

## **4700. AQUIFER AND WATERSHED PROTECTION DISTRICT**

**4710. Purpose of District.** The purpose of this Aquifer and Watershed Protection District is:

1. To promote the health, safety and general welfare of the community by promoting an adequate quality and quantity of drinking water for residents, institutions, and businesses of the Town of Westborough;
2. To preserve and maintain the existing and potential groundwater supplies, aquifers and groundwater recharge areas of the Town and to protect them from adverse development or land use practices;
3. To preserve and protect present and potential sources of drinking water supply for the public health and safety;
4. To conserve the natural resources of the Town;
5. To prevent blight and the temporary or permanent pollution of the environment.
6. To ensure that only water supply related activities are permitted in the Zone 1 400 foot protective radius of Town wells. (ATM 1996)

**4720. Scope and Authority.** The Aquifer and Watershed Protection District shall be considered as overlaying other Zoning Districts. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses. Any activities or uses permitted in the portion of the District so overlaid shall be permitted, subject to all the provisions of this District, unless expressly prohibited under this overlay district.

**4730. Establishment and Delineation of Aquifer and Watershed Protection District.** For the purposes of this District, there are hereby established within the Town certain Aquifer and Watershed Protection areas, consisting of aquifer and/or aquifer recharge areas, which are delineated on the overlay map referenced in Section 4732.

**4731. District.** The Aquifer and Watershed Protection District includes the aquifer itself, including the land above the most significant recharge areas for these aquifers and consists of:

Zone I, which includes land within the protective four hundred (400) foot radius around an existing or potential public water supply well or well field; and,

Zone II, which includes that area of an aquifer which contributes water to an existing or potential well under the most severe pumping and recharge conditions that can be or realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the groundwater divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or

bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend up gradient to its point of intersection with prevailing hydro geologic boundaries (a groundwater flow divide, a contact with till or bedrock, or a recharge boundary); and,

Zone III, (Contributing Watershed), which includes that land area beyond the area of Zone II from which surface water and groundwater drain into Zone II. The surface drainage area as determined by topography is commonly coincident with the groundwater drainage area and is used to delineate Zone III. In some locations, where surface and groundwater drainage are not coincident, Zone III shall consist of both the surface drainage and the groundwater drainage areas.

**4732. Overlay Map.** The boundaries of this District are delineated on a map at a scale of one inch equals eight hundred feet entitled Aquifer and Watershed Protection Districts, Town of Westborough, Massachusetts dated January, 2001. These boundaries reflect the best hydro geologic information available as of the date of the map. In the event of a discrepancy between the map and the criteria of Zones I, II and III above, the criteria shall control. Where the bounds as delineated are in doubt or in dispute, the burden of proof shall be upon the owner (s) of the land in question to show where they should properly be located. At the request of the owner(s), the Town may engage a professional hydro geologist or engineer to determine more accurately the location and extent of an aquifer or recharge area or to review information submitted by the owner (s), for all or part of the cost of the investigation. (ATM1996, 2001)

**4733. Split lot Provisions.**

**Zone I Boundary Line.** Where the Zone I boundary line divides any lot of record, the portion of the lot within Zone I shall remain undeveloped with the exception of the land uses directly related to the operation and maintenance of a public water supply and the uses and regulations pertinent to Zone II shall be applied to the development of the remainder of such lot.. (ATM 2001)

**Zone II Boundary Line.** Where the Zone II District boundary line divides any lot of record, the uses and regulations pertinent to Zone III shall be applied to the development of such lot provided that all structures and waste disposal systems are located in that portion of the lot lying in Zone III.

**Zone III Boundary Line.** Where the Zone III boundary line divides a lot of record in any underlying District, the requirements of the Westborough Zoning Bylaws applicable to the less restrictive District may be applied to the development of such lot, provided that all structures and waste disposal systems are located in that portion of the lot lying in the less restrictive District.

**4734. Recoverable water yield criteria.** Aquifers and aquifer recharge areas are defined by standard geologic and hydro geologic investigations which may include drilling observation wells, performing pumping tests, water sampling and geologic mapping. An aquifer recharge area, to be considered significant for drinking water purposes must

generally be comprised of sand and gravel with at least twenty (20) feet of saturated thickness for transmissivity of at least ten thousand five hundred (10,500) gallons per day per foot and/or capable of continuous yield of at least one hundred (100) gallons per minute to a single well.

**4740. Use Regulations.** Within the Aquifer and Watershed Protection District, the requirements of the underlying Districts continue to apply as indicated in subsections 4741 and 4742, Use Regulations Schedule, or as exempted by this Bylaw or Statute.

Symbols employed shall mean the following:

Y - A permitted use

N - An excluded or prohibited use

S - A use authorized by the issuance of a Special Permit as provided for in Section 1330 and Section 4750 herein.

**4741. Permitted Uses.** The following uses are permitted within the Aquifer and Watershed Protection district, (provided that all necessary permits, orders, or approvals required by law are also obtained):

- Conservation of soil, water, plants and wildlife;
- Outdoor recreation, native study, boating, fishing, hunting;
- Foot, bicycle and/or horse paths, and bridges;
- Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- Maintenance and repair of existing structures;
- Residential development, subject to Section 4742 (use regulations schedule) and Section 4740 (Special Permits);
- Farming, gardening, nursery, conservation, forestry, harvesting, grazing, subject to 4742 and 4750.
- Construction, maintenance, repair and enlargement of drinking water supply related facilities.

## 4742. Use Regulation Schedule

Principal Uses	District Protection Area		
	ZONE I	II	III
Disposal or treatment of toxic or hazardous wastes as a principal activity	N	N	N (ATM 2001)
Manufacture, use, transport, storage of toxic or hazardous wastes as a principal activity	N	N	N (ATM 2001)
Truck terminal:	N	N	S
Sanitary landfill, junk yard, open dump, salvage yard, other solid waste disposal:	N	N	N
Landfilling of sludge or septage as defined in 310 CMR 32.05	N	N	S
Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;	N	N	S
Earth removal to within six (6) feet of high groundwater level, except for excavation for buildings, roads and utility works:	N	N	S
Motor vehicle service, station, car wash:	N	N	S
Automobile Service and repair shops, automotive body and paint shops:	N	N	S
Disposal of snow from outside District area:	N	N	S
Storage of commercial fertilizers and soil conditioners, as defined in MGL c.128,s.64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;	N	N	S
Industrial uses which discharge process wastewater on site; any commercial and service uses discharging wastewater on site containing contaminants other than domestic septic waste:	N	N	S
Storage of liquid petroleum products, except the following;			
a. normal household use, outdoor maintenance and heating of a structure;			
b. waste oil retention facilities required by statute, rule, or regulation;			
c. emergency generators required by statute, rule, or regulation;			
d. treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters;			
Provided that storage, listed in items a			

through d above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity.	N	N	S
Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;	N	N	S
Storage of animal manure unless covered or contained;	N	N	S

**ZONE I      II      III**

**Accessory Uses or Activities.**

Disposal or treatment of toxic or hazardous materials as a secondary activity:	N	N	N
Manufacture, use, transport, storage of toxic or hazardous materials as a secondary activity:	N	N	S
Sanitary landfill, junk yard, open dump, salvage yard, other solid waste disposal:	N	N	N
Landfilling of sludge or septage as defined in 310 CMR 32.05	N	N	S
Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;	N	N	S
Storage of liquid petroleum products, except the following:			
a. normal household use, outdoor maintenance, and heating of a structure;			
b. waste oil retention facilities required by statute, rule, or regulation;			
c. emergency generators required by statute, rule or regulation;			
d. treatment works approved under 314 CMR 5.00 for treatment of ground or surface waters;			
Provided that storage, listed in items a through d above, is in free-standing containers within buildings or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity.	N	N	S
Underground storage of fuel oil, gasoline or chemicals:	N	N	S
Disposal of snow from outside District area:	N	N	S

Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;	N	N	S
Storage of animal manure unless covered or contained	N	N	S
Storage of commercial fertilizers and soil conditioners, as defined in MGL c. 128 s.64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff or leachate;	N	N	S
Land uses that result in impervious surfaces of more than 15% or 2,500 square feet, whichever is greater, of any lot unless a means for providing ground water recharge is provided.	N	SP	Y
Land uses on residential lots where impervious surfaces drain to pervious areas on the same lot do not require special permits in Zone II.			

(ATM 2001, ATM 1996)

**4750.** Special Permits shall be granted if the Special Permit Granting Authority determines that the intent of this Bylaw, as well as the specific criteria of Sections 4751 through 4753 are met. The Special Permit Granting Authority shall be the Zoning Board of Appeals, except that, where a Special Permit is required by Section 2300 (use Regulation Schedule), the Special Permit Granting Authority authorized by that Section shall also be the Special Permit Granting Authority for the Special Permit required herein. In making such determination, the Special Permit Granting Authority shall give consideration to the simplicity, reliability and feasibility of the control measures proposed and the degree of threat to surface and groundwater quality which would result if the control measures were to fail. The Special Permit Granting Authority shall not grant a Special Permit under this Section unless the application includes, in the Special Permit Granting Authority's opinion, sufficiently detailed, definite and credible information to support positive findings in relation to the criteria given in this Section.

**4751. Special Permit Application.**

1. Each application for a Special Permit shall be filed with the Special Permit Granting Authority and shall be accompanied by nine (9) copies of the plan and documents;
2. Said application and plan shall be prepared in accordance with the data requirements of the proposed development (e.g., Site Plan Review, Erosion and Sedimentation Control Plan, etc.);

**3.** The following documents shall also be submitted in applying for a Special Permit:

- a.** A complete list of all chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.
- b.** A description of potentially toxic or hazardous wastes to be generated, indicating storage and disposal method.
- c.** For those activities using, storing, or generating such hazardous materials, an Aquifer Protection Management Plan shall be prepared and filed with the Board of Health, Building Department, and Fire Chief.

The Plan shall include:

- provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;
  - provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
  - evidence of compliance with the Regulations of the Massachusetts Hazardous Waste Management Act 310 CMR 30.00, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
- d.** Evidence of approval by the Massachusetts Department of Environmental Protection (DEP) for any industrial waste treatment and disposal system or any wastewater treatment system over fifteen thousand (15,000) gallons per day capacity as regulated by 314 CMR 5.00 Massachusetts Groundwater Discharge Permit Program.
  - e.** For underground storage of toxic or hazardous materials, evidence of qualified professional supervision of system design and installation.
  - f.** Analysis by a hydro geologist or engineer experienced in groundwater evaluation and/or hydrogeology to demonstrate that the proposed activity will not be detrimental to the purpose of the District as set forth in Section 4710.
  - g.** Proposed and/or existing down-gradient location(s) for ground water monitoring well(s), should the special permit granting authority deem the proposed activity a potential groundwater threat, together with a monitoring schedule.

**4752. Procedures.** The Special Permit Granting Authority shall refer copies of the application to the Board of Health, Planning Board, Board of Selectmen, Building Department, Conservation Commission, Town Engineer, Department of Public Works and Fire Department which shall review, either jointly or separately, the application and shall submit their recommendations to the Special Permit Granting Authority. Failure to make recommendations

within thirty-five (35) days of the referral of the application shall be deemed lack of opposition.

The Special Permit Granting Authority shall hold a hearing, in conformity with the provisions of Massachusetts General Laws Chapter 40A, Section 9 within sixty-five (65) days after the filing of the application with the Special Permit Granting Authority and after the review of the aforementioned Town Boards/Departments.

Notice of Public Hearing shall be given by publication and posting and by first-class mailings to 'parties of interest' as defined in Massachusetts General Laws Chapter 40A, Section 11. The decision of the Special Permit Granting Authority and any extension, modifications or renewal thereof, shall be filed with the Special Permit Granting Authority and Town Clerk within ninety (90) days following the closing of the Public Hearing. Failure of the Special Permit Granting Authority to act within ninety (90) days shall be deemed as a granting of the Permit. However, no work shall commence until a certification is recorded as required by said Section 11.

**4753. Approval Criteria.** After notice and Public Hearing, and after due consideration of the reports and recommendations of the Planning Board, the Board of Health, the Conservation Commission, Board of Selectmen, Building Department, the Town Engineer, Department of Public Works and Fire Department, the Special Permit Granting Authority may grant such a Special Permit, only upon finding that the proposed use:

1. Will not cause groundwater quality to fall below the standards established in 314 CMR 6.00 Massachusetts Groundwater Quality Standards or for parameters where no standard exists, below standards established by the Board of Health and, where existing groundwater quality is already below those standards, upon determination that the proposed activity will result in no further degradation;
2. Is in harmony with the purpose and intent of this Bylaw and will promote the purposes of the Aquifer and Watershed Protection District;
3. Will not, during construction or thereafter, have an adverse environmental impact on any aquifer or recharge area in the Town and is designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water related natural characteristic of the site to be developed; and,
4. Will not adversely affect the quality or quantity of an existing or potential water supply.

**4760. Violations.** Written notice of any violation shall be provided by the Building Commissioner to the owner of the premises, specifying the nature of the violation and specifying a time for compliance, including cleanup of any spilled materials. The time allowed shall be reasonable in relation to the public health hazard involved and the difficulty of compliance, but in no event shall more than thirty (30) days be allowed for either compliance or finalizing of the plan for longer-term compliance. The cost of containment, clean-up or other action of compliance shall be borne by the owner and operator of the premises. (ATM 1986)

#### **4800. Special Permits for Adult Uses:**

- A. Purpose and Intent:** It has been documented in numerous other towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States that Adult Entertainment uses are distinguishable from other business uses and that the location of Adult Entertainment uses degrade the quality of life in the areas of a community where they are located with impacts including increased levels of crime, blight, and late hours of operation resulting in noise and traffic late into the night. Therefore, this bylaw is enacted pursuant to MGL, Chapter 40A, Section 9 and Section 9A to serve the compelling Town interests by regulating and limiting the location of adult entertainment enterprises as defined herein. This regulation will promote the Town of Westborough's great interest in protecting and preserving the quality of its neighborhoods, commercial districts, and the quality of life through effective land use planning.
- B. General:** Special permits shall be required to authorize the establishment of adult bookstores, adult video stores, adult paraphernalia, adult live entertainment establishments or adult motion picture theaters or establishments which display live nudity for its patrons as hereinafter defined. Such permit shall require specific improvements, amenities and locations of proposed uses for which such permit may be granted.

**4810. Definitions** - As used in this section, the following words shall have the following meanings:

**Adult Bookstore** "Adult Bookstore": an establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by their emphasis sexual depicting, describing, or relating to sexual conduct or excitement as defined in MGL, Chapter 272, Section 31. For purposes herein, "substantial or significant portion of stock" shall mean more than twenty-five percent (25%) of the subject establishment's inventory or more than twenty-five percent (25%) of subject premise's gross floor area.

**Adult Motion Picture Theater** "Adult motion picture theater": an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL, Chapter 272, Section 31.

**Adult Paraphernalia Store** "Adult paraphernalia store": an establishment having a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in MGL, Chapter 272, Chapter 31. For purposes herein, "Substantial or significant portion of stock" shall mean more than twenty-five percent (25%) of the subject establishment's inventory or more than twenty-five percent (25%) of the subject premise's gross floor area.

**Adult Video Store** "Adult video store": an establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual

conduct or sexual excitement as defined in MGL, Chapter 272, Chapter 31. For purposes herein, "substantial or significant portion of stock" shall mean more than twenty-five percent (25%) of the subject establishment's inventory or more than twenty-five percent (25%) of the subject premise's gross floor area.

**Adult Live Entertainment Establishment** Any establishment which displays live entertainment which is distinguished or characterized by its emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in MGL, Chapter 272, Section 31 and which excludes minors by virtue of age.

**Establishments Which Displays Live Nudity For Its Patrons** Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in MGL, Chapter 272, Section 31. (1996 STM)

#### **4820. Rules and Application Requirements:**

**4821.** The special permit granting authority, the Westborough Planning Board, shall adopt and from time to time amend rules relative to the issuance of the permits, and shall file a copy of said rules in the office of the Town Clerk.

**4822.** No special permit shall be granted by the Planning Board for an Adult Bookstore, Adult Video Store, Adult Paraphernalia Store, Adult Motion Picture Theater or establishments which display live nudity for its patrons, or Adult Live Entertainment Establishment unless the following conditions are satisfied:

- a. When submitting a proposal for a special permit under Section 4800 of these bylaws, the applicant shall obtain a copy of the application and procedures from the Westborough Planning Board, the permit granting authority. The applicant shall file one copy of the application with the Town Clerk and deliver a second, date stamped copy of the application form to the office of the Planning Board. All applications shall be accompanied by fifteen copies of the permit applied for. Special Permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board.
- b. Dimensional Requirements:  
The proposed use shall observe the following minimum distance separations from all property lines of the proposed adult uses:
  1. a minimum of one thousand (1000) feet from any residential district designated by Westborough zoning bylaws;
  2. a minimum of one thousand (1000) feet from any public school, public library, day care facility, or religious facility;

3. a minimum of five hundred (500) feet from any public playground, park or recreational area where large numbers of minors regularly travel or congregate;
  4. a minimum of one thousand (1000) feet from any other adult bookstore, adult video store, adult paraphernalia store, adult entertainment establishment, or adult motion picture theater or establishments which display live nudity for its patrons or from any establishment licensed under the provision of MGL, Chapter 138, Section 12.
- c. No pictures, publications, videotapes, movies, covers, or other implements, items, or advertising that fall within the definition of adult bookstore, adult video store, adult paraphernalia store, adult motion picture theater or establishments which display live nudity for its patrons or adult live entertainment establishment merchandise of which are erotic, prurient, or related to violence, sadism, or sexual exploitation shall be displayed in the windows of, or on the building of any adult bookstore, adult video store, adult paraphernalia store, adult live entertainment establishment or adult motion picture theater, or establishments which display live nudity for its patrons or be visible to the public from the pedestrian sidewalks or walkways or from other areas, public or semi-public, outside such establishments.
  - d. No special permit shall be issued to any person convicted or violating the provisions of MGL, Chapter 119, Section 63 or MGL, Chapter 272, Section 28.
  - e. Adult use special permits shall only be issued following public hearings held within sixty-five (65) days after filing of an application with the special permit granting authority, a copy of which shall forthwith be given to the city or town clerk by the applicant. The special permit granting authority shall act within ninety (90) days following a public hearing for which notice has been given by publication or posting as provided in MGL, Chapter 40A, Section 11, and by mailing to all parties in interest. Failure by a special permit granting authority to take final action upon an application for a special permit within said ninety (90) days following the date of public hearing shall be deemed to be a grant of the permit applied for. Special Permits issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board and a unanimous vote of a three member board.

**4823.** A special permit granted under this bylaw shall lapse after six months, and including such time required to pursue or await the determination of an appeal referred to in MGL, Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for a good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause

**4824.** Existing Adult Entertainment Enterprises. Any existing adult bookstore, adult motion picture theater, adult paraphernalia store, adult video store or establishment which displays live nudity for its patrons, or adult video store shall apply for such permit within ninety (90) days following the adoption of this zoning bylaw. (1996 STM)

**4830.** Severability. If any section of this bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw. (1996 ATM)

Note: Art. 26, 1990 ATM established Section 4800: Critical Resource Protection District. It was disapproved by the Attorney General and rescinded by Art. 11, 6/20/90 STM)