calling, or other connection with the Police and/or Fire Department of the town, either at its regularly constituted telephone number or any other number which may be designated by said Police or Fire Department as a police/fire emergency number, without a permit issued by the Board of Selectmen.
- 19.2.3** No person shall use, operate, or install any dialing device that will, upon activation, automatically dial, call, or connect with the telephone number designated by the Chief of Police and/or Fire Chief for the purpose of receiving such alarm messages, more than twice for any one (1) incident.
- 19.2.4** Any system installed on or after the effective date of this section must comply with this section. Preexisting installations must comply within six (6) months of the effective date of this section.

**19.3 Mandatory Alarm Delay**

**19.3.1** Upon the activation of a burglary (break-in ) alarm, there shall be a mandatory delay of at least fifteen (15) seconds before the transmission of a signal to the Police Department to enable the user to abort the signal in the event that it was triggered inadvertently.

**19.3.2** This delay shall not be applicable to a robbery (holdup), fire, or medical emergency alarm.

**19.3.3** Any system installed on or after the effective date of this section must comply with this section. Preexisting installations must comply within six (6) months of the effective date of this section.

**19.4 Timing Devices** The user of every alarm system emitting and audible, visual, or other response shall, at the time such system is installed or within ninety (90) days of the effective date of this section in the case of existing systems, install or cause to be installed an automatic timing device which shall deactivate such alarm so that it will be activated for no more than fifteen (15) seconds.

**19.5 KnoxBox** All new alarm system users of emergency, medical, or fire system alarm systems shall equip the alarmed premises with an approved KnoxBox of sufficient size to hold all pertinent data and provide the Fire Department access to the facility. All KnoxBoxes are to have a red locator centered over them and shall contain a complete set of access keys and a typewritten laminated list of emergency contacts and alarm code. Existing alarm system users shall install KnoxBoxes within twelve (12) months of the passage of this bylaw.

**19.6 Information to be filed**

**19.6.1** The user of every alarm system maintained in the town, except those installed in motor vehicles, shall within ten (10) days of the installation thereof or within sixty (60) days of the enactment of this section, file the following information with the Police Department of the town:

1) The type of alarm system.

2) The street address and the nearest cross street of the building which houses the alarm.

3) In the case of a commercial premises, the name, address, and telephone number of an authorized represented and/or alternate who will be able to respond when called by police to deactivate the alarm system, if necessary.

4) In the case of a private residence, the name, address, and telephone number of a person who is not a resident of the private residence in question and who will be able to deactivate the alarm system.

**19.6.2** Such filing requirements are not applicable to all alarm systems, whether the same are or are not directly connected to the Police, Fire Department, or dispatch center or are merely audible alarms. Such filing must be made within the time period specified above even though there shall have been previous notification of the existence of such alarm systems to the Police and/or Fire Department or other department of the town.

**19.7 Permit Fees**

**19.7.1** The Board of Selectmen is hereby authorized to grant a revocable permit to any owner, lessee, or occupant of property located in the

town to operate, maintain, install, or modify a police or fire alarm device, and no such device shall be operated unless such permit shall have first been issued.

- 19.7.2** The Board of Selectmen shall charge of a fee of \$25.00 for the issuance of such permits, which are to be renewed annually. Permits will expire on December 31 of each year.

**19.8**     Revocation

- 19.8.1** A permit issued pursuant to this section may be revoked at any time or from time to time by the Board of Selectmen upon the giving of ten (10) days' notice, in writing, by registered or certified mail, to the permittee, sent to the address shown on the permit.

- 19.8.2** The violation of this section shall constitute grounds for the revocation of the permit.

- 19.9**     False Alarms A fee will be charged as listed below for each response by the Fire and /or Police Department to any building/residence in which an alarm malfunction or alarm activation is caused by the occupant or persons having control of the building/residence. The Police/Fire Chief or senior officer making an alarm response shall determine whether the alarm was a malfunction by the alarm system or accidental activation. After a third response in a twelve month period, the permit shall be revoked by the Board of Selectmen until the alarm system has been recertified by a reputable installer of alarms.

First Offense:     \$ 0.00

Second Offense:   \$25.00

Third Offense:     \$50.00

- 19.10**   Disconnection In the event that an alarm system emitting an audible, visual or other similar response shall fail to be deactivated within the time limitation specified in *Section 19.4* above, the town shall have the right to take such action as may be necessary in order to disconnect any such alarm.

- 19.11**   Violations and penalties Any person operating an alarm system without a permit from the Board of Selectmen violates the provisions of this section and shall be subject to a fine of \$100.00 for each offense.  
(Adopted at ATM 05.06.19; Approved AG Office 11.19.19)

**SECTION 20**

**MARIJUANA PROHIBITION**

- 20.1**     The operation of a marijuana cultivator shall be prohibited in the Town of New Marlborough.
- 20.2**     The operation of a craft marijuana cooperative shall be prohibited in the Town of New Marlborough.
- 20.3**     The operation of a marijuana product manufacturer shall be prohibited in the Town of New Marlborough.
- 20.4**     The operation of a marijuana retailer shall be prohibited in the Town of New Marlborough.
- 20.5**     The operation of a marijuana independent testing laboratory and standards laboratory shall be prohibited in the Town of New Marlborough.
- 20.6**     The operation of a marijuana transporter shall be prohibited in the Town of New Marlborough.
- 20.7**     The operation of a marijuana microbusiness shall be prohibited in the



## **SECTION 21 CURB CUT REGULATIONS**

**21.1 Purpose.** The purposes of this regulation are to:

- Enhance public safety and welfare by reducing storm water runoff onto a Town Road (as defined in Section 12.13) or a future Town Road.
- Clarify the responsibilities of developers/builders/residents who wish to cross or perform work within a Town Road.
- Manage storm water runoff and control erosion created by development of private property and to minimize the adverse impact of this development on any Town Road or a future Town Road.
- Ensure that ditches, culverts and catch basins are maintained so there is no adverse impact on a Town Road or a future town Road.

**21.2 Applicability.** This regulation applies to all new driveways on a Town Road, to any modifications to a driveway on any Town Road or, and to any other curb cut on any Town Road. This regulation is not applicable to private roads.

**21.3** Any proposed curb cut, or modification of an existing curb cut must be approved by the Highway Superintendent who may issue a Curb plan which depicts property bounds, Town Right(s) of Way, location of all proposed work and area of disturbance, current and finish grades and setbacks. To be approved, the new or modified curb cut must meet the following criteria:

1. Storm water runoff generated by development shall be managed, to the extent possible, and recharged on-site, outside of the Town Road.
2. The maximum width of driveway where it meets/crosses a Road shall be no less than 8' and no wider than 16' exclusive of radius with street (unless a wider width is needed to accommodate Requirement 6 below).
3. The driveway, at its intersection with the Road, must provide a leveling-off area with a slope no greater than 10% for the first 20' from the edge of the Road or top of curb, if present.
4. The driveway shall intersect a Road at an angle as close to 90° as possible, but no less than 60°.
5. Driveway layout shall accommodate access by emergency vehicles with a 24' wheelbase and 11' of vertical clearance.
6. The driveway shall meet site distance at intersection with the Road and shall not create traffic or pedestrian safety hazards to its users or the public.

7. The number of curb cuts shall be limited to one per lot. Additional curb cuts will require a Special Permit.
8. All erosion and storm water flow during and after construction must not impact the Town Road. The cost of any cleanup will fall upon the applicant.
9. Any deviation or modification from the approved driveway plan must be justified and approved by the Highway Superintendent.
10. Should an engineer-stamped plan or plans for appeals, waivers or As-Built be deemed necessary by the Town, the cost of the plans will fall upon the applicant.
11. Farm roads, logging roads or temporary construction roads must be permitted. All reasonable care shall be taken to ensure no negative impact to the Road including but not limited to: damage to the Road surface or other infrastructure, undermining of the roadway or debris tracked onto the Road. The cost to repair any damage or cleanup will fall upon the applicant.
12. A Curb Cut Permit will not be issued until the Highway Superintendent or his designee approves the Curb Cut Application and confirms the work has been completed in conformance with these requirements. The Highway Superintendent or the Select Board may impose a fine of \$100.00 for the first day and \$50.00 per day thereafter, for any construction undertaken in violation of this bylaw. Fines are to be administered by the Highway Superintendent under Chapter 21 of Massachusetts General Laws, non-criminal ticketing. Fines can be waived at the discretion of the Highway Superintendent or the Select Board.

#### **21.4 Special Considerations**

1. Work on so-called "Scenic Roads" is subject to Massachusetts General Laws, Chapter 40, Section 15C.
2. Issue of Curb Cut Permit and/or Right Of Way Permit shall not constitute approval of any other required permit nor supersede applicable Federal, State or Local regulations.
3. Commercial/Industrial driveways or curb cuts must be submitted on a scaled plan and stamped by a professional engineer.
4. Any driveway work within jurisdiction areas of the Wetlands Protection Act requires Conservation Commission permission. (Adopted at ATM 05.22.21; Approved AG Office 09.22.21)

**22.1 PURPOSE**

The purpose of this Section 22 is to: (i) protect the rural character of the Town; (ii) protect the natural beauty of a dark sky, in which stars, planets and constellations can be viewed

unimpeded from the encroachment of glare, excessive lighting, and light pollution; (iii)

promote the use of advanced lighting technology; and (iv) balance the needs of economic development, human and animal safety and the Town's natural character through the regulation of Outdoor Lighting in new construction and changes of use.

**22.2 DEFINITIONS**

**“Adaptive Controls”** means mechanical or electronic devices, when used in the context of Outdoor Lighting systems, intended to actively regulate the switching, duration, and/or intensity of light emitted by such systems. Examples of adaptive controls include timers, dimmers, and motion-sensing switches.

**“Applicant”** means the person or entity that applies for the issuance of any permit.

**“Application”** means a written application for the issuance of any permit.

**“Electronic display”** means any illuminated sign of an informative or advertising nature, whether on or off-premises, and operable at night, whose content is made visible to the viewer by means of luminous elements under active electronic control and therefore subject to alteration in order to vary the content of the message. Electronic displays may be either static or dynamic in terms of light color and intensity.

**“Fully Shielded”** means an outdoor Luminaire constructed so that in its installed position all the light emitted by the Luminaire is projected below the horizontal plane passing through the lowest light-emitting part of the Luminaire. Figure 1 shows the correct configuration of a Fully Shielded Luminaire, indicating the ninety (90) degree angle between the horizontal plane passing through the lowest light emitting part of the Luminaire and the nadir, defined as the local vertical pointing toward the center of the earth.

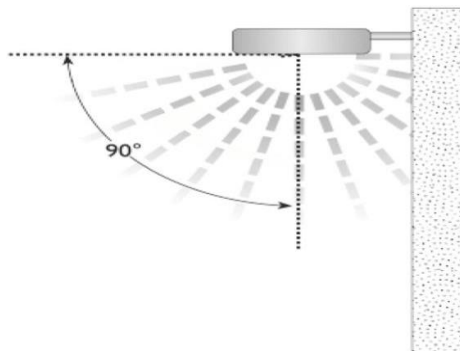


Figure 1

**“International Dark-Sky Association”** means the non-profit organization headquartered at

3223 North First Avenue, Tucson, Arizona, whose mission is to reduce light pollution through the promotion of recognized best practices in Outdoor Lighting design, installation, and operation.

**“Lamp”** means the bulb or other light-emitting portion of a Luminaire, not inclusive of any reflective or refractive optics used to direct light.

**“Light pollution”** means any unintended, adverse and/or obtrusive effect of the use of outdoor light at night.

**“Luminaire”** means a complete lighting assembly, consisting of a Lamp, housing, optic(s), and other structural elements, but not including any mounting pole or surface.

**“Outdoor Lighting”** means temporary or permanent lighting that is installed, located, or used in such a manner as to cause light rays to shine outdoors.

**“Outdoor Sports Lighting”** means lighting equipment designed and installed specifically to illuminate outdoor fields used for the practice and play of any outdoor sport or similar recreation activity. This term refers only to lighting directed toward, and intended to facilitate, play or recreation on outdoor surfaces, or to illuminate spectator viewing stands, but not for illumination of any other part of a connected or adjacent property.

**“Public Lighting”** means Outdoor Lighting equipment owned, operated, and/or maintained or leased by the Town and that is situated either on Town-owned property or in a public right of way. This term is inclusive of street lighting when owned or leased by the Town.

**“Searchlight”** means any high-intensity light source whose emission pattern is confined to a narrow beam and whose intended purpose is to draw attention to the locations at which products or services are sold. Sometimes referred to as a “sky beam.”

**“Special Permit Granting Authority”** means the Select Board of the Town.

**“Town”** means the town of New Marlborough, MA.

**“Up-lighting”** means any Luminaire that is directed toward the sky or onto an object from below the object.

## **22.3 APPLICABILITY**

**22.3.1** General applicability. All Outdoor Lighting Luminaires installed after the effective date of this bylaw, in all zoning districts in the Town, shall be in conformance with the requirements established by this bylaw and any other applicable bylaws, codes or regulations of the Town.

- 22.3.2** New Construction. The provisions of this bylaw shall apply to all new construction of real property for which a building permit is required.
- 22.3.3** Renovation. The provisions of this bylaw shall apply to the renovation of an existing building or structure for which a building permit is required; provided however, that compliance with this bylaw is required only with respect to the renovated portion of the existing building or structure. To the extent, however, that the renovation of an existing building or structure equals or exceeds twenty-five (25) percent of the property's assessed value, then all the Outside Lighting Luminaires on the property must be brought into conformance with this bylaw.
- 22.3.4** Legal non-conforming Luminaires. All commercial and residential Outdoor Lighting Luminaires that were lawfully installed prior to the effective date of this bylaw, but that do not comply with the requirements of this bylaw are declared to be legal non-conforming Luminaires. All legal non-conforming Luminaires may continue to be used and maintained after the adoption of this bylaw and any related codes or regulations, but shall be brought into compliance with its requirements upon the first to occur of any of the following:
- 22.3.4.1** A change of use of a property, or any other modification requiring a special permit.
- 22.3.4.2** A determination by the Select Board that the legal non-conforming Luminaire constitutes a public hazard or a nuisance.
- 22.3.4.3** The replacement of any legal non-conforming Luminaire with new lighting equipment, not inclusive of Lamps or similar consumable parts; or
- 22.3.4.4** Conformity shall occur prior to issuance of a certificate of occupancy, final inspection, or final plat recordation, when applicable. For other permits, the applicant shall have a maximum of sixty (60) days from the date of permit issuance to bring the lighting into conformance.
- 22.3.5** Intention. The intention of this bylaw is to encourage, but not require, that legal non-conforming Luminaires not otherwise affected by this bylaw be made compliant with this bylaw within five (5) years after the effective date of this bylaw.

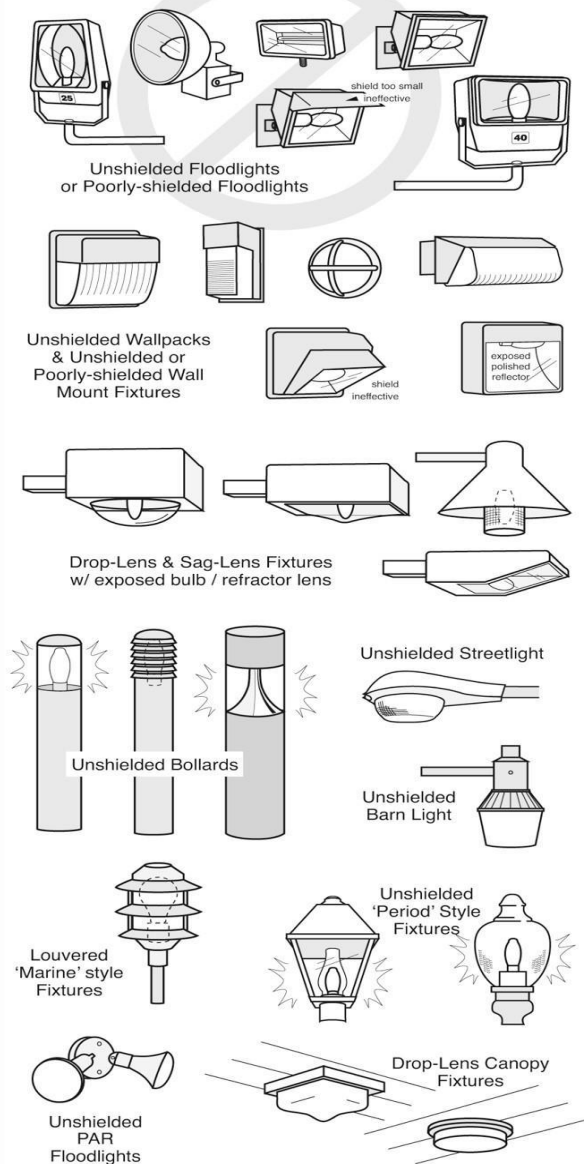
## **22.4 MAIN PROVISIONS**

- 22.4.1** Shielding. All Outdoor Lighting Luminaires installed after the effective date of this bylaw shall be Fully Shielded: See Figure 2 for examples of shielded and unshielded Luminaires.

## Examples of Acceptable & Unacceptable Lighting Fixtures

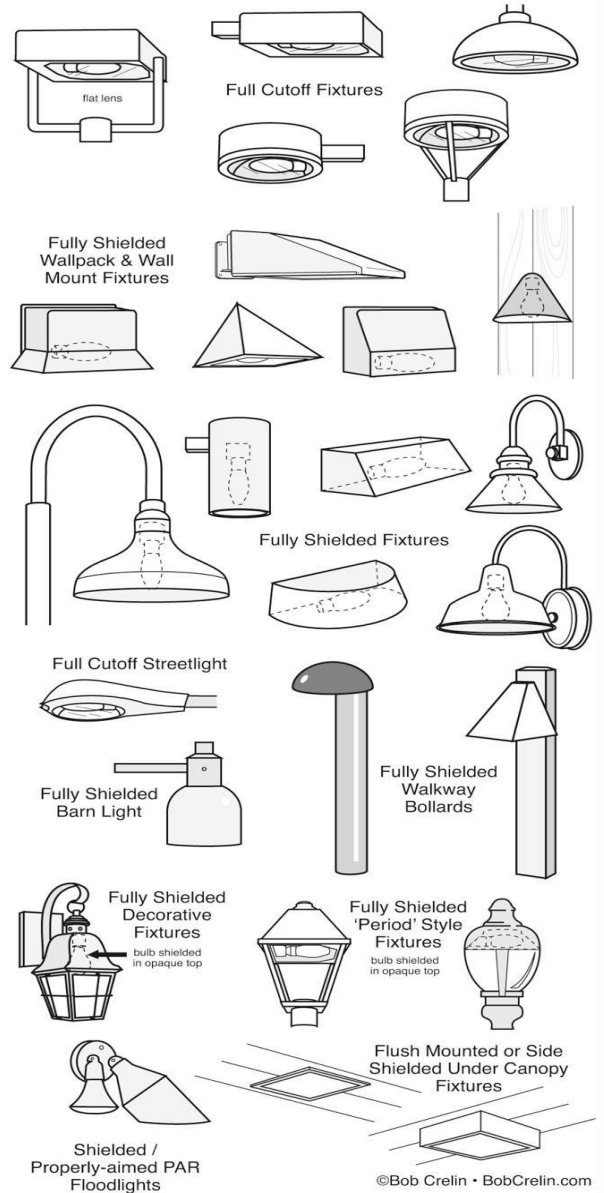
### Unacceptable/Not Compliant

Fixtures that produce glare and light trespass



### Acceptable/Compliant

Fixtures that shield the light source to minimize glare and light trespass and to facilitate better vision at night



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Figure 2

- 22.4.2** Spectrum management. The color temperature of Lamps in all Outdoor Lighting Luminaires shall not exceed 2,700 Kelvins.
- 22.4.3** Top-down lighting. Externally illuminated signs shall be lit only from the top of the sign with Fully Shielded Luminaires designed and installed to prevent light from spilling beyond the physical edges of the sign.
- 22.4.4** General curfew for commercial uses. All Outdoor Lighting shall be extinguished by 11:00 pm or within one (1) hour of the close of normal business hours, or at the conclusion of usual operations, whichever occurs later.

- 22.4.5** Outdoor Sports Lighting. Outdoor Sports Lighting shall be permitted and exempted from this bylaw and related codes and regulations if its design and installation adheres to the version of the International Dark-Sky Association's Criteria for Community Friendly Outdoor Sports Lighting operative at the time when the construction permit is submitted to the Town for review.
- 22.4.6** Displays of the United States flag. Flagpoles displaying the United States flag are exempt from this bylaw, provided that the sole objective of the illumination is the United States flag. Wherever possible, illumination shall be from above the flag pointing downward.
- 22.4.7** Other restrictions. The use of the following types of Outdoor Lighting are prohibited unless specifically approved by special permit by the Special Permit Granting Authority:
- 22.4.7.1** Searchlights, sky beams, and similar lighting, except as required by response personnel during emergency conditions.
  - 22.4.7.2** Lasers.
  - 22.4.7.3** Electronic displays.
  - 22.4.7.4** Up-lighting.
  - 22.4.7.5** Any light that dynamically varies its output by intermittently fading, flashing, blinking, or rotating. This type of lighting includes strobe lighting.
  - 22.4.7.6** Any Luminaire that uses mercury vapor Lamps. Further, any Luminaire that uses mercury vapor Lamps is not grandfathered by this bylaw and must be Fully Shielded within five (5) years of the effective date of this bylaw.

**22.5 PUBLIC LIGHTING**

- 22.5.1** New installations. New installations of Outdoor Lighting on public properties and rights of way may be installed only upon determination by the Select Board that a public safety hazard exists in the area to be lit, and that the hazard can only be effectively mitigated through the use of Outdoor Lighting and not through some other passive means, such as reflectorized roadway paint or markers.
- 22.5.2** Adaptive Controls. All new installations of Outdoor Lighting on public properties and rights of way must be regulated with Adaptive Controls such that the lighting of areas is restricted to times, places and amounts required for safe occupancy.
- 22.5.3** Curfew. All Outdoor Lighting on public properties and rights of way not adaptively controlled must be fully extinguished by 11:00 pm, or within one hour of the end of occupancy of the structure or area to be lit, whichever is later.
- 22.5.4** Compliance. All new installations of Outdoor Lighting on public properties and rights of way must comply with this bylaw.
- 22.5.5** Adoption. Existing Outdoor Lighting on public properties and rights of way must be modified to comply with this bylaw within one (1) year of the effective date of this bylaw.

## **22.6 ENFORCEMENT**

- 22.6.1** Administrative guidance. The Select Board is authorized to promulgate one or more interpretive documents to aid in the administration of, and compliance with, this bylaw.
- 22.6.2** Violations. It shall be unlawful to install or operate any Outdoor Lighting Luminaire in violation of any provision of this bylaw. Any person violating any provision of this bylaw shall be guilty of a misdemeanor. Each day during which the illegal erection, maintenance and use of such non-conforming Outdoor Lighting continues shall constitute a separate offense.
- 22.6.3** Primary relief. The Town shall also have the right to bring a civil action to enforce the provisions of this bylaw and to seek remedies as allowed by law, including, but not limited to injunctive relief, monetary damages; or other relief as directed by a court with jurisdiction over the matter.
- 22.6.4** Alternative relief.
- 22.6.4.1** Civil Penalties. In lieu of criminal possession, a civil penalty to \$100 per day may be assessed by the Town when it is demonstrated that a property owner was actually notified of the provisions of this bylaw and committed acts in violation of this bylaw or failed to take action necessary for compliance with this bylaw and other available relief.
- 22.6.4.2.** Stop work orders. In the event work is not being performed in accordance with this bylaw, the Town may issue a stop work order and all work shall immediately cease on the entire project for which a permit is issued. No further work shall be undertaken on the project if a stop work order is in effect. (Adopted ATM 05.02.22; Approved AG's Office 11.09.22)

## **SECTION 22 NEW MARLBOROUGH HISTORIC STRUCTURE DEMOLITION PAUSE**

### **Section 1:** Intent and Purpose.

This bylaw is adopted for the purpose of protecting and preserving significant historical structures, which constitute or reflect important features of the history, architecture, and/or historical character of the Town of New Marlborough. Through this bylaw the town seeks to encourage owners and businesses to preserve, rehabilitate, reuse and/or restore such significant structures rather than demolishing them.

### **Section 2:** Definitions.

For the purpose of this bylaw the following words and phrases will have these meanings:

a. *Structure*: Any edifice or building of any kind that is constructed or erected and requires a permanent location on the ground, or is attached to such a structure (not including wheels).

b. *Commission*: The New Marlborough Historical Commission



c. *Committee*: Two members from the New Marlborough Planning Board, two members from the Historical Commission and one at large member appointed by the Selectmen.

d. *Demolition*: Any act of destroying, pulling down, removing or razing more than 40% of a significant structure.

e. *Demolition Permit*: The permit issued by the Building Inspector as required by State Building Code for the demolition or partial demolition or removal of a structure from its' lot, or moving such structure on the lot.

f. *Permit*: Written authorization from the Building Inspector that will allow or disallow a particular action with respect to construction and/or demolition.

g. *Significant Structure*: The Committee shall determine that a structure be designated as a significant structure if it was built prior to the date Nineteen hundred one (1901) **and** meets one or more of the following criteria:

1. *National Register of Historic Places*: the structure is listed on, is within an area listed on or is the subject of a pending application for listing on the National Register of Historic Places.

2. *Historical Importance*: the structure meets the criteria of historical importance if it meets one or more of the following:

- a. as character, interest or value as part of the development, heritage or cultural characteristics of the town of New Marlborough, Berkshire County, the Commonwealth of Massachusetts or the nation;
- b. is the site of an historic event;
- c. is identified with a person or group of persons who had some historic influence on society;
- d. exemplifies the historic cultural, political, economic, or heritage of The Town of New Marlborough.

3. *Architectural Importance*: the structure meets the criteria of architectural importance if it meets one or more of the following:

- a. portrays the environment of a group of people in an era of history characterized by a distinctive architectural style;
- b. embodies distinguishing characteristics of an architectural type; is the work of an architect, master builder or craftsman whose individual work has influenced the development of the Town or region; contains elements of architectural design, detail, materials or craftsmanship which represent a significant innovation.

4. *Geographic Importance*: the structure or site meets the criteria of geographic importance if either:

- a. the site is part of, or related to, a historically relevant square, park or the structure, as to its unique location or;
- b. its' physical characteristics, represents an established and familiar visual historic feature of the neighborhoods, village centers, or the community as a whole

### **Section 3: Required Review Procedure.**

No permits for demolition of a *Significant Structure*, as determined under Section 2, (Definitions), shall be issued without following the provisions of this bylaw.

An applicant proposing to demolish a structure subject to this bylaw shall file with the Building Inspector an application containing the following information:

- a. address of the structure to be demolished.
- b. owner's name, address and telephone number.
- c. description of the structure.
- d. reason(s) for requesting a demolition permit,
- e. brief description of the proposed reuse, reconstruction or replacement.
- f. photograph(s) of the structure.

The Building Inspector, upon receipt of an application for demolition of a structure subject to this bylaw, shall within the next seven (7) business days forward a copy of each such application for a demolition permit to (or shall satisfy himself that a duplicate of such application has been submitted to) the Committee. No demolition permit shall be issued at that time.

Within thirty (30) days from receipt of the application for a permit from the Building Inspector, the Committee shall make a determination as to whether the structure is a Significant Structure as defined in Section 2. The Committee shall make its determination in a public meeting of members or through use of a predetermined *Significant Structures* list developed and maintained through processes determined by the Committee consistent with this bylaw. If the Historic Committee determines the structure to not be significant, the Committee shall notify the Building Inspector in writing within five (5) business days and the permit may be granted through the normal building permit process. If the Committee determines the structure to be significant, the permit will be put on hold until the Committee holds a public hearing and determines if the structure is considered a *Significant Structure*.

Such public hearing will be held within thirty (30) days of determination by the Committee that a structure for which a demolition permit has been requested is a *Significant Structure*. Notice of the public hearing shall be published in a local newspaper two (2) weeks in advance of the hearing and the structure owner and all abutters notified in writing at the same time.

If, after such hearing, the Committee determines that the demolition of the structure would not be detrimental to the historical, geographical or architectural heritage or resources of the Town, the Committee shall so notify the Building Inspector within ten (10) business days of such hearing. Upon receipt of such notification, or after the expiration of ten (10) business days from the date of the conclusion of the hearing if she/he has not received notification from the Committee, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, bylaws, rules and regulations, issue the demolition permit.

### **Maximum Pause Period**

If the Committee determines that the demolition of the structure would be detrimental to the historical, geographical or architectural heritage or resources of the Town, such structure shall be considered a *Significant Structure*. Upon such determination by the Committee, no permit for demolition, new construction or alterations to the subject structure shall be issued for a period of nine (9) months from the date of receipt of the permit request by the Building Inspector. The Committee may reduce the maximum pause period if preservation, rehabilitation, reuse and or restoration of a *Significant Structure* is deemed impracticable.

No permit for demolition of a structure determined to be a *Significant Structure* in order to build a new structure(s) shall be granted until all approvals necessary for the issuance of permits for new structure(s), including any necessary zoning variances or special permits, are granted and all appeals concluded.

The Building Inspector may issue a demolition permit for a *Significant Structure* within the nine (9) months delay only if the Committee notifies the Building Inspector in writing that the Committee finds the intent and purpose of this bylaw is served even with the issuance of the demolition permit.

Following the nine (9) month delay period, the homeowner can proceed with the Building Inspector to obtain a demolition permit. If demolition does not occur within twenty-four (24) months of the permitted date, the permit will expire.

**Section 4: Administration.**

The Committee may adopt such rules and regulations as are necessary to administer the terms of this bylaw. The Committee is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw. The Committee may develop a list of Significant Structures that will be subject to this bylaw. Structures proposed for the Significant Structure list shall be added following a public hearing.

**Section 5: Emergency Demolition:**

If after an inspection, the Building Inspector finds a structure subject to this bylaw to pose an immediate threat to public health or safety due to its deteriorated condition and that there is no reasonable alternative to the immediate demolition of the structure, the Building Inspector may issue an emergency demolition permit to the owner of the structure. The Building Inspector shall then prepare a report explaining the condition of the building and the basis for his decision, which shall be forwarded to the Committee within seven (7) days.

**Section 6: Enforcement and Remedies:**

The Building Inspector is specifically authorized as enforcing person to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof, including, but not limited to non-criminal disposition pursuant to MGL c.40 §21D and Articles of the General Bylaw.

Any owner of a structure subject to this bylaw who demolishes a structure without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished structure is completed, or unless otherwise agreed to by the building inspector AND the Committee.

If a structure subject to this bylaw is demolished without first obtaining a demolition permit, no building permit shall be issued for a period of two (2) years from the date of the demolition on the subject parcel of land unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Committee and Building Inspector.

**Section 7: Appeal:**

Appeals from decisions or determinations of the Committee following a Public Hearing may be made by the applicant(s) or the abutter(s) to the courts under the certiorari statute, MGL c.249, Section 4.

**Section 8: Severability.**

In case any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court, every other section, paragraph and part shall continue in full force and effect. (Adopted ATM 05.02.22; Approved AG's Office 11.09.22)

## **Section 23 PROTECTION AGAINST LIGHT TRESPASS**

### **23.1 PURPOSE**

The purpose of this Section 23 is to protect a Person from the intentional and unintentional Light Trespass caused by another Person.

### **23.2 DEFINITIONS**

“**Lamp**” means the bulb or other light-emitting portion of a Luminaire, not inclusive of any reflective or refractive optics used to direct light.

“**Light Trespass**” means a condition in which artificial light emitted from a Luminaire on one property is directed in such a manner that the light source or glare is visible from any other property and constitutes public hazard or a nuisance.

“**Luminaire**” means a complete lighting assembly, consisting of a Lamp, housing, optic(s), and other structural elements, but not including any mounting pole or surface.

“**Person**” means an individual, a member of a limited liability company, a partnership, or a corporation.

“**Town**” means the town of New Marlborough, MA.

### **23.3 ENFORCEMENT**

The Select Board, in its sole discretion, shall determine if a Light Trespass constituting a public hazard or nuisance exists

### **23.4 VIOLATIONS**

A condition determined by the Select Board to constitute a public hazard or nuisance shall be in violation of this bylaw. Each day during which the violation exists shall constitute a separate offense.

### **23.5 RELIEF**

The Town shall have the right to bring a civil action to enforce the provisions of this bylaw and to seek remedies as allowed by law, including, but not limited to injunctive relief, monetary damages; or other relief as directed by a court with jurisdiction over the matter.

### **23.6 CIVIL PENALTY**

A civil penalty up to \$100 per day may be assessed by the Town when it is determined a Person is in violation of this bylaw and has failed to take action necessary for compliance with this bylaw, after notice. (Adopted ATM 05.02.22; Approved AG’s Office 11.09.22)