

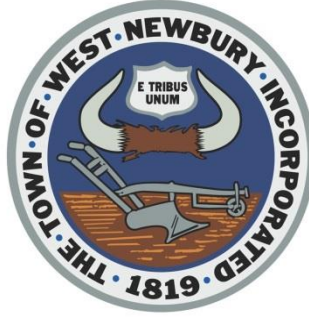


Town of West Newbury, Massachusetts

Special Town Meeting

October 23, 2021, 2:00 p.m.

Town Annex, 379 Main Street, Outside



October 23, 2021

Dear Fellow Residents of West Newbury:

We have prepared this booklet to assist you in making informed decisions on this meeting's warrant articles. The Finance Committee has reviewed each proposed article, and herein reports to you on our recommendations.

The Select Board and Finance Committee continue to approach the Fall Special Town Meeting's agenda with the intent to use this time for articles of a more urgent nature. The Committee's preference is to retain the Spring Annual Town Meeting as the forum to bring forward articles that surface through normal Town operations.

Participation at the Special Town Meeting is always important. Voters will have the opportunity to decide on appropriating Town funds toward a variety of projects, such as: transferring \$200,000.00 from Free Cash to lower the current year tax rate. Voters will also consider the purchase of a new truck for the Water Department, and a new backhoe for the Department of Public Works. Voters will get the chance to weigh in on a number of budget amendments to the budget that was approved at our Spring Town Meeting, which if approved would reduce the operating budget by over \$114,000.00. The Water Department has also proposed an article to transfer funds in order to prepare an engineering report regarding replacing sections of aging water mains on Church St. and Prospect St.

We encourage all West Newbury residents to get involved and to participate on Town committees, current vacancies are posted to www.wnewbury.org/volunteer. The Finance Committee generally meets Tuesday evenings at 7:00 p.m. at the 1910 Building, or as posted on our web page: www.wnewbury.org/finance-committee. We encourage you to review our website, which includes various documents, such as Finance Committee Town Meeting booklets and meeting minutes, as well as an email link to communicate with the Committee.

"You are entitled to your own opinion. But you are not entitled to your own facts."
-Daniel Patrick Moynihan

Gary L. Roberts, Jr., Chairman

The West Newbury Finance Committee

Gary L. Roberts, Jr., chair
Nathan Kelly, vice chair
Jim Sperelakis, secretary

Joseph Heyman
Charles Wegrzyn
Angus G. Jennings, ex officio

Reading Votes for Town Meeting Warrant Articles.

Votes for town meeting warrant articles follow the format of **(Yay-Nay-Abstention)** for the given article. For example:

Select Board Recommendation: **Approve: 2-1-0**

This states that two Select Board members approved the article, one disapproved, no abstentions.

FinCom Recommendation: **Disapprove: 2-3-1**

This states that two FinCom members approved the article, three disapproved, one abstention.

WHAT TO EXPECT AT TOWN MEETING DUE TO COVID-19

This section is intended to share some information about the preliminary plans for the Saturday, October 23, 2021 Special Town Meeting.

Please know that the primary concern of all town officials is to conduct the meeting in a way that protects the health and safety of everyone, while at the same time upholding our town meeting traditions and standards of participatory democracy. Following is a summary of some of the measures to help conduct town meeting safely and efficiently.

Meeting Venue: The risk of contagion is much lower if we meet outside. So, we'll hold town meeting in the area of the Bandstand located behind the 1910 Building and Annex.

Social Distancing: Voter check-in will be closely monitored and we will assign seating in accordance with CDC social distancing guidelines.

Face Coverings: Members must wear face coverings over both their nose and mouth; the Town will provide face coverings for those who do not have them and anyone who does not wear a mask for personal medical reasons will be assigned to sit in a designated location. Such attendees will be afforded full access to the proceedings.

Microphone Cleaning and Disinfecting: Appropriate cleaning supplies will be available to sanitize the microphones used by those who chose to debate.

Main Motion: A designated speaker will read the main motions under the articles. Then we will move to debate.

Meeting Efficiency: A number of steps will be taken to help facilitate a quick, efficient, and orderly meeting.

Rain Date: The decision on whether to postpone would likely need to be made the day of the meeting. If a postponement is needed due to weather, we will post notice on the Town of West Newbury website (www.wnewbury.org) and via reverse 911, email, social media, and the press.

**TOWN OF WEST NEWBURY
COMMONWEALTH OF MASSACHUSETTS
WARRANT – SPECIAL TOWN MEETING
SATURDAY, OCTOBER 23, 2021 @ 2:00pm**

Essex, ss.

To any of the Constables of the Town of West Newbury:

In the name of the Commonwealth, you are hereby required to notify and warn all the inhabitants of the Town of West Newbury, who are qualified to vote in the elections and Town affairs to meet outdoors behind the Town Annex (near the Bandstand), 379 Main Street, at 2:00 p.m. on Saturday, October 23, 2021 to act upon or take any other action relative to all of the following articles.

ARTICLE 1. To hear and act upon the reports of Town officers and committees. *By request of the Board of Selectmen.*

ARTICLE 2. To see if the Town will vote to amend the following Line Items:

- 7 – Special Counsel Legal Fees & Expenses;
- 8 – Town Clerk/Town Counsel Salary & Wages;
- 10 – Conservation Commission Salary & Wages, Expenses, Vehicle Allowance;
- 23 – Pentucket Regional School Assessment;
- 37 – Essex County Retirement Fund, Regional Retirement Assessment;

as set forth in the Fiscal Year 2022 Town Omnibus Budget adopted under the Motion for Article 3 of the Annual Town Meeting on May 22, 2021 and vote to raise and appropriate a sum or sums of money as may be necessary to defray the expenses of the Town for Fiscal Year 2022, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because budget amendments arise out of the normal course of conducting business in the community, and are the most appropriate way to transparently account for these changes. This article contains both decreases and increases to the budget. Ultimately, the effect of these budget adjustments is a net decrease of \$114,040, which we are pleased to see. Having discussed all of the changes with the Town Manager, we firmly believe that the requests are prudent and appropriate. This year's budget amendments were driven by changes in staffing, an adjustment in assessment, and by an error in the favor of the Town discovered by the dedicated members of the Town's Finance Department. Details can be seen in Appendix A.*

Funding source: *Raise and Appropriate*

Sunset Date: *N/A*

ARTICLE 3. To see if the Town will vote to transfer from available funds the sum of \$200,000.00 to reduce the current year tax rate, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:
Select Board Recommendation:

Voting 10/23/21
Approve: 2-1-0

Rationale: *At the time of the final Finance Committee Meeting before this Special Town Meeting, the amount that would be requested was not yet available to the Committee. As such, a vote on approval/ disapproval would not yet be appropriate, and the decision was made to wait to vote until just prior to the Special Town Meeting.*

However, please be aware that in the recent past, the Finance Committee has supported passage of a similar article to transfer funds from the Town's Free Cash Account for this purpose. Without passage of this article, the projected tax rate would be higher than it would be otherwise in order to maintain a balanced FY2022 budget.

Funding source: *Free Cash*

Sunset Date: *N/A*

ARTICLE 4. To see if the Town will vote to amend the vote taken under the Motion for Article 9 of the May 22, 2021 Special Town Meeting, which appropriated \$100,000.00 to fund unbudgeted costs associated with the operation and administration of public health clinics to administer the COVID-19 vaccine, to provide that such appropriation of the remaining funds from the \$100,000.00 may also be used to fund unbudgeted costs associated with the operation and administration of public health clinics to administer the seasonal flu vaccine and to conduct contact tracing for positive COVID-19 individuals, or take any other action relative thereto. *By request of the Board of Health.*

FinCom Recommendation:
Select Board Recommendation:

Approve: 4-0-0
Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously recommends amending the previous vote to include administration of flu vaccine and contact tracing because of the potential to diminish costs by decreasing the need for testing, minimizing hospitalization, and further preventing spread of both Covid-19 and flu. The expenditure would come from funds already approved.*

Funding source: *5/22/21 ATM Article 9 Appropriated Funds*

Sunset Date: *N/A*

ARTICLE 5. To see if the Town will vote to appropriate the sum of \$100,000.00 from the Water Enterprise Fund Retained Earnings for the purposes of funding the engineering and design of approximately 7,700 linear feet of new 8-inch diameter ductile iron water main on Church Street and Prospect Street, as well as any incidental and related expenses, or take any other action relative thereto. *By request of the Board of Water Commissioners.*

FinCom Recommendation:
Select Board Recommendation:

Approve: 4-0-1
Approve: 3-0-0

Rationale for Approval: *The Finance Committee supports this expenditure because it is a necessary first step toward a water main replacement project, which was identified within the Water Department Master Plan. The*

majority of water mains in Town are approximately a century old, and are planned for phased replacement. Once the engineering is complete, the Water Department intends to pursue Federal funding to help fund the replacement project. It is important to address this issue in a timely fashion because, as seen with many construction projects lately, the longer the Town waits to address the issue, costs will simply continue to rise.

Funding source: *Free Cash*

Sunset Date: *N/A*

ARTICLE 6. To see if the town will vote to transfer the sum of \$47,000.00 from the Water Enterprise Fund Stabilization Account for the purpose of purchasing and equipping a ¾ ton 4WD pickup truck with plow, and to dispose of the existing pickup truck in accordance with the Town policy for disposition of surplus property, or take any other action relative thereto. *By request of the Board of Water Commissioners.*

FinCom Recommendation:

Approve: 5-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article to purchase a new truck and dispose of the existing truck because the current 14-year-old truck is near the end of its useful life, has an extensive amount of rusting, and is experiencing frequent increasing maintenance costs. The Water Department needs a dependable truck in order to deliver its services.*

Funding source: *Water Enterprise Fund Stabilization Account*

Sunset Date: *N/A*

ARTICLE 7. To see if the Town will vote to transfer the sum of \$150,000.00 from available funds for the purpose of purchasing and equipping a new DPW backhoe to replace a 2010 John Deere backhoe with same or comparable equipment, and to dispose of the existing backhoe in accordance with the Town policy for disposition of surplus property, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 5-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because it is necessary for the daily operations of the Department of Public Works (DPW), and the current machine is in need of replacement. The DPW backhoe is used almost daily for various tasks including roadway maintenance, snow-clearing, and yard operations. The existing backhoe, purchased in 2010, with more than 3,200 use hours (not including over-the-road travel) has shown major signs of wear and tear, a decline in lift and power strength, with a risk of serious breakdown or safety failure – which would result in an expensive repair. The sum of \$150,000 does not factor in the trade-in value of the existing John Deere backhoe, estimated at \$7,000 - \$12,000. Useful life of a new backhoe is expected to be 10-12 years. Routine maintenance for a new backhoe is estimated at \$2,000 - \$3,000 per year, for the first 3-5 years of ownership.*

Funding source: *Free Cash*

Sunset Date: *End of FY 2023*

ARTICLE 8. To see if the Town will vote to transfer from available funds the sum of \$8,000.00 for all costs and expenses pertaining to identifying, mapping and remediating invasive species on

public lands in the Town of West Newbury, or take any other action relative thereto. *By request of the Climate Change Resiliency Committee.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because invasive species of plants and insects are a point of concern for many of the residents of West Newbury, and this article will advance our attempts to try and deal with the impact of invasive species. The \$8,000 funding is intended for the wages and expenses of two student interns, performing invasive species mapping and control work on Town land. The interns will be supervised by the Town's Conservation Agent, in consultation with other personnel, residents and Committees engaged with this work, and is expected to support future efforts for invasives eradication and replacement with native pollinator gardens on public land. This article will also allow for community outreach to educate residents on both identifying and eradicating invasive species on their own property.*

Funding source: *Free Cash*

Sunset Date: *End of FY 2023*

ARTICLE 9. To see if the Town will vote to transfer from available funds the sum of \$10,000.00 to provide matching funds upon award of a Green Communities grant in the FY22 grant round, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because it is an investment toward a grant for a project that is projected to create annual operations savings of an estimated \$2,928. As such, this investment should "pay for itself" within four years, and create additional savings beyond that time. An added benefit is a reduction in greenhouse gases produced by Town consumption. The project itself would incorporate automated scheduling and unoccupied temperature setbacks into improved HVAC controls, creating operational efficiency for Council on Aging space heating and cooling, and the 1910 Building main hot water heating plant.*

Funding source: *Free Cash*

Sunset Date: *N/A*

ARTICLE 10. To see if the Town will vote to accept Massachusetts General Laws Chapter 59, Section 57A to allow for a single notice of preliminary or actual real estate or personal property taxes due for amounts not in excess of \$100.00, and if unpaid after the day of the first installment of the notice of preliminary tax or actual tax bill for the year is due, shall be subject to interest at the same rate and from the same date as any delinquent preliminary or actual tax first installment, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because it will improve efficiency for the Town Treasurer/Collector, and reduce headaches for taxpayers. Currently, tax bills are due quarterly, regardless of the amount. In FY 2022, 63 tax bills in Town would fall under the \$100.00 threshold, with*

the lowest invoice being \$0.04. The Town then breaks these payments into four parts, and pursues collection quarterly. This is extremely inefficient, and very costly relative to the value of the tax due.

Funding source: N/A

Sunset Date: N/A

ARTICLE 11. To see if the Town will vote to accept Massachusetts General Laws Chapter 33, Section 59 to allow Town employees who serve in the military to perform required military service without loss of seniority, accrued vacation leave, sick leave, personal leave, compensation time, or earned overtime, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously supports this article because we believe that it is right to protect Town employees who protect our country by serving in the military. They should not be negatively affected in terms of their status or benefits when required to perform required military service. The law would cover the difference in wages. While this article potentially creates additional expenses for services not received, the Town should be grateful to fund them. This article applies to both full-time and part-time, and union and non-union, employees.*

Funding source: N/A

Sunset Date: N/A

ARTICLE 12. To see if the Town will vote to accept Massachusetts General Laws Chapter 44, Section 55C and to authorize the Board of Selectmen to establish a Trust, to be known as the West Newbury Affordable Housing Trust Fund, for the purpose of creating and preserving affordable housing in West Newbury for the benefit of low- and moderate-income households, and for the funding of community housing, or take any other action relative thereto, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:

Approve: 4-0-0

Select Board Recommendation:

Approve: 3-0-0

Rationale for Approval: *The Finance Committee unanimously recommends acceptance and authorization to establish the West Newbury Affordable Housing Trust Fund to increase the flexibility of responding to opportunities independent of Town Meetings, while protecting the interests of taxpayers through a dedicated board of trustees and annual financial audits. No expenditure is needed to establish the Trust Fund, and the Town may later choose to vote contributions to the fund, and to propose Town Meeting adoption of a Bylaw to govern the Trust Fund's operations.*

Funding source: N/A

Sunset Date: N/A

ARTICLE 13. To see if the Town will vote to amend the West Newbury Zoning Bylaw to amend Section 5.D. Floodplain Overlay District, as on file and available for viewing in the Town Clerk's Office, in compliance with the National Flood Insurance Program, and further, to authorize the Town Clerk to make any non-substantive, ministerial changes to numbering and formatting, so as to ensure consistency with the rest of the Zoning Bylaws, as necessary, or take any other action relative thereto. *By request of the Planning Board.*

FinCom Recommendation:
Select Board Recommendation:

No Vote
Approve: 3-0-0

Note: The specific proposed language proposed for amendment, is included in Appendix B.

ARTICLE 14. To see if the Town will vote to amend the West Newbury Town Bylaws to adopt a new Section XLI Stormwater Management Bylaw, in compliance with the MS4 (Municipal Separate Storm Sewer System) Post Construction Stormwater Management requirements and the Town of West Newbury's MS4 General Permit [National Pollutant Discharge Elimination System (NPDES) Permit ID #: MAR041231, Town of West Newbury], as on file and available for viewing in the Town Clerk's Office, and further, to authorize the Town Clerk to make any non-substantive, ministerial changes to numbering and formatting, so as to ensure consistency with the rest of the Town Bylaws, as necessary, or take any other action relative thereto. *By request of the Board of Selectmen.*

FinCom Recommendation:
Select Board Recommendation:

No Vote
Approve: 3-0-0

Note: The specific proposed language proposed for adoption, is included in Appendix C.

APPENDIX A – 2021 Special Town Meeting
STM Article #3
PROPOSED AMENDMENTS TO FY22 OMNIBUS BUDGET

Budget Section	Budget Line	Approved Budget	Proposed Increase (Decrease)	Revised Budget (if Amended)
7 Special Counsel	Legal Fees and Expenses	\$18,000	\$20,000	\$38,000
8 Town Clerk	Salary & Wages	\$156,793	(\$20,000)	\$136,793
10 Conservation	Salary & Wages	\$24,240	\$14,624	\$38,864
10 Conservation	Land Agent	\$7,129	(\$7,129)	\$0
10 Conservation	Expenses	\$2,710	\$3,600	\$6,310
10 Conservation	Vehicle Allowance	\$600	(\$600)	\$0
23 Education – Pentucket	Pentucket Reg. Sch. Assessment	\$7,336,342	(\$93,357)	\$7,242,985
37 Essex County Retirement Fund	Essex Regional Retirement Assessment	\$762,611	(\$31,178)	\$731,433
Combined Net Effect of Proposed FY21 Budget Amendments:			(\$114,040)	

The rationale for the proposed budget amendments is as follows:

Special Counsel

At the time that the FY22 budget was prepared and approved, the Town's legal counsel services were provided both in-house (Michael McCarron, who as Town Clerk/Counsel served as General Counsel), payable from the Town Clerk/Counsel line, with KP Law contracted for Special Counsel, payable from Special Counsel line. The Town received Mr. McCarron's notice of retirement on May 24, 2021, shortly following Town Meeting. Since that time, the Town has contracted with KP Law to also provide General Counsel services. The proposed increase in this line of the operating budget is to account for anticipated increases in contracted (as opposed to in-house) legal costs.

Town Clerk

At the time that the FY22 budget was prepared and approved, the Town Clerk/Counsel budget was set based on the anticipated annual compensation of a full-time Town Clerk/Counsel (plus support staff in that office). With Mr. McCarron's retirement, the Town Clerk/Counsel position was changed to a Town Clerk position. The budgeted salary for the Town Clerk is lower than what had been budgeted for the Town Clerk/Counsel. The proposed reduction in the approved FY22 budget reflects the updated amount. The revised amount continues to account for other personnel in that office.

Conservation

At the time that the FY22 budget was prepared and approved, the Conservation budget lines were based on the anticipated wage rate for the incumbent Conservation Agent. In early April, the former Agent provided notice that he had accepted another position elsewhere. Since that time, the Town has

entered an Intermunicipal Agreement (IMA) with the Town of Merrimac to jointly hire a shared Conservation Agent (in order to combine what had been two separate part-time positions into a single full-time position). A new Agent was hired, and began work in late September.

Under the terms of the IMA, West Newbury will pay the employee their gross wages and benefits, then be reimbursed a proportional amount by the Town of Merrimac. In order to do so, the gross amount of wages (incl. Merrimac's share) needs to be included in the operating budget. (This will not increase the "bottom line" of the West Newbury tax rate, since revenues will be received from Merrimac to offset their portion of costs).

As part of the proposed changes, it is also proposed to incorporate the so-called "Land Agent" wages – which are included on a separate budget line in the approved budget – into the Conservation Agent salary & wages line. The Land Agent responsibilities are now formalized as part of the Agent's responsibilities. The proposed changes would also remove the "auto allowance" line, with the \$600 currently budgeted for "auto allowance" added to the Expenses line to cover mileage reimbursement.

Finally, the proposed FY22 expenses line of the Conservation budget is proposed to increase by \$3,000. This is because, during the period that the position was vacant, the office was covered by the former Conservation Agent, who was paid as a 1099 vendor (not as an employee). Because this amount – \$3,000 – was not paid as wages, it cannot be paid from the salary & wages line. This expense was not anticipated at the time the FY22 budget was proposed.

Education – Pentucket

The approved FY22 budget included the assessment received from Pentucket in May, 2021. Subsequent to that, the School Committee voted a revised assessment, reflected in the updated assessment dated August 18, 2021. The FY22 budget is proposed for revision to reflect the updated amount.

Essex Regional Retirement

The approved FY22 budget included the assessment received from ERRS in December, 2020. Subsequent to that, an error in the assessment was identified. The ERRS Board voted a revised assessment, reflected in the updated assessment dated June 10, 2021. The FY22 budget is proposed for revision to reflect the updated amount.

**APPENDIX C – 2021 Special Town Meeting
STM Article #14
TOWN BYLAWS**

ARTICLE 14. Proposed amendment to the Town Bylaws: adoption of new Stormwater Management Bylaw.

XLI Stormwater Management Bylaw

ARTICLE I – GENERAL PROVISIONS

Section 1. Purpose and Objective

- A. The purpose of this Bylaw is to protect public health, safety, general welfare, and environment by controlling the adverse effects of construction site stormwater runoff and post-construction runoff. Stormwater runoff can be a major cause of:
 - (1) Impairment of water quality and flow in lakes, ponds, streams, rivers, coastal waters, wetlands, groundwater and drinking water supplies;
 - (2) Contamination of drinking water supplies;
 - (3) Contamination of downstream coastal areas;
 - (4) Alteration or destruction of aquatic and wildlife habitat;
 - (5) Overloading or clogging of municipal stormwater management systems; and
 - (6) Flooding.
- B. The objectives of this Bylaw are to:
 - (1) Protect water resources;
 - (2) Comply with state and federal statutes and regulations relating to stormwater discharges including total maximum daily load requirements;
 - (3) Prevent and reduce pollutants from entering the Town of West Newbury's municipal separate storm sewer system (MS4);
 - (4) Establish minimum construction and post construction stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
 - (5) Establish provisions for the long-term responsibility for, and maintenance of, structural stormwater control facilities and nonstructural stormwater best management practices to ensure that they continue to function as designed are maintained, and pose no threat to public safety; and
 - (6) Recognize the Town of West Newbury's legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

Section 2. Definitions

Unless a different definition is indicated in other sections of this Bylaw, the following definitions and provisions shall apply throughout this Bylaw. Additional definitions may be adopted by separate regulation:

ALTERATION: Any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a site.

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

CERTIFIED PROFESSIONAL IN EROSION AND SEDIMENT CONTROL (CPESC): A certified specialist in soil erosion and sediment control. This certification program, sponsored by the Soil and Water Conservation Society in cooperation with the American Society of Agronomy, provides the public with evidence of professional qualifications.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of an existing use, usually involving construction.

DISTURBANCE: Any activity that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material; results in an increased amount of runoff or pollutants; measurably changes the ability of the ground surface to absorb waters; removes trees or vegetation; clears or grades land; or results in an alteration of drainage characteristics.

EROSION AND SEDIMENT CONTROL PLAN: A document containing narrative, drawings and details—developed by a qualified professional engineer (PE) or a certified professional in erosion and sedimentation control (CPESC) — that includes best management practices or equivalent measures designed to control surface runoff, erosion, and sedimentation during construction and construction-related land disturbance activities.

IMPERVIOUS COVER: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious Cover includes without limitation roads, paved parking lots, sidewalks, and rooftops.

INFEASIBLE: Means not technologically possible, or not economically practicable and achievable in light of best industry practices.

INFILTRATION: The act of conveying surface water into the ground to permit groundwater recharge and the reduction of stormwater runoff from a project site.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS: The latest version, as may be amended from time to time, of the Stormwater Management Standards and accompanying Stormwater Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26 through 53. The Stormwater

Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k), and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of West Newbury.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT: A permit issued by United States Environmental Protection Agency (EPA) or jointly with the Commonwealth of Massachusetts that authorizes the discharge of pollutants to waters of the United States.

NPDES PHASE II REGULATED AREA: The area within West Newbury identified by EPA as “Designated MS4 Area” under the NPDES Phase II Stormwater Program.

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

NEW DEVELOPMENT: Any construction activities or land alteration resulting in earth disturbance on an area that has not previously been developed to include impervious cover.

NORMAL MAINTENANCE: Activities that are regularly scheduled to maintain the health and condition of a landscaped area. Examples include removal of weeds or invasive species, pruning, mowing, raking, and other activities that are done at regular intervals within the course of a year.

OPERATION AND MAINTENANCE PLAN: A plan that defines the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.

PERSON: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

POINT SOURCE: Any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.

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

PRE-DEVELOPMENT: The conditions that exist prior to the proposed disturbance activity. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-

development conditions.

RECHARGE: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.

REDEVELOPMENT: Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including impervious surfaces, on previously developed sites. The creation of new areas of impervious surface or new areas of land disturbance on a site constitutes new development, not redevelopment, even where such activities are part of a common plan which also involves redevelopment. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved stormwater management such as projects to separate storm drains and sanitary recharge and stormwater retrofit projects.

RUNOFF: Rainfall, snowmelt, or irrigation water flowing over the ground surface.

SEDIMENT: Mineral or organic soil material that is transported by wind or water, from its origin to another location; the product of erosion processes.

SEDIMENTATION: The process or act of deposition of Sediment.

SITE: Any lot or parcel of land or area of property where Land-Disturbing or Development Activities are, were, or will be performed.

STORMWATER AUTHORITY: Town of West Newbury Planning Board or the board, commission, or its agent, designated by the Planning Board to administer and enforce this Bylaw.

STORMWATER: Runoff from precipitation or snow melt and surface water runoff and drainage.

STORMWATER MANAGEMENT: The use of structural or nonstructural practices that are designed to control or treat stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater management includes the use of low-impact development (LID) management practices.

STORMWATER MANAGEMENT PERMIT (SMP): A permit issued by the Stormwater Authority, after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

TOTAL MAXIMUM DAILY LOAD or TMDL: the greatest amount of a pollutant that a water body can accept and still meet water quality standards for protecting public health and maintaining the designated beneficial uses of those waters for drinking, swimming, recreation, and fishing. A TMDL is also a plan, adopted under the Clean Water Act, specifying how much of a specific pollutant can come from various sources, including stormwater discharges, and identifies strategies for reducing the pollutant discharges from these sources so as not to violate Massachusetts surface water quality standards. (314 CMR 4.00, *et seq.*)

TOTAL SUSPENDED SOLIDS OR TSS: Undissolved organic or inorganic particles in water.

Section 3. Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Massachusetts home rule statutes, the regulations of the Federal Clean Water Act, 40 CFR 122.34, and as authorized by the residents of the Town of West Newbury at Town Meeting dated (insert date).

Section 4. Responsibility for administration

Stormwater Authority shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed upon Stormwater Authority may be delegated in writing by Stormwater Authority to its employees or agents.

Section 5. Applicability

- A. This Bylaw shall be applicable to any alteration, disturbance, including clearing, grading, excavation, development, or redevelopment that will disturb land surface area equal to or greater than 1 acre (43,560 s.f.).
- B. This Bylaw shall apply to land or parcels of land that are held in common ownership (including ownership by related or jointly controlled persons or entities) as of the effective date of this Bylaw, if the total land-disturbing activities on said land or parcels, considered as a whole, would presently or ultimately exceed the minimum thresholds established in the West Newbury Stormwater Bylaw and are not exempted by Section 6, then no such activity shall commence until a permit under this Bylaw has been issued. A development shall not be segmented or phased in a manner to avoid compliance with this Bylaw.

Section 6. Exemptions

- A. Any activity which will disturb or alter land areas below the thresholds described in Section 5-A above.
- B. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act regulations, 310 CMR 10.04 and G.L. c. 40A, § 3.
- C. Any work or projects for which all necessary approvals and permits, including building permits, have been issued before the effective date of this Bylaw.
- D. Normal maintenance of existing lawn, landscaping or garden areas.
- E. Construction of any fence that will not alter existing terrain or drainage patterns.
- F. Construction of utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) other than drainage which will not alter terrain, ground cover, or drainage patterns, provided that appropriate BMPs are used to prevent erosion, sedimentation and release of pollutants.
- G. Emergency repairs to any existing utilities (gas, water, sanitary sewer, electric, telephone, cable television, etc.) or emergency repairs to any stormwater management facility that poses a threat to public health or safety as determined by the Stormwater Authority. Where such work is subject to the jurisdiction of the Conservation Commission, the work shall not proceed without the issuance of an Emergency Certification by the Commission pursuant to 310 CMR 10.06.

- H. The maintenance or resurfacing (not including reconstruction) of any public or private way.
- I. The repair or replacement of an existing and lawfully located driveway servicing not more than two dwelling units (see definition of dwelling unit in the Town's Zoning Bylaw) provided that all work remains within the existing limits of the existing driveway, erosion control measures are utilized to prevent runoff and sediment from entering a traveled way or adjacent properties, and all surfaces are permanently stabilized within 14 days of final grade.

Section 7. Regulations

- A. The Stormwater Authority may adopt within one (1) year, and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures, and administration of this Stormwater Management Bylaw by majority vote after conducting a public hearing to receive comments. Such hearing shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. Failure of the Stormwater Authority to issue such rules, or regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this Bylaw.
- B. Stormwater Management regulations, rules or guidance shall identify requirements for Stormwater Management Permits required by this Bylaw and not inconsistent with the most recent Small Municipal Separate Sewer System General Permit (MS4).

Section 8. Enforcement

The Stormwater Authority or its authorized agent shall enforce this Bylaw, and any associated regulations, orders, violation notices, and enforcement orders and may pursue all civil remedies for such violations.

- A. Civil relief. If a person violates the provisions of this Bylaw, regulations, permit, notice, or order issued there under, the Stormwater Authority may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation(s).
- B. Orders.
 - (1) If the Stormwater Authority determines that a person's failure to follow the requirements of a Stormwater Management Permit and/or the related Erosion and Sedimentation Control Plan, and/or Operations and Maintenance Plan and/or any other authorization issued pursuant to this Bylaw or regulations issued hereunder, then the Stormwater Authority may issue a written order to the person to remediate the non-compliance and/or any adverse impact caused by it, which may include:
 - (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the Bylaw and provisions of the Stormwater Management Permit and/or other authorization;

- (b) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (c) Monitoring, analyses, and reporting;
 - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land-disturbing activity; and/or
 - (e) A requirement to eliminate discharges, directly or indirectly, into a watercourse or into the waters of the Commonwealth.
- (2) If the Stormwater Authority or its authorized agent determines that abatement or remediation of any adverse impacts caused by the permit holder is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further provide that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of West Newbury may, at its option, pursue a Court Order allowing the Town to undertake such work, and expenses thereof shall be charged to the violator pursuant to G.L. c. 40, §58.
- (3) Within 30 days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the Town of West Newbury, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Authority within 30 days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within 30 days following a decision of the Stormwater Authority affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a municipal charge against the property owner and shall constitute a lien on the owner's property for the amount of said costs pursuant to G.L. c 40, §58.
- C. Noncriminal disposition. As an alternative to a civil action, the Town of West Newbury may elect to utilize the noncriminal disposition procedure set forth in M.G.L. c. 40, § 21D in which case the agent of the Stormwater Authority shall be the enforcing person. The penalty for the first violation shall be a warning. The penalty for the second violation shall be \$100. The penalty for the third and subsequent violation shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.
- D. Entry to perform duties under this Bylaw. To the extent permitted by local, state, or federal law, or if authorized by the owner or other party in control of the property, the Stormwater Authority, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under this Bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Stormwater Authority deems reasonably necessary.
- E. Appeals. The decisions or orders of the Stormwater Authority shall be final. Further relief shall be appealed to a court of competent jurisdiction.
- F. Remedies not exclusive. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law.

Section 8. Severability

The provisions of this Bylaw are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this Bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Bylaw.

ARTICLE II– STORMWATER MANAGEMENT PERMITS

Section 1. Applicability

No person may undertake a construction activity or land disturbance, including clearing, grading, excavation or redevelopment that will disturb equal to or greater than 1 acre without a Stormwater Management Permit approved by a majority of the Stormwater Authority members or as otherwise provided in this Bylaw.

Any person that fails to follow the requirements of a Stormwater Management Permit and the related Erosion and Sedimentation Control Plan, and Operations and Maintenance Plan, or any Permit issued under the Stormwater Management Regulations shall be in violation of this Bylaw.

Section 2. Approval and/or Permit

A Stormwater Management Permit must be obtained prior to the commencement of Land Disturbing Activity or Redevelopment based on the thresholds established in this Bylaw. An applicant seeking an approval and/or permit shall file an appropriate application with the Stormwater Authority in a form and containing information as specified in this Bylaw and in regulations adopted by the Stormwater Authority.

Section 3. Consent to Entry onto Property

An applicant should consent to entry of Stormwater Authority or its authorized agents in or on the site to verify the information in the application and to inspect for compliance with Review or Permit conditions. Refusal to grant access may constitute grounds for denial and/or revocation of a Stormwater Management Permit.

Section 4. Inspection and Site Supervision

The Stormwater Authority or its designated agent shall make inspections as outlined in the Stormwater Management Regulations to verify and document compliance with the Stormwater Management Permit.

Section 5. Compliance with the provisions of EPAs General Permit for MS4s in Massachusetts

This Bylaw and its related Stormwater Management Regulations shall be implemented in accordance with the requirements of United States Environmental Protection Agency's most recent Massachusetts Small Municipal Separate Storm Sewer System (MS4s) General Permit relating to construction site runoff, and post-construction stormwater management, as well as the Massachusetts Wetlands Protection Act (WPA) and Regulations as may be amended. Where conflicts exist between the MS4 Permit and the WPA, the stricter shall prevail. The Stormwater Authority may establish additional requirements by regulation to further the purposes and objectives of this Bylaw so long as they are not less stringent than those in the MS4 General Permit for Massachusetts.

Section 6. Surety

Pursuant to M.G.L. c. 44, § 53G ½, the Stormwater Authority may require the applicant to post before the start of land disturbance or construction activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be approved by the Stormwater Authority and be in an amount deemed sufficient by the Stormwater Authority to ensure that the work will be completed in accordance with the permit. If the project is phased, the Stormwater Authority may release part of the bond as each phase is completed in compliance with the permit.

Section 7. Final Reports

Upon completion of the work, the applicant shall submit a report (including certified as-built construction plans) from a Professional Engineer (P.E.), surveyor, or Certified Professional in Erosion and Sedimentation Control (CPESC), certifying that all BMPs, erosion and sedimentation control devices, and approved changes and modifications, have been completed in accordance with the conditions of the approved Erosion and Sediment Control Plan and Stormwater Management Plan. The Stormwater Authority may, by regulation, require ongoing reporting to ensure long-term compliance, including, but not limited to, appropriate operation and maintenance of stormwater BMPs. Any discrepancies shall be noted in the cover letter.

APPENDIX B – 2021 Special Town Meeting
STM Article #13
ZONING BYLAW

ARTICLE 13. Proposed amendments to the Zoning Bylaws, Floodplain Overlay District.

Editing Notes:

- Text with no underline, strike through, or italics: Current language that is not being changed or deleted.
- ~~Text with Strikethrough~~: Language proposed for deletion.
- Underlined Text: Proposed new language.

SECTION 5.D. FLOODPLAIN OVERLAY DISTRICT

5.D.1. Purpose and Intent (*Editing Note: Unchanged*)

The purposes of the Floodplain Overlay District are to:

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

~~5.D.2. Applicability~~ (*Editing Note: Section Deleted*)

~~Any Development (See Definitions) proposed in the Floodplain shall require a Special Permit from the Planning Board.~~

5.D.2. Definitionsⁱ – these definitions are unique to this section (*Editing Note: Former Section 5.D.4.*)

~~Area of Special Flood Hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A or AE.~~

Base Flood Elevation (BFE): means the flood having a one percent chance of being equaled or exceeded in any given year. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

Development: ~~means any manmade~~ Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations- or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]

~~District means Floodplain Overlay District.~~

Federal Emergency Management Agency (FEMA): The government agency that administers the National Flood Insurance Program- ~~FEMA~~ and provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

Flood Insurance Rate Map (FIRM): ~~means an~~ An official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Boundary and Floodway Map: An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

Flood Hazard Boundary Map (FHBM): An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E. [US Code of Federal Regulations, Title 44, Part 59]

Flood Insurance Study: ~~means an~~ An examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related ~~erosion~~ hazards.

Floodway: ~~means the~~ The channel of a the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation- more than a designated height. [780 CMR, Base Code, Chapter 2, Section 202]

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14]

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59]

Historic Structure: Any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or
 - (2) Directly by the Secretary of the Interior in states without approved programs.
- [US Code of Federal Regulations, Title 44, Part 59]

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

New Construction: ~~means, for floodplain management purposes, structures~~ Structures for which the "start of construction" commenced on or after the effective date of ~~a the first floodplain management code, regulation, bylaw, or standard adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later. the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement.~~ the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]

~~One Hundred Year Flood – see Base Flood.~~

Recreational Vehicle: A vehicle which is:

- (a) Built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) Designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- [US Code of Federal Regulations, Title 44, Part 59]

Regulatory Floodway: - see Floodway

Special Flood Hazard Area: ~~means an~~ The land area having special subject to flood and/or flood-related erosion hazards; and shown on ~~an FHBM or FIRM as~~ a Flood Insurance Rate Map or

other flood hazard map as ~~Zone A and Zone AE~~. Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [780 CMR, Base Code, Chapter 2, Section 202]

Start of Construction: The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [780 CMR, Base Code, Chapter 2, Section 202]

Structure: ~~means, (for floodplain management purposes), a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. [US Code of Federal Regulations, Title 44, Part 59] STRUCTURE, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.~~

Substantial Damage: ~~means damage~~ Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. [US Code of Federal Regulations, Title 44, Part 59]

Substantial Improvement: ~~means any repair, Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. before the start of construction of the improvement. The term includes structures that have incurred “substantial damage,” regardless of the cause of damage and regardless of the cost of repair work actually performed. However, the term does not include:~~

- Any project for improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications that have been identified by the local code

enforcement official, and that are the minimum necessary to ensure safe living conditions,
or
• Any alteration of a “historic structure,” provided that the alteration will not preclude the
structure’s continued designation as a “historic structure.” [US Code of Federal
Regulations, Title 44, Part 59]

Substantial Repair of a Foundation: When work to repair or replace a foundation results in the
repair or replacement of a portion of the foundation with a perimeter along the base of the
foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in
linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or
pier supported foundation, the building official shall determine it to be substantial repair of a
foundation. Applications determined by the building official to constitute substantial repair of a
foundation shall require all existing portions of the entire building or structure to meet the
requirements of 780 CMR, the MA State Building Code as amended.

Variance: A grant of relief by a community from the terms of a flood plain management
regulation. [US Code of Federal Regulations, Title 44, Part 59]

Violation: The failure of a structure or other development to be fully compliant with the
community's flood plain management regulations. A structure or other development without the
elevation certificate, other certifications, or other evidence of compliance required in
§60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until
such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

Zone A: ~~means the 100-year floodplain area where the base flood elevation (BFE) has not been~~
~~determined. To determine the BFE, use the best available federal, state, local, or other data. An~~
~~area of special flood hazard without water surface elevations determined.~~

Zone AE (for new and revised maps) ~~means the 100-year floodplain where the base flood~~
~~elevation has been determined.~~

ZONE A1-30 and ZONE AE: Area of special flood hazard with water surface elevations
determined.

ZONE AH: Areas of special flood hazards having shallow water depths and/or unpredictable
flow paths between (1) and (3) feet, and with water surface elevations determined.

ZONE AO: Area of special flood hazards having shallow water depths and/or unpredictable flow
paths between (1) and (3) ft. (*Velocity flow may be evident; such flooding is characterized by*
ponding or sheet flow.)

ZONE A99: Area of special flood hazard where enough progress has been made on a protective
system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes.
(Flood elevations may not be determined.)

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

ZONES B, C, AND X: Areas of minimal or moderate flood hazards or areas of future-conditions flood hazard. (Zone X replaces Zones B and C on new and revised maps.)

ZONE V: Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).

ZONE V1-30 and ZONE VE (for new and revised maps): Area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area).

~~5.D.3. Application Procedure (Editing Note: Section Deleted)~~

~~See Section 8.A.2. of the Zoning Bylaw and Planning Board Regulations for Special Permits for filing and other requirements. When feasible, the Planning Board and Conservation Commission may schedule a joint Public Hearing for Applications submitted. Applications are exempt from the requirement of Site Plan Review, Section 8.B.~~

5.D.3. Abrogation and Greater Restriction (Editing Note: New Section)

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

~~5.D.4. Definitions (Editing Note: Moved to Section 5.D.2 above)~~

5.D.4. Disclaimer of Liability (Editing Note: New Section)

The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection.

~~5.D.5. Floodplain Overlay District Boundaries (Editing Note: Moved to Section 5.D.10. below)~~

5.D.5. Severability (Editing Note: New Section)

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

~~5.D.6. Base Flood Elevation and Floodway Data (Editing Note: Moved to Section 5.D.1211. below)~~

5.D.6. Designation of Community Floodplain Administrator (Editing Note: New Section)

The Town of West Newbury hereby designates the position of Building Commissioner/Inspector of Buildings to be the official floodplain administrator for the Town.

~~5.D.7. Notification of Watercourse Alteration (Editing Note: Section Deleted)~~

~~In a riverine situation, the Building Inspector/Zoning Enforcement Officer shall notify the following of any alteration or relocation of a watercourse:~~

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

5.D.7. Development & Subdivision Proposals (Editing Note: New Section)

All subdivision proposals and Development proposals in the Floodplain Overlay District shall be reviewed to assure that:

- a) Such proposals minimize flood damage.
- b) Public utilities and facilities are located & constructed so as to minimize flood damage.
- c) Adequate drainage is provided.

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

~~5.D.8. Use Regulations (Editing note: Part 5.D.8.a. moved to Section 5.D.1716. below. Part 5.D.8.b. becomes part of 5.D.1211 below)~~

5.D.8. Permit Required (Editing Note: New Section)

The Town of West Newbury requires a permit from the Floodplain Administrator for all proposed construction or other development in the Floodplain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other Development that might increase flooding or adversely impact flood risks to other properties. The proponent must acquire all necessary local, state and federal permits necessary to carry out the proposed Development in the Floodplain Overlay District. The Town's permit review process includes the use of a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the floodplain overlay district. The proponent must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired.

~~5.D.9. Permitted Uses (Editing Note: Moved to Section 5.D.1817 below)~~

5.D.9. Floodplain Overlay District Boundaries (*Editing Note: Former Section 5.D.5.*)

The Floodplain Overlay District is herein established as an Overlay District. The Floodplain Overlay District includes all special flood hazard areas within West Newbury designated as Zones A and AE, on the Essex County on West Newbury's Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, dated July 3, 2012 and on the Flood Boundary & Floodway Map dated July 3, 2012. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the Floodplain Overlay District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated (July 3, 2012). The effective FIRM, FBFM, and FIS report are incorporated herein by reference and are on file with the Town Clerk, and the Building Official. The map panels of the Essex County FIRM that are wholly or partially within the Town of West Newbury are panel numbers 25009C0084F, 25009C0092F, 25009C0094F, 25009C0103F, 25009C0104F, 25009C0108F, 25009C0111F, 25009C0112F, 25009C0113F, 25009C0114F, 25009C0116F, and 25009C0118F dated July 3, 2012. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Essex County Flood Insurance Study (FIS) report dated July 3, 2012. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, and the Building Inspector.

~~5.D.10. Planning Board Findings (Editing Note: Moved to Section 5.D.2120.)~~

5.D.10 Unnumbered A Zones (*Editing Note: New Section*)

In A Zones, in the absence of FEMA BFE data and floodway data, the Inspectional Services department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A as the basis for elevating residential

structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

5.D.11. ~~Base flood Elevation and Floodway Data~~ Floodway Encroachment (*Editing Note: Parts of former Sections 5.D.6. & 5.D.8.b*)

(5.D.6.)

- ~~Floodway Data.~~ In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- a. ~~Base Flood Elevation Data.~~ Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or on 5 acres, whichever is the lesser, within unnumbered A zones.

(5.D.8.b.)

~~b. Other Use Regulations~~

- ~~In Zone AE,~~ In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the ~~Essex County~~ Town's most recent FIRM or Flood Boundary & Floodway Map, encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - 2) ~~Existing contour intervals of site and elevations of existing structures must be included on plan proposal.~~
-

5.D.12. Requirement to submit new technical data (*Editing Note: New Section*)

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

- FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor
Boston, MA 02110

And copy of notification to:

- Massachusetts NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th Floor
Boston, MA 02114-2104
-

5.D.13. Notification of Watercourse Alteration *(Editing Note: New Section)*

In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
 - Bordering States, if affected
 - Massachusetts NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th Floor
Boston, MA 02114-2104
 - NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110
-

5.D.14. AO and AH zones drainage requirements *(Editing Note: New Section)*

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

5.D.15. Recreational vehicles *(Editing Note: New Section)*

In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

5.D.16. Use Regulations *(Editing Note: Former Section 5.D.8.a.)*

a. ~~Reference to Existing Regulations~~

All development in the Floodplain Overlay District, including structural and non-structural activities, ~~whether permitted by right or by Special Permit~~ must be in compliance with M.G.L. Chapter 131, § 40 and with the following:

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

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

5.D.17. ~~Permitted~~ Uses (*Editing Note: Former Section 5.D.9.*)

~~The following uses of low flood damage potential and which will not cause obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:~~

- ~~a. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.~~
- ~~b. Forestry and nursery uses.~~
- ~~c. Outdoor recreational uses, including fishing, boating, play areas, etc.~~
- ~~d. Conservation of water, plants, wildlife.~~
- ~~e. Wildlife management areas, foot, bicycle, and/or horse paths.~~
- ~~f. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.~~
- ~~g. Buildings lawfully existing prior to the adoption of these provisions.~~

All uses normally allowed in the underlying zone(s), provided that they comply with this Floodplain Overlay District bylaw, the Massachusetts State Building Code and the requirements of the NFIP, shall be permitted.

5.D.18. Variances to building code floodplain data (*Editing Note: New Section*)

The Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files. The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that:

- a) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and
 - b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions for the referenced development in the Floodplain Overlay District.
-

5.D.19. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP) (Editing Note: New Section)

A variance from these floodplain bylaws must meet the requirements set out by State law and Section 8.A.1. of the Zoning Bylaws, and may only be granted if:

- a) Good and sufficient cause and exceptional non-financial hardship exist;
 - b) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
 - c) the variance is the minimum action necessary to afford relief.
-

5.D.20. Planning Board Findings (Editing Note: Former Section 5.D.10)

For a use in the underlying Zoning District that requires a Special Permit, in addition to that set forth in Section 8.A.2. of the Zoning Bylaws, the Planning Board shall make the following Findings relative to Special Permit approval in the Floodplain Overlay District:

- a. Such proposals shall ~~minimize flood~~ not increase potential damage caused by flood;
 - b. All public utilities and facilities shall be located and constructed to minimize or eliminate flood damage;
 - c. Adequate drainage shall be provided to reduce exposure to flood hazards;
 - d. There is no volumetric loss of flood storage within the designated floodplain resulting in an increase in the Base Flood Elevation within the affected floodplain.
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5.D.21. Enforcement (Editing Note: New Section)

Enforcement shall be in compliance with Section 8.C of this bylaw and with Chapter 40A, Section 7.

ⁱ All terms that are defined in Section 5.D.2. ‘Definitions’ have been changed from **Bold** to Not Bold. A colon has been added after each term.

Balances Report		Estimated					
		Town Capital Stabilization	Pension Stabilization	School Stabilization	Town Free Cash	Water Stabilization	Water Retained Earnings (a/k/a "Free Cash")
	7/1/2021	1,946,407	314,205	1,257,733	1,749,980	520,479	731,245
10/2021 STM	Art #						
Reduce tax rate	3				(200,000)		
Engineering for water main replacements	5						(100,000)
Water Dept. Truck	6					(47,000)	
DPW backhoe	7	(150,000)					
Invasive Species Internship program	8				(8,000)		
Matching funds Green Communities	9				(10,000)		
Balances after STM		1,796,407	314,205	1,257,733	1,531,980	473,479	631,245

Source: West Newbury Finance Department, 10/6/21