

# TOWN OF ESSEX MUNICIPAL CODE

## **Title 1**

### **GENERAL PROVISIONS**

#### **Chapters:**

**1.01 Code Adoption**

**1.05 Code of Ethics Investigation and Enforcement**

# TOWN OF ESSEX MUNICIPAL CODE

## Chapter 1.01

### CODE ADOPTION

#### Sections:

**1.01.010 Adoption of code.**

**1.01.020 Reference to code.**

**1.01.030 Reference applies to amendments.**

**1.01.040 Title, chapter and section headings.**

**1.01.050 References to ordinances to apply to corresponding code provisions.**

**1.01.060 Effect of code on past actions and obligations.**

**1.01.070 Scope.**

**1.01.080 Savings clause.**

**1.01.090 Severability.**

\*Prior ordinance history: Ord. passed 10/2/89, and 6/16/25 eff. 7/15/25.

#### **1.01.010 Adoption of code.**

There is adopted the "Essex Municipal Code" as compiled, edited and published by Book Publishing Company, Seattle, Washington. (§ 1 of Ord. passed 10/2/89)

#### **1.01.020 Reference to code.**

In any prosecution for the violation of any provision of said code or in any proceeding involving said code, it shall be sufficient to refer to said code as the "Essex Municipal Code." It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part thereof as an addition to, amendment to, correction or repeal of the "Essex Municipal Code." Further reference may be had to the titles, chapters, sections and subsections of the "Essex Municipal Code" and such references shall apply to that numbered title, chapter, section and subsection as it appears in the code. (§ 2 of Ord. passed 10/2/89)

#### **1.01.030 Reference applies to amendments.**

Any reference to the "Essex Municipal Code" or to any ordinance of the town codified therein, shall apply to all amendments, corrections and additions heretofore or hereafter made. (§3 of Ord. passed 10/2/89)

#### **1.01.040 Title, chapter and section headings.**

Title, chapter and section headings contained in said code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions contained in any title, chapter or section thereof. (§4 of Ord. passed 10/2/89)

#### **1.01.050 References to ordinances to apply to corresponding code provisions.**

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The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with, ordinances which are therein specifically designated by number or otherwise and which are included within the code; such references shall be construed to apply to the corresponding provisions contained within the code. (§ 5 of Ord. passed 10/2/89)

## **1.01.060 Effect of code on past actions and obligations.**

The adoption of this code shall not affect prosecutions for ordinance violations committed prior to the effective date of this code, does not waive any fee or penalty due and not paid on the effective date of this code, and does not affect the validity of any bond, letter of credit or cash deposit posted, filed or deposited pursuant to the requirements of any ordinance. (§ 6 of Ord. passed 10/2/89)

## **1.01.070 Scope.**

This code includes all ordinances adopted through June 5, 1989 and subsequent amendments. Specifically not codified are zoning regulations, subdivision regulations and policy statements. (§ 7 of Ord. passed 10/2/89)

## **1.01.080 Savings clause.**

Adoption of the codifications of ordinances shall not be construed to repeal, modify or amend the substantive provisions of any duly adopted ordinance existing as of the date hereof. (§ 8 of Ord. passed 10/2/89)

## **1.01.090 Severability.**

In the event any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the code. (§ 9 of Ord. passed 10/2/89)

## **Chapter 1.05**

### **CODE OF ETHICS INVESTIGATION AND ENFORCEMENT**

#### **Sections:**

**1.05.010 Authority.**

**1.05.020 Purpose.**

**1.05.030 Definitions.**

**1.05.040 Complaints.**

**1.05.050 Enforcement.**

**1.05.060 Appeals.**

**1.05.070 Other laws.**

**1.05.080 Severability.**

**1.05.090 Effective date.**

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## **1.05.010 Authority.**

This ordinance is adopted by the Selectboard (“Legislative Body”) of the Town of Essex (“Municipality”) under authority of 24 V.S.A. § 1997.  
(Ord. passed 3/17/25)

## **1.05.020 Purpose.**

The purpose of this ordinance is to enact procedures for the investigation of complaints that allege a municipal officer has violated Vermont’s Municipal Code of Ethics and the enforcement in instances of substantiated complaints, including methods of enforcement and available remedies.  
(Ord. passed 3/17/25)

## **1.05.030 Definitions.**

- A. “Designated Complaint Recipient” means the municipal officer or body designated to receive complaints alleging violations of the Municipal Code of Ethics.
- B. “Municipal Code of Ethics” means the municipal ethics framework in Vermont established by Act 171 (H.875) of 2024.
- C. “Municipal Ethics Complaint” means a complaint against a “Municipal Officer” or “Officer” alleging a violation of the Municipal Code of Ethics.
- D. “Municipal Officer” or “Officer” means:
  - 1. any member of a legislative body of a municipality;
  - 2. any member of a quasi-judicial body of a municipality; or
  - 3. any individual who holds the position of, or exercises the function of, any of the following positions in or on behalf of any municipality:
    - a. advisory budget committee member;
    - b. auditor;
    - c. building inspector;
    - d. cemetery commissioner;
    - e. chief administrative officer;
    - f. clerk;
    - g. collector of delinquent taxes;
    - h. department heads;
    - i. first constable;
    - j. lister or assessor;
    - k. mayor;
    - l. moderator;
    - m. planning commission member;
    - n. road commissioner;
    - o. town or city manager;
    - p. treasurer;

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- q. village or town trustee;
- r. trustee of public funds; or
- s. water commissioner.

- E. "Public body" means any board, council, or commission of the Municipality, any board, council, or commission of any agency, authority, or instrumentality of the Municipality, or any committee or subcommittee of any of the foregoing boards, councils, or commissions.

(Ord. passed 3/17/25)

## 1.05.040 Complaints.

- A. Any member of the general public may make a Municipal Ethics Complaint including any person elected, appointed, or employed by the Municipality.
- B. All Municipal Ethics Complaints must be directed to the Designated Complaint Recipient.
- C. The Designated Complaint Recipient will conduct a prompt, thorough, and impartial investigation of all Municipal Ethics Complaint, and confidentiality will be protected to the extent possible.
- D. Municipal Ethics Complaints against the Designated Complaint Recipient must be directed to the Deputy Manager of the Town of Essex.
- E. No person will be adversely affected in either their volunteer or employment status with the Municipality as a result of bringing a Municipal Ethics Complaint.

(Ord. passed 3/17/25)

## 1.05.050 Enforcement.

If the Designated Complaint Recipient, or the Town Manager in the case of a Municipal Complaint brought against the Designated Complaint Recipient, determines that a violation of the Municipal Code of Ethics has occurred, the Deputy Manager will take immediate and appropriate corrective action. Municipal Officers who are found to have violated the Municipal Code of Ethics may face the following disciplinary action:

- A. **Enforcement Against Elected Officers.** In cases in which the Municipal Officer holds elected office, the Legislative Body may, in its discretion, take any of the following disciplinary actions against such an elected officer as it deems appropriate:
  1. The Chair of the Legislative Body may meet informally with the Municipal Officer to discuss the Municipal Code of Ethics violation. This will not take place in situations where the Chair of the Legislative Body and the Municipal Officer together constitute a quorum of a public body.
  2. The Legislative Body may meet to discuss the conduct of the Municipal Officer. Executive session may be used for such discussion in accordance with 1 V.S.A. § 313(a)(4). The Municipal Officer may request that this meeting occur in public. If appropriate, the Legislative Body may admonish the offending Municipal Officer in private.
  3. The Legislative Body may admonish the offending Municipal Officer at an open

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meeting and reflect this action in the minutes of the meeting. The Municipal Officer will be given the opportunity to respond to the admonishment.

4. Upon majority vote in an open meeting, the Legislative Body may request (but not order) that the offending Municipal Officer resign from their office.

**B. Enforcement Against Appointed Officers.** In cases in which the Municipal Officer holds appointed office, the Legislative Body may choose to follow any of the steps articulated in Section 5A. In addition to, or in lieu of any of those steps, the Legislative Body may choose to remove an appointed Municipal Officer from office, subject to state law.

**C. Enforcement Against Employees.** In cases in which the Municipal Officer is also an employee of the Municipality, the Town Manager may take any disciplinary action, up to and including termination, in accordance with the Municipality's personnel policy.

(Ord. passed 3/17/25)

## **1.05.060 Appeals.**

A decision of the Legislative Body may be reviewable by the Vermont Superior Court pursuant to Rule 75 of the VT Rules of Civil Procedure. An enforcement action taken against an employee may be appealed in accordance with the Municipality's personnel policy.

(Ord. passed 3/17/25)

## **1.05.070 Other laws.**

This ordinance is in addition to all other ordinances of the Municipality and all applicable laws of the State of Vermont. All ordinances or parts of ordinances, resolutions, regulations, policies, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

(Ord. passed 3/17/25)

## **1.05.080 Severability.**

If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding will not invalidate any other part of this ordinance. If any statute referred to in this ordinance is amended, this ordinance will be deemed to refer to such amended statute.

(Ord. passed 3/17/25)

## **1.05.090 Effective date.**

This ordinance will become effective sixty (60) days after its adoption by the Legislative Body. If a petition is filed under 24 V.S.A. § 1973, that statute will govern the taking effect of this ordinance.

(Ord. passed 3/17/25)

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**Title 2**

**(RESERVED)**

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## **Title 3**

### **BUSINESS AND FINANCIAL REGULATIONS**

#### **Chapters:**

#### **3.04 Impact Fees for New Development**

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## Chapter 3.04

### IMPACT FEES FOR NEW DEVELOPMENT\*

#### Sections:

**3.04.010 Authority.**

**3.04.020 Purposes.**

**3.04.030 Establishment of fees.**

**3.04.040 Imposition of fees.**

**3.04.050 Accounting and register of payment.**

**3.04.060 Use of Funds.**

**3.04.070 Payment of fees.**

**3.04.080 Refunds.**

**3.04.090 Exemptions.**

**3.04.100 Infrastructure credits.**

**3.04.101 Credits for “in-kind” contributions.**

**3.04.110 Appeals.**

**3.04.120 Violation-Penalty.**

**3.04.130 Severability.**

\*Prior ordinance history: Ord. passed 5/15/89, 4/2/01, and 6/16/25 eff. 7/15/25.

#### **3.04.010 Authority.**

The ordinance codified in this chapter is enacted pursuant to the specific authority granted municipalities to establish impact fees contained in 24 VSA, Chapter 131, the Charter of the town, and the general authority granted to municipalities to enact ordinances in 24 VSA, Chapter 59. The ordinance codified in this chapter shall be a civil ordinance within the meaning of 24 VSA, Chapter 59. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

#### **3.04.020 Purposes.**

This ordinance is intended to assist in the implementation of the Town Plan and the Capital Budget Program. The purpose of this ordinance is to regulate the use development, and redevelopment of land such that new development bears a proportionate share of the cost of capital expenditures necessary for each cost center to provide and maintain current services standards of public services in the Town of Essex. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

#### **3.04.030 Establishment of fees.**

An ordinance relating to the regulation of the use, development, and redevelopment of land in the Town of Essex; imposing an impact fee on land development and redevelopment in the Town of Essex for providing capital facilities and equipment for each of the Town's cost centers:

- Fire Department
- Recreation Department

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This ordinance shall be known and may be cited as the "Town of Essex Impact Fee Ordinance". This ordinance shall be a civil ordinance within the meaning of 24 V.S.A. Chapter 59.

The Selectboard of the Town of Essex finds, determines, and declares that:

- A. The Vermont State Legislature through the enactment in 1988 and with subsequent revisions of 24 V.S.A. Chapter 117, Section 4302 and 24 V.S.A. Chapter 131, Section 5203 (a) has enabled the Selectboard of the Town of Essex to enact impact fees.
- B. The Town shall expand its capital facilities and equipment in the above mentioned cost center(s) in an effort to maintain the current services standards for each cost center as new development and redevelopment is to be accommodated without decreasing the current services standards for each cost center. This shall be done in order to promote and protect the public health, safety, and welfare.
- C. Land development and redevelopment will create demand for the acquisition of equipment, the expansion of related capital facilities, and the construction of capital facilities for each of the cost centers through the additional demands placed upon the system by the occupants and users of the development.
- D. The impact fees are based upon, and do not exceed the costs of providing the proportionate share of, the cost of equipment, expansion or construction of capital facilities necessitated by the new land development and redevelopment for which the fees are levied.
- E. The following reports set forth a reasonable methodology and the associated analyses for the determination of the impact of new development and redevelopment on the need for and costs of additional equipment and facilities for each of the cost centers in the town.
  - a. "2004 Essex Recreation Impact Fee Analysis: Town of Essex, Vermont" prepared by Burnt Rock Associates, Inc., Michael J. Munson, dated September 29, 2004, which report is incorporated into this chapter by reference.
  - b. "Town of Essex Fire Impact Fee" prepared by VSD Consulting, LLC " dated December 2024.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.040 Imposition of fees.**

- A. Any person who, after the effective date of this ordinance, seeks to develop (and redevelop) land within the Town of Essex, by applying for; a building permit for a residential building; for an extension of a building permit issued prior to that date; a permit for an accessory dwelling unit (ADU) or an extension of a building permit for the development of an ADU issued prior to that date; or a permit associated with commercial, institutional, industrial, or other nonresidential improvement to land or buildings which may reasonably be expected to increase the demand for the public services provided by the cost centers is hereby

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required to pay impact fees for each cost center in the manner and amount set forth in this ordinance.

- B. No new nonresidential permit, residential building permit, or new permit for an ADU for any activity requiring payment of an impact fee pursuant to this ordinance shall be issued unless and until all impact fees hereby required have been paid in full.
- C. No extension of a nonresidential permit, residential building permit or permit for an ADU issued prior to the effective date of this ordinance for any activity requiring payment of an impact fee pursuant to this ordinance shall be granted unless and until all impact fees hereby required have been paid in full.
- D. These fees shall be applicable to so-called “after-the-fact” permits that are deemed necessary by the Zoning Officer for projects of the type(s) described above, regardless of the date of construction of said improvements.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.041 Alternative Fee Schedule.**

- A. An alternative impact fee can be requested by the applicant if the land use is a unique and a significantly different land use than what has been considered in the impact fee studies. The applicant must make this request during the development review process.
- B. The applicant must submit an independent fee calculation. The Town shall in no way bear the cost of such a calculation; shall never receive less than \$250 as payment, and may assess the feepayer all of the extraordinary administrative cost for each and every review of an independent fee calculation submitted to the Community Development Department. The alternative fee study shall conform to acceptable professional practices and the demographic and economic documentation shall show both the method and basis upon which the independent fee calculation was made.
- C. The Community Development Department and/or the Fire and Parks & Recreation Departments shall consider the documentation submitted by the applicant, but is not required to accept such documentation as the Departments shall reasonably deem it to be inaccurate or not reliable and may, in the alternative, require the applicant to submit additional or different documentation for consideration. The Town can retain additional council and third party review of the alternative fee calculation at the expense of the applicant.
- D. A recommendation to the Selectboard from appropriate staff regarding the applicant’s request under item B in this section shall be made within 60 days of submittal of the alternative fee study. The Selectboard shall choose to grant or deny acceptance of the alternative fee, and shall render such decision in writing within 21 days of the meeting at which this item is discussed. Every effort shall be made to review and provide a determination on an applicant’s request within 90 days of receipt by the Community Development Department.
- E. If the independent fee calculation study is not accepted, the feepayer shall pay all impact fees based upon the schedules in Schedule A. (Ord. passed 6/16/25 (part), eff. 7/15/25)

### **3.04.042 Escalation**

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- A. Fire impact fees are to be escalated in-line with inflation over the life of the study noted in Section 3.04.040.E.b to maintain purchasing power.
- B. The eligible fees may be annually adjusted by the Consumer Price Index for All Urban Consumers (CPI-U) in the Northeast region. Any adjustment shall be approved by the Selectboard. (Ord. passed 6/16/25 (part), eff. 7/15/25)

### **3.04.050 Accounting and register of payment.**

- A. This ordinance authorizes the Finance Director to create an Impact Fee Trust Fund.
- B. This ordinance establishes a separate interest bearing account within the Impact Fee Trust Fund for each cost center as identified in Section 3.04.030 of this ordinance.
- C. The Selectboard hereby authorizes the Impact Fee Administrator to transfer all impact fee balances to the appropriate impact fee fund for the cost centers.
- D. At least once each fiscal year the Impact Fee Administrator shall prepare an annual accounting of all fees paid into and withdrawn from each account, showing the source and amounts collected, and the amounts expended and the projects for which such expenditures were made. Such annual accounting shall be provided to the Selectboard.
- E. The Town Manager appointed Impact Fee Administrator shall maintain a register for this account, indicating the date of payment of each fee, the amount paid and the name of the payer.
- F. Funds withdrawn from these accounts must be used in accordance with the provisions of Section 3.04.060 of this ordinance.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.060 Use of Funds.**

- A. All impact fees collected pursuant to this ordinance, and accrued interest, shall be expended only in the manner in which they were calculated in the impact fee study and consistent with state statute. Changes in the quantity, type, and quality of projects shall provide a similar level of service and benefit to the community. Any changes that result in a new impact fee shall be carried forward effective upon approval of a revised impact fee study or addendum.
- B. All impact fees and accrued interest shall be expended within the timeframe specified in state statute as of the date they are received by the Impact Fee Administrator.
- C. The Impact Fee Administrator shall pay, from the appropriate account, expenses associated with the designated projects as they become due and upon receipt of appropriate documentation regarding such expense.
- D. The Town shall be entitled to assess and retain an amount not more than the amount of funds collected as compensation for the expense of collecting these fees and administering this ordinance, inclusive of costs associated with updating the impact fee study. The annual financial accounting shall identify the portion of fees retained for administrative purposes.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.070 Payment of fees.**

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- A. Schedule A shows the annual Impact Fees assessed on applicable land development or redevelopment as identified in this ordinance.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.080 Refunds.**

- A. If the actual expense to the town of the projects funded at least in part by impact fees is less than anticipated in the analysis on which the fees were based, the town shall refund to the then owner of the property for which the fee was paid, that portion of any impact fee which is in excess of the appropriate amount due to the town. The town shall provide this refund within one year of the date it completes construction of the project.
- B. If the town reduces the amount of an impact fee after some fees have been collected, the town shall refund to the then owner of the property for which a fee was paid, that portion of any impact fee which is in excess of the appropriate amount due to the town. The town shall provide this refund within one year of the date that the impact fee is reduced.
- C. The town shall expend the impact fee within the time limit identified by state statute and refund the impact fees in accordance with state statute. Any accrued interest may be retained by the town to offset administrative costs.
- D. A person who pays an impact fee established under this chapter and receives a zoning permit may request and receive from the town a refund of the impact fee in full in the event that the development covered by the zoning permit is terminated without commencement of construction. A prerequisite to a refund shall be a returned and rescinded zoning permit. Any accrued interest may be retained by the town to offset administrative costs. A person who receives a refund under this provision shall not commence construction of the development for which the refund was made without having again paid the required impact fee and obtained a new zoning permit.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.090 Exemptions.**

The following shall be exempted from payment of one or all impact fees as appropriate:

- A. A replacement, alterations or expansion of an existing residential building where no additional residential units (beds, bedrooms, or dwelling units) are created, commercial land use is unchanged, or where no increase in occupancy, intensity, or net occupancy is reasonably expected.
- B. The replacement of a destroyed or partially destroyed building or structure with a new building or structure with a new building or structure of the same size, use, or intensity of transportation demand.
- C. Any claims of exemption must be made no later than the time of application for a zoning permit. Any claim not so made shall be deemed waived and void.
- D. All other impact fee exemptions shall be decided in accordance with the provisions of 24 V.S.A. Section 5205.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.100 Infrastructure credits.**

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An applicant can make an offer that can be in-lieu or offset the assessed impact fee. The offer must specifically request for an impact fee credit for each cost center for which the feepayer proposes to provide improvements. If the Community Development Director receives such offer, the same process shall apply as that described in Section 3.04.041D of this Ordinance. The credit shall be determined and provided in the following manner:

- A. Credit for the dedication of land shall be valued at: (i) 100% of the most recent assessed value by the Town of Essex Property Appraiser or Lister, or (ii) by such other appropriate method as the Selectboard may have accepted prior to the effective date of this ordinance for the particular cost center(s) in question(s), or (iii) by fair market value established by private appraisers acceptable to the Town. The credit shall be the value as expressed above with the applicant paying for all costs to assess and transfer the land.
- B. Credit for the construction of facilities or improvements identified in the impact fee study shall construct the facility to the standards to which the cost has been estimated to and up to the standards of the Town of Essex and any other appropriate and relevant jurisdiction. The credit shall be held as an unpaid liability until the facility is approved accepted by the administrator of the specific cost center.
- C. Credit may be provided before completion of specified capital projects if adequate assurances are given by the applicant that the standards set out above in subparagraph (c) will be met and if the feepayer posts security as provided below for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit, or escrow agreement shall be posted with and approved by the Town Attorney in an amount determined by the Town Manager. If the capital construction project will not be constructed within one (1) year of the acceptance of the offer by the Selectboard, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the Selectboard and Town Attorney
- D. Credits shall not be transferable from one project to another without the approval of the Selectboard. The amount of credit shall not exceed the total amount of the impact fee that would otherwise be levied on the proposed project.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### **3.04.101 Credits for “in-kind” contributions.**

- A. “In-kind” contributions shall mean provision, by a person subject to payment of an impact fee, of land, equipment, or construction of facilities, that are related to or part of the projects identified for impact fees in this chapter.
- B. Upon recommendation of the Development Review Board commission, the Selectboard may approve credit against an impact fee levied under this chapter for the value of the “in-kind” contributions. The amount of credit for an “in-kind” contribution shall be based on the actual cost to the person requesting the credit for providing or creating the facilities. The planning commission shall indicate the basis on which the amount of credit is determined. The amount of credit for an “in-kind” contribution shall not exceed the total amount of the impact fee that would otherwise be levied on the proposed project. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

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### 3.04.110 Appeals.

A. An individual or entity required to pay an impact fee under this chapter may challenge the imposition of such fee, or the amount of the fee, by filing a written notice of appeal with the town treasurer, which appeal shall not be filed later than thirty (30) days after payment of the impact fee. Said notice of appeal shall state the basis of the appellant's challenge to the fee. Within sixty days (60) of the filing of a notice of appeal, the town Selectboard shall hold a public hearing to receive oral and written evidence and argument from the appellant and town representatives. Within forty-five (45) days after the conclusion of the hearing, the Selectboard shall notify the appellant of its decision, in writing. (Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### 3.04.120 Violation—Penalty.

A person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. The zoning administrator of the Town of Essex shall be authorized to act as an issuing municipal official to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$ 50.00
Second offense	\$100.00
Third offense	\$150.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$100.00
Second offense	\$200.00
Third offense	\$300.00
Fourth and subsequent offenses	\$500.00

Offenses shall be counted on a calendar year basis. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

### 3.04.130 Severability.

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In the event that any provision of this chapter is for any reason declared invalid, such invalidity shall not affect the remaining provisions which can be given effect without the invalid provision.

## Schedule A: Impact Fees

### Section A1: Recreational Impact Fees

Table R-1 in Schedule A presents net recreation impact fees where credits for land or cash contributions are not applicable.

Table R-2 in Schedule A presents additional credits to be deducted if credits for land or cash contributions are applicable.

#### Table R-1

##### Total Net Recreation Impact Fees

- Base impact fee for single-family dwelling = \$640.00
- Base impact fee for multiple-family dwelling = \$480.00

Single-Family Dwelling. The impact fee shall be:

$2.967 \times \$215.90$ , rounded downwards to \$640.00, minus credits for past and future tax payments used for recreation facility expenditures, and minus credits for land or cash contributions for recreation facilities, if applicable.

Multiple-Family Dwelling (Fee Per Unit). The impact fee shall be:  $2.255 \times \$215.90$ , rounded downwards to \$480.00, minus credits for past and future tax payments used for recreation facility expenditures, and minus credits for land or cash contributions for recreation facilities, if applicable.

(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

#### Table R-2

##### Recreation Impact Fee Credits for Land or Cash Contributed for Recreation Facilities (Per Dwelling Unit)

Autumn Knoll	(the maximum value of the computed recreation impact fee)
Forestdale	\$235.00 per unit

Examples of Recreation Impact Fee Calculations. To illustrate how the recreation impact fee formulae work, consider the following examples.

Example 1. A zoning permit for a single-family dwelling is requested on May 3, 2006. The dwelling is not in a subdivision that has previously dedicated land or cash to the town for recreation purposes so no credit from Table R-2 is applicable. The impact fee is determined as follows. First, since the permit was requested in May, it is assumed that the dwelling will enter the grand list in April of the following year, 2007. The net recreation impact fee will be found in Table R-1.

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To determine the fee, enter Table R-1 at the row representing the year that the new dwelling goes on the grand list, 2007. Since the dwelling is a single-family dwelling, the fee is found in column 3, and equals \$578.00.

Example 2. In November of 2006, a zoning permit is requested for a ten-unit residential structure. This is clearly a multiple-family project. The impact fee is computed on a per unit basis, and then multiplied by the number of units being constructed. The development is not in a subdivision that has previously dedicated land to the town for recreation purposes so no credit from Table R-2 is applicable. The fee per unit is found in Table R-1.

To determine the fee, enter Table R-1 at the row representing the year that the new dwelling unit goes on the grand list. In this case, the permit was requested in November, and the rule indicates that it will not go on the grand list until April of the year following the next year, or 2008. Since the dwelling is a multiple-family dwelling, the fee is found in column 3, and equals \$454.00 per unit.

For the ten-unit structure, the total recreation impact fee would equal \$4,540.00.

If either of the illustrative developments had been located in one of the subdivisions included in Table R-2, an additional credit would have been deducted. For instance, if the single-family dwelling in Example 1 had been on a lot in Forestdale, an additional credit of \$235.00 would have been deducted, making the total impact fee equal: \$581.00 - \$235.00 = \$346.00.

If the dwelling had been in Autumn Knoll, the additional credit from Table R-2 would equal the total remaining impact fee, with the result that no impact fee would be due.  
(Rev. Ord. passed 6/16/25 (part) eff. 7/15/25; Ord. passed 4/2/01 (part); Ord. passed 7/13/98 (part))

## **Section A1: Fire Impact Fees**

Section 2 includes the Base Impact Fee for the fire cost center.

**Table F-1**  
**Base Fire Impact Fee Table**

<b>Residential</b>	
Per capita	\$423
0 bedroom (studio)	\$563
1 bedroom	\$710
2 bedroom	\$857
3 bedroom	\$1,004
4 bedroom	\$1,151
5+ bedroom	\$1,408
<b>Nonresidential</b>	
Per job	\$278

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Per 1,000 square feet of gross floor area	\$480
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(Ord. passed 6/16/25 eff. 7/15/25)

# TOWN OF ESSEX MUNICIPAL CODE

## **Title 4**

### **ANIMALS**

#### **Chapters:**

#### **4.04 Dog Licensing and Control**

# TOWN OF ESSEX MUNICIPAL CODE

## Chapter 4.04

### DOG LICENSING AND CONTROL\*

#### Sections:

- 4.04.000 Authority
- 4.04.010 Purpose
- 4.04.020 Definitions
- 4.04.030 License Requirements
- 4.04.040 Falsifying Documents
- 4.04.050 Investigation of Vicious Dogs
- 4.04.060 Potentially Vicious Dogs
- 4.04.070 Dog Bites
- 4.04.080 Disturbance by sound
- 4.04.090 Running at Large
- 4.04.100 Dog Waste
- 4.04.110 Impoundment—Contracting for services
- 4.04.120 Impoundment—Authorized when—Notice to owner
- 4.04.130 Impoundment—Release conditions
- 4.04.140 Unclaimed Dogs—Disposition
- 4.04.150 Unclaimed Dogs—Owner responsible for costs
- 4.04.160 Interference with Impoundment
- 4.04.170 Confinement of Animals
- 4.04.180 Enforcement
- 4.04.190 Violations - Penalties
- 4.04.200 Severability

\*Prior ordinance history: Ordinances passed 7/11/88, 4/21/86, 12/18/95, and 11/1/21.

#### **4.04.000 Authority**

- A. This ordinance is enacted pursuant to 24 VERMONT STATUTES ANNOTATED § 2291, et seq. and 20 VERMONT STATUTES ANNOTATED § 3549. It shall constitute a civil ordinance within the meaning of 24 VERMONT STATUTES ANNOTATED, Chapter 59.

#### **04.04.010 Purpose**

- A. The purpose of this ordinance is to regulate the keeping of dogs and wolf hybrids and to provide for their leashing, muzzling, restraint, impoundment and destruction, in order to protect the public health and safety of the Town and preserve the quiet enjoyment of its residents' homes and properties.

#### **4.04.020 Definitions**

# TOWN OF ESSEX MUNICIPAL CODE

Used in this chapter, unless the context indicates otherwise:

- A. **Dog:** shall mean an animal of the canine species, and wolf-hybrid as defined in 20 VERMONT STATUTES ANNOTATED § 3541.
- B. **At large:** means off the premises of the owner except for those areas as defined in subsection B of 4.04.080, and not under the control of the owner, a member of their immediate family, or an agent of the owner, by leash, cord or chain so that at all times the dog may be prevented from causing any damage, disturbance, nuisance or annoyance.
- C. **Municipal official:** shall mean Animal Control Warden of the Town of Essex or any police officer; deputy sheriff; or any person designated by the Town of Essex for the control of dogs.
- D. **Owner:** means any person who has actual or constructive possession of a dog. The term also includes those persons who provide food and shelter to a dog.
- E. **Premises:** means the home and real property of the dog owner.
- F. **Potentially Vicious Dog:** shall mean a dog running at large that inflicts minor injuries on a person not necessitating medical attention; chases in a menacing manner, threatens to attack or attacks another domestic pet or domestic animal; causes damage to personal property; chases a person; or causes any person to reasonably fear attack or bodily injury from such dog. This definition shall not apply if the dog was protecting or defending itself, its offspring, another domestic pet or animal or a person from attack or assault or the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog.
- G. **Vicious Dog:** shall mean a dog, which causes bodily injury by attacking, biting or previously bitten or endangered the safety of a person or other domestic animal on any public or private property, unless the person is trespassing on the property of another animal, was protecting or defending itself, its offspring, another domestic pet or animal or a person from attack or assault or the person attacked or threatened by the dog was engaged in teasing, tormenting, battering, assaulting, injuring or otherwise provoking the dog.

## 4.04.030 License requirements

- A. Dogs must be registered and licensed annually in accordance with the Town Clerk's Office, pursuant to 20 VERMONT STATUTES ANNOTATED § 3581.
- B. All dog owners shall obtain and be required to demonstrate proof of current rabies vaccinations, a certificate or a certified copy thereof signed by a duly licensed veterinarian as a requirement of the annual license application.

## TOWN OF ESSEX MUNICIPAL CODE

C. All dogs must wear a collar or harness with current license attached. Any dogs visiting from another town, city or state must wear a collar or harness with current license of said jurisdiction. A dog that is found to be without a collar or harness and license shall be in violation of this ordinance.

### 4.04.040 Falsifying documents

- A. No owner shall knowingly present false documentation to the Town Clerk's Office with the purpose of misleading the breed of the dog. This shall also apply to proof of rabies vaccination certificates.

### 4.04.050 Investigation of vicious dogs

- A. When a dog has bitten a person while the dog is off the premises of the owner or keeper, and the person bitten requires medical attention for the attack, such person may file a written complaint with the Legislative Body for the Town of Essex. The complaint shall contain the time, date and place where the attack occurred, the name and address of the victim or victims, and any other facts that may assist the legislative body in conducting its investigation required by subsection (B) of this section.
- B. The legislative body, within seven (7) days from receipt of the complaint, may request the police department to investigate the charges and hold a hearing on the matter. If the owner of the domestic pet or wolf-hybrid which is the subject of the complaint can be ascertained with due diligence, said owner shall be provided with a written notice of the time, date and place of hearing and the facts of the complaint.
- C. If the dog is found to have bitten the victim without provocation, the legislative body for the Town of Essex shall make such order for the protection of persons as the facts and circumstances of the case may require, including, without limitation, that the domestic pet or wolf-hybrid is disposed of in a humane way, muzzled, chained, or confined. The order shall be sent by certified mail, return receipt requested. A person who, after receiving notice, fails to comply with the terms of the order shall be subject to the penalties provided in 20 VERMONT STATUTES ANNOTATED § 3550.
- D. The procedures provided in this section shall apply if the dog is not a rabies suspect. If a member of the legislative body or a municipal official designated by the legislative body determines that the animal is a rabies suspect, the provisions of 20 VERMONT STATUTES ANNOTATED Chapter 193, Subchapter 5, and the rules of the department of health shall apply, the terms and conditions set forth in the legislative body's order shall be enforced.

*Cross reference. General Provisions,  
See 20 VERMONT STATUTES ANNOTATED § 3546; Penalties,  
See 20 VERMONT STATUTES ANNOTATED § 2550; Control of Rabies,*

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See 20 VERMONT STATUTES ANNOTATED § 3801-3813.

## 4.04.060 Potentially Vicious Dogs

- A. A person claiming a dog is a “potentially vicious dog” may file a written complaint with the legislative body. The complaint shall contain the time, date and place where the alleged behavior occurred, an identification of the domestic pet or animal threatened or attacked; the name and address of any victim or victims, and any other facts that may assist the legislative body in conducting its hearing.
- B. A municipal official upon discovery of a potentially vicious dog may also file a written complaint with the legislative body of the legislative body. Upon receipt of a “potentially vicious dog” complaint the legislative body may proceed as in the case of a “vicious dog” complaint with the exception that if the legislative body determines that the behavior classifies the dog as “potentially vicious” the legislative body may order any protective measures be taken absent the dog being humanely destroyed.

## 4.04.070 Dog Bites

- A. No person shall permit or cause any dog to cause bodily injury to a person or other domestic animal.

## 4.04.080 Disturbance by sound

- A. No person shall keep or harbor a dog that disturbs the quiet, comfort and repose of others by frequent or long continued barking, whining, calling, or howling that disturbs the comfort or repose of persons in the vicinity for a continuous period of 15 minutes or more. *“This regulation shall not apply to dogs in a kennel or boarding facility which has received a zoning permit under the Town of Essex - Zoning Regulations. The zoning permit will govern the use of the kennel or boarding facility.”*]

## 4.04.090 Running at large

- A. No owner shall permit or cause any dog to go at large off the premises on any public or private property within the Town of Essex. Dogs shall be restrained by leash, cord or chain. All dogs using a town sidewalk, recreational or bicycle path, and parking areas must be leashed on a leash that is no longer than six (6) feet.
- B. Exemptions - Dogs shall be under control of the owner, but may be unrestrained by leash, cord or chain:
  - 1. In Saxon Hill Forest, except for the parking areas.

## TOWN OF ESSEX MUNICIPAL CODE

2. In undeveloped area of Indian Brook Park, which includes any areas except for the following: boat launch area, boat launch parking area, upper parking lot, lower parking lot, dam and beach area, and picnic area on east side of Indian Brook Dam and must be 300 yards away from the parking lots on a trail system before being unleashed.
3. In the dog park located at 111 West Street, according to the regulations for use of the park.
4. While hunting with the owner.

### **4.040.100 Dog Waste**

A. A dog that defecates in any public area or on the private premises of another person and whose owner does not immediately remove the fecal material and dispose of it in a sanitary manner is in violation of this ordinance.

### **4.04.110 Impounding—Contracting for services**

A. The legislative body may enter into a contract or contracts with persons or firms for impoundment services and enforcement of this chapter.

### **4.04.120 Impounding—Authorized when—Notice to owner**

- A. Any dog may be immediately impounded if the dog:
1. Has been determined by a municipal official to be a “potentially vicious dog” which presents an imminent danger to people or other animals.
  2. Has reportedly bitten a person off or on the premises of the owner.
  3. Is in violation of state licensing law.
  4. Has an unknown rabies vaccination history or is suspected of having been exposed to rabies.
  5. Is running at large.
  6. Is found without a collar or a harness.

B. A municipal official who impounds a dog shall, within twenty-four hours, given notice to the owner thereof either personally, by telephone, email or by regular mail postage to the owner’s last known address. Such notice shall inform the owner of the violations, the dog’s location, and the necessary steps to have it returned to the owner.

### **4.04.130 Impoundment—Release conditions**

A. Impounded dogs shall be released to the owner only after payment of all penalties and impoundment fees (including, but not limited to, boarding, food, and veterinary expenses), the final disposition of a potentially vicious dog or vicious dog hearing if applicable, and after all necessary remedial action, as determined by the enforcement officer and or legislative body in consideration of the violation committed, is taken by the owner. Remedial action shall include, but is not limited to, such actions as providing a collar and current license; verification of certification of current vaccination against rabies; payment of all applicable fines or waiver fees; and proof of satisfactory successful

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completion of a program designed to improve the owner's understanding and execution of dog ownership responsibilities.

- B. If the owner of a dog impounded under the provisions of this ordinance refuses to take the remedial action necessary to secure the dog's release within ten (10) calendar days following notice of impoundment or gives notice either personally, by telephone call, or in writing to the municipality of forfeiture of ownership before that time, the dog may be placed in an adoptive home, transferred to a humane society or rescue organization; or, if the town is unable to transfer the dog, it may be humanely destroyed. The owner of a dog transferred or humanely destroyed shall remain liable for all expenses incurred by the Town for treatment, boarding and care of the dog for the duration of its impoundment, and any expenses associated with its transfer or humane disposal.
- C. The procedures provided in this section shall only apply if the dog is not a rabies suspect. If an official designated by the legislative body to enforce the provisions of this ordinance determines that the dog is a rabies suspect, the municipal official shall immediately notify the Municipal Health Officer who shall proceed in accordance with the Vermont Department of Health's rules.

### **4.04.140 Unclaimed dogs—Disposition**

- A. Unless sooner redeemed by payment, it shall be the duty of the pound keeper or other official designated by the legislative body to keep all dogs so impounded for a period of seven days. If, at the expiration of seven (7) days from the initial date of impoundment, such dog shall not have been redeemed, it may be sold, given away or destroyed. Any proceeds from the sale of the impounded dog, over and above impoundment fees, license fees and other charges required under this chapter, shall be paid over to the owner, if any is found.

### **4.04.150 Unclaimed dogs—Owner responsible for costs**

- A. Any owner, if known, who elects not to redeem their dog and does not pay the boarding fees and impoundment fees within thirty (30) days of initial impoundment, may be assessed all of such fees and charges in a civil action brought under this chapter.

### **4.04.160 Interference with impoundment prohibited**

- A. Any person who interferes with the impounding of a dog under provision of this chapter, or releases or who attempts to release an impounded dog contrary to this chapter, shall be punished by fees not to exceed eight hundred dollars (\$800.00) in an action brought under this chapter.

### **4.04.170 Confinement of Animals**

- A. An owner shall not leave an animal unattended in a standing or parked motor vehicle in a manner that would endanger the health or safety of the animal.

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- B. Any municipal official may use reasonable force to remove any such animal from a motor vehicle. The municipal official removing an animal shall deliver the animal to a humane society, veterinarian or municipal pound. If the owner of the animal cannot be found, the municipal official shall place a written notice in the vehicle, bearing the name of the officer and the department and address where the animal may be claimed. The owner shall be liable for reasonable expenses, and a lien may be placed on the animal for these expenses. The officer may not be held liable for criminal or civil liability for any damage resulting from actions taken under this section.

*Cross reference. Humane and Proper Treatment of Animals,  
See 13 VERMONT STATUTES ANNOTATED § 386.*

## 4.04.180 Enforcement

A. This is a civil ordinance and shall be enforced in accordance with 24 VERMONT STATUTES ANNOTATED § 1974a et seq.

## 4.04.190 Violations – Penalties

A. Any person in violation of any provisions of this chapter shall be fined pursuant to Chapter 4.04 Section 4.04.180. If any violation continues, each day shall constitute a new violation.

### 1. Waiver Fees

a. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First Offense	\$50.00
Second Offense	\$100.00
Third Offense	\$200.00
Fourth and subsequent Offense	\$400.00

Offenses shall be counted on a calendar year basis.

### 2. Civil Penalties

a. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First Offense	\$100.00
Second Offense	\$200.00
Third and subsequent Offense	\$400.00
Fourth and subsequent Offense	\$800.00

Offenses shall be counted on a calendar year basis.

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3. In addition to the enforcement procedures available before the Judicial Bureau, the Manager or their designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

## **4.04.200 Severability**

- A. If any portion of this ordinance and any amendments made hereto are held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this ordinance shall be amended this ordinance shall be deemed to refer to such statute as amended.

# TOWN OF ESSEX MUNICIPAL CODE

## Title 5

### HEALTH AND SAFETY

#### Chapters:

**5.04 Emergency and Disaster Management**

**5.08 Fire, Burglary and Emergency Alarms**

**5.09 Open Fires**

**5.16 Littering**

**5.20 Swimming Pools**

# TOWN OF ESSEX MUNICIPAL CODE

## Chapter 5.04

### EMERGENCY AND DISASTER MANAGEMENT

#### Sections:

**5.04.010 Purpose of provisions.**

**5.04.020 Definitions.**

**5.04.030 Membership and organization.**

**5.04.040 Emergency powers—Town Manager.**

**5.04.050 Emergency powers—Town Chairperson.**

**5.04.060 Emergency powers—Town Vice-Chairperson.**

**5.04.070 Unlawful acts designated.**

**5.04.080 Violation—penalty.**

#### **5.04.010 Purpose of provisions.**

A. It is the intent and purpose of the ordinance codified in this chapter to establish an office that will insure the complete and efficient utilization of all of the town's facilities to combat attacks or other disasters as defined herein.

B. The Town of Essex's office of emergency management will be the coordinated agency for all activity in connection with civil defense; it will be the instrument through which the town manager may exercise the authority and discharge the responsibilities vested in him in Title 20, Section 6, VERMONT STATUTES ANNOTATED, as amended.

C. This chapter will not relieve any town department of the moral responsibilities or authority given to it in the Town Charter or by local ordinance, nor will it adversely affect the work of any volunteer agency organized for relief in disaster emergencies. (§ 1 of Ord. passed 10/20/86)

#### **5.04.020 Definitions.**

The following definitions shall apply in the interpretation of this chapter:

A. "Attack" means a direct or indirect assault against the Town of Essex, its government, its environs, or of the nation, by the forces of a hostile nation or the agents thereof, including assault by bombing, radiological, chemical or biological warfare, or sabotage.

B. "Director" means the town manager or his designated alternate duly appointed.

C. "Disaster" means and includes but is not limited to actual or threatened enemy attack, sabotage, extraordinary fire, flood, epidemic or other impending or actual emergency or calamity endangering or threatening to endanger health, life or property or constituted government.

D. "Emergency management" in its broad meaning is to carry out the basic government functions of maintaining the public peace, health and safety during an attack or disaster. This shall include plans and preparations for protection from, and relief, recovery and rehabilitation from, the effects of an attack on the town by the forces of an enemy nation or the agents thereof, and it shall also include such activity in connection with disaster as defined herein. It shall not, however, include any activity that is the primary responsibility of the military forces of the United States.

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E. “Emergency management forces” means the employees, equipment and facilities of all town departments, boards, institutions and commissions, and, in addition, it shall include all volunteer personnel, equipment and facilities contributed by or obtained from volunteer persons or agencies.

F. “Emergency management volunteer” means any person duly registered, identified and appointed by the chairman of the office of emergency management and assigned to participate in the emergency management activity.

G. “Regulations” means and shall include plans, programs and other emergency procedures deemed essential to emergency management.

H. “Town chairperson” means the chairperson of the Town of Essex office of emergency management, appointed as prescribed in this chapter.

I. “Vice-chairperson” means assistant to the chairperson.

J. “Volunteer” means contributing a service, equipment or facilities to the civil defense organization without remuneration. (§ 2 of Ord. passed 10/20/86)

### **5.04.030 Membership and organization.**

A. The town manager is hereby authorized and directed to create an organization for emergency management utilizing to the fullest extent the existing agencies within this town. The town manager, as executive head of the municipal government, shall be the director of the emergency management forces of this town, and shall be responsible for their organization, administration and operations.

B. The organization shall consist of the following:

1. An office of emergency management within the executive department of the town government and under the direction of the town manager. There shall be an executive head of the office of emergency management, who shall be known as the “town chairperson of emergency management”; there shall also be a vice-chairperson of emergency management, and such other assistants and other employees as are deemed necessary for the proper functioning of the organization;

2. The employees, equipment and facilities of town departments, boards, institutions and commissions will participate in the emergency management activity. Duties assigned to a town department shall be the same or similar to the normal duties of the department;

3. Volunteer persons and agencies offering service to, and accepted by, the town.

C. The emergency management director (town manager) shall appoint the town chairperson of the office of emergency management, who shall be a person well-versed and trained in planning operations involving the activities of many different agencies which will operate to protect the public health, safety and welfare in the event of danger from enemy action or disaster, as defined in this chapter.

D. The emergency management director (town manager) shall also appoint the vice-chairperson of the office of emergency management, who shall assist the chairperson in the above-described activities.

E. In the absence of the emergency management director (town manager), the emergency management chairperson shall assume the duties and authority of the director. In the absence of both the director and the chairperson, the vice-chairperson shall assume the duties and authority of the director. (§ 3 of Ord. passed 10/20/86)

### **5.04.040 Emergency powers—Town Manager.**

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A. The emergency management director may exercise the emergency power and authority necessary to fulfill his general powers and duties as defined in the Town Charter. The judgment of the emergency management director shall be the sole criterion necessary to invoke emergency powers. The town Selectboard may convene to perform their legislative and administrative powers as the situation demands, and shall receive reports relative to emergency management activities. Nothing in this chapter shall be construed as abridging or curtailing the powers or restrictions of the town Selectboard as defined in the Town Charter, and the Selectboard, by a majority vote, may overrule the declaration of an emergency as defined under this chapter.

B. During any period when disaster threatens or when the town has been struck by disaster, within the definition of this chapter, the town manager may promulgate such regulations as he deems necessary to protect life and property and preserve critical resources. Such regulations may include, but shall not be limited to, the following:

1. Regulations prohibiting or restricting the movement of vehicles in order to facilitate the work of emergency management forces, or to facilitate the mass movement of persons from critical areas within or without the town;
2. Regulations pertaining to the movement of persons from areas deemed to be hazardous or vulnerable to disaster;
3. Such other regulations necessary to preserve public peace, health and safety.

C. Regulations promulgated in accordance with the authority above will be given widespread circulation by proclamation published and uttered by newspaper and radio. These regulations will have the force of ordinance when duly filed with the town clerk.

D. The emergency management director shall order emergency management forces to the aid of other communities when required in accordance with the statutes of the state, and he may request the state, or a political subdivision of the state, to send aid to the Town of Essex in case of disaster, when conditions in the town are beyond the control of the local emergency management forces.

E. The emergency management director may obtain vital supplies, equipment and other properties found lacking and needed for the protection of health, life and property of the people, and bind the town for the fair value thereof.

F. The emergency management director may require emergency services of any town officer or employee. If regular town forces are determined inadequate, the director may require the services of such other personnel as he can obtain that are available, including citizen volunteers. All duly authorized persons rendering emergency services shall be entitled to the privileges and immunities as are provided by state law, the Town Charter and ordinances, for regular town employees and other registered and identified emergency management and disaster workers.

G. The emergency management director will exercise his ordinary powers as town manager and all of the special powers conferred upon him by the Town Charter and ordinances of the Town of Essex, all powers conferred upon him by any statute, or any other lawful authority. (§ 4 (part) of Ord. passed 10/20/86)

### **5.04.050 Emergency powers—Town Chairperson.**

The town chairperson of the office of emergency management shall be responsible to the director in regard to all phases of the emergency management activity. Under the supervision of the director, he shall be responsible for the planning coordination. Under the supervision of the director, he shall

# TOWN OF ESSEX MUNICIPAL CODE

maintain liaison with the state and federal authorities and the authorities of other nearby political subdivisions as to insure the most effective operation of the emergency management plan. Unless contrary to custom or state statute, the chairperson shall be in charge, under the director, at the scene of any emergency in the Town of Essex. His duties shall include, but not be limited to, the following:

A. Coordinating the recruitment of volunteer personnel and agencies to augment the personnel and facilities of the town for emergency management purposes;

B. Development and coordination of plans for the immediate use of all the facilities, equipment, manpower and other resources of the town for the purpose of minimizing or preventing damage to persons and property, and protecting and restoring to usefulness governmental services and public utilities necessary for the public health, safety and welfare;

C. Negotiating and concluding agreements with owners or persons in control of buildings or other property, for the use of such buildings or other property, for the civil defense purposes, and designating suitable buildings as public shelters;

D. Through public informational programs, educating the civilian populations as to actions necessary and required for the protection of their persons and property in case of enemy attack or disaster, as defined herein, either impending or present;

E. Conducting public practice alerts to insure the efficient operation of the emergency management forces and to familiarize residents with emergency management regulations, procedures and operations;

F. Coordinating the activity of all the public and private agencies engaged in an emergency management activity;

G. Assuming such authority and conducting such activity as the director may direct, to promote and execute the emergency management plan. (§ 4 (part) of Ord. passed 10/20/86)

#### **5.04.060 Emergency powers—Town Vice-Chairperson.**

The vice-chairperson of the office of emergency management shall be responsible to the chairperson, and shall assist in the performance of the chairperson's duties. (§ 4 (part) of Ord. passed 10/20/86)

#### **5.04.070 Unlawful acts designated.**

It shall be unlawful for any person to violate any of the provisions of this chapter, regulations or plans issued pursuant to the authority contained herein, or to willfully obstruct, hinder or delay any member of the emergency management organization as herein defined in the enforcement of the provisions of this chapter, or any regulations or plan issued hereunder. (§ 5 of Ord. passed 10/20/86)

#### **5.04.080 Violation—penalty.**

Any person, firm or corporation violating any provisions of this chapter, or any rule or regulations formulated hereunder, shall be subject to legal action relating to applicable state and federal statutes. (§ 6 of Ord. passed 10/20/86)

## **Chapter 5.08**

### **FIRE, BURGLAR AND EMERGENCY ALARMS**

# TOWN OF ESSEX MUNICIPAL CODE

## Sections:

### **5.08.010 Permit—requirements.**

### **5.08.020 Permit—fees.**

### **5.08.030 Failure to pay fees or comply—penalty.**

### **5.08.040 Installation conditions.**

### **5.08.050 Audible alarm restrictions.**

### **5.08.060 Applicant—cost responsibilities.**

### **5.08.070 Applicant—employee training.**

### **5.08.080 Changes of location or equipment.**

### **5.08.090 Applicant—response to alarm.**

### **5.08.100 Response to alarms—liability limitations.**

### **5.08.110 False alarms—designated—penalty.**

### **5.08.120 Violation—penalty.**

### **5.08.010 Permit—requirements.**

Any person who shall be in possession of or in charge of any premises equipped to transmit a fire, burglary, holdup or other alarm to police headquarters by automatic device, either by direct leased phone line or by conventional phone line, shall first secure a permit therefore on a form of application as provided by the town. Said applicant shall provide information which details the premises protected, the type of alarm, the type of detection system in use, and the method of transmitting the alarm to police headquarters. No permit shall be required for an alarm system which does not transmit an alarm signal or notification to police headquarters or other Town of Essex facility. (§ 1 of Ord. passed 10/18/93: § 1 of Ord. passed 10/20/86)

### **5.08.020 Permit—fees.**

Fees payable to the Town of Essex shall be in addition to any fees or costs mentioned in Section 5.08.060, and shall be set by the Selectboard. (§ 2 of Ord. passed 10/18/93: § 2 of Ord. passed 10/20/86)

### **5.08.030 Failure to pay fees or comply—penalty.**

Failure to make prompt payment of fees required in connection with this application and permit, or failure to comply with Sections 5.08.010 and 5.08.020 above, within a reasonable time, may result in disconnection of the system and/or disregard of alarms received, after written notification, and penalties as provided by law in addition to those in Section 5.08.110. (§ 6 of Ord. passed 10/18/93: § 6 of Ord. passed 10/20/86)

### **5.08.040 Installation conditions.**

The system installed must be of an approved type in good mechanical or electrical/electronic order so as to prevent false alarms being transmitted under normal circumstances. Alarms, which when activated, transmit a prerecorded voice message over the telephone line to police headquarters shall not be allowed. In addition, no alarm shall utilize an emergency “911” telephone line to transmit a signal. (§ 3 of Ord. passed 10/18/93: § 3 of Ord. passed 10/20/86)

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### **5.08.050 Audible alarm restrictions.**

Security alarms which are transmitted to police headquarters or any other monitoring location shall not also have an audible alarm on the premises. If an audible alarm is utilized, in violation of the foregoing without transmission capability, the owner shall be liable for any false alarm penalties consistent with the provisions of Section 5.08.110. Whether or not a permit is required, the chief of police, at his discretion, may order the disconnection of any audible alarm which is determined to be intrusive upon reasonable expectations of noise levels of property owners within the general vicinity of the audible alarm. This provision shall pertain to security alarms only and not to fire alarms. (§ 10 (part) of Ord. passed 10/18/93: § 10 of Ord. passed 10/20/86)

### **5.08.060 Applicant—cost responsibilities.**

The applicant shall be solely responsible for any purchase fees, lease or rental fees, installation fees, maintenance costs, as may be required to be paid the equipment owner, sales agency, telephone company or any other persons or firms. (§ 5 of Ord. passed 10/18/93: § 5 of Ord. passed 10/20/86)

### **5.08.070 Applicant—employee training.**

The owner must implement training and procedures as necessary to insure that false alarms are not transmitted by any employee or other authorized person who may lawfully have access to the premises during opening or closing or at any other time. (§ 4 of Ord. passed 10/18/93: § 4 of Ord. passed 10/20/86)

### **5.08.080 Changes of location or equipment.**

The applicant shall provide the Town of Essex with any information, in writing, as may pertain to change of location of transmitter site, type of equipment change, contact persons and phone numbers during the life of the permit. (§ 8 of Ord. passed 10/18/93: § 8 of Ord. passed 10/20/86)

### **5.08.090 Applicant—response to alarm.**

The applicant or representative shall respond to the site, when requested, to provide access, or to secure premises, when such response is deemed necessary by police or fire officials. (§ 9 of Ord. passed 10/18/93: § 9 of Ord. passed 10/20/86)

### **5.08.100 Response to alarms—liability limitations.**

The Town of Essex shall not be responsible for any claims or losses resulting from the servicing of and response to any private emergency alarm systems, and at all times the town shall only respond to private emergency alarms in a manner determined to be in the best interest of the town. In the event several emergencies occur simultaneously, it shall be the duty of the police officer in charge to determine the response priorities; however, all activated alarm systems shall be responded to and a record made thereof. (§ 10 (part) of Ord. passed 10/18/93: § 11 of Ord. passed 10/20/86)

### **5.08.110 False alarms—designated—penalty.**

A. For the purposes of this section, the term “false alarm” means the activation of any emergency alarm other than during a legitimate emergency or situation that could reasonably be perceived as a legitimate emergency.

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B. For response to premises at which a false alarm occurs and at which no other false alarm has occurred within the preceding six (6)-month period, hereinafter referred to as a “first response,” no penalty shall be charged, but the person having or maintaining such alarm shall, within three working days after notice to do so, make a written report to the chief of police on forms prescribed by him setting forth the cause of such alarm, the corrective action taken, whether such alarm has been inspected by an authorized serviceman, and such other information as the chief of police may reasonably require to determine the cause of such false alarm and corrective action necessary.

C. For the second and third response to premises at which a false alarm occurs and within six months after a first response, no fee shall be charged, but a written report shall be required as for a first response, and the chief of police shall be authorized to inspect or cause to be inspected, after consultation with the owner, at the owner’s expense, the alarm system at such premises, prescribe necessary corrective action, and shall give notice to the person owning or maintaining such alarm system of the conditions and requirements of this section.

D. For a fourth and fifth response to premises at which a false alarm occurs and within six (6) months after the first response, and for the second and subsequent responses in any six (6)-month period thereafter, a fee of fifty dollars (\$50) shall be charged, and for all subsequent responses within six (6) months of the first response, a fee of seventy-five dollars (\$75) shall be charged, and if such fourth false alarm or any subsequent false alarm is as a result of failure to take necessary corrective action prescribed by the chief of police, the chief of police may order the disconnection of such alarm system, and it shall be unlawful to reconnect such alarm system until such corrective action is taken; provided, that no disconnection shall be ordered at any premises required by federal, state or local requirements or as otherwise required by town policies or regulations to have an alarm system in operation. In addition, in the event the person who shall be in possession or in charge of the emergency alarm shall not pay the penalty or penalties within thirty (30) days of notification, the chief of police shall order the disconnection of the alarm system until such time as all outstanding fees have been paid. In the event that the alarm system in question transmits a signal to a location other than police headquarters or other Town of Essex facility and said penalties are not paid within thirty (30) days of written notification, no disconnection shall be ordered however all police response to emergency alarms shall be discontinued until such time as all outstanding penalties are paid in full.

E. Notwithstanding the above provisions, no penalties shall be charged and no false alarms deemed to have occurred during the first thirty (30) days after the initial installation of, or additional modification to, any emergency alarm system. (§ 7 of Ord. passed 10/18/93: § 7 of Ord. passed 10/20/86)

### **5.08.120 Violation—penalty.**

Any person who violates the provisions of this chapter may be fined as provided by law for municipal ordinance not to exceed one hundred dollars (\$100). Said fine shall be in addition to any penalty as described in Section 5.08.110. (§ 11 of Ord. passed 10/18/93: § 12 of Ord. passed 10/20/86)

## **Chapter 5.09**

### **OPEN FIRES**

# TOWN OF ESSEX MUNICIPAL CODE

## Sections:

### **5.09.010 Purpose of provisions.**

### **5.09.020 Burning permit requirements.**

### **5.09.030 Permissible open burning.**

### **5.09.040 Violation—Penalty.**

### **5.09.010 Purpose of provisions.**

It is the intent of the ordinance codified in this chapter to provide for the control of open fires to ensure the public's health, safety and welfare and to provide for the ability to collect penalties when this chapter is violated. (Ord. passed 6/17/96 (part))

### **5.09.020 Burning permit requirements.**

A. Open fires of materials other than brush, grass, and natural unpainted, unstained, and untreated dimension lumber and wood products shall not be permitted. Materials such as tires, solid waste, composite materials, treated, painted or stained dimension lumbers, painted or stained, pressure treated materials or other materials are specifically prohibited from open fires.

B. Residents wishing to burn brush, grass, natural unpainted, unstained, untreated dimension lumber and wood products shall obtain a burning permit from the Town of Essex police department before burning. The times of burning will be allowed at the discretion of the fire warden and/or Town of Essex fire chief. There shall be no charge for a burning permit.

C. Individuals having burning permits must maintain control of the fire at all times and not allow its spread beyond their property lines. (Ord. passed 6/17/96 (part))

### **5.09.030 Permissible open burning.**

A. Nothing contained herein shall prevent the Essex fire department from conducting live fire drills and training involving the burning of structures and fields, or motor vehicles. Written notification to adjoining property owners having a structure within a five-hundred-foot (500') radius of the proposed burn shall be provided at least six (6) weeks in advance. Property owners shall be given fourteen (14) days from receipt of the written information to appeal the decision of the fire department to burn the building, fields or motor vehicles to the Town of Essex Selectboard.

B. Nothing contained herein shall prevent the use of campfires, outdoor grills and fireplaces for recreation or preparing of food provided no public or private nuisance is created. (Ord. passed 6/17/96 (part))

### **5.09.040 Violation—Penalty.**

A. Any person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers, fire warden, deputy fire warden, fire chief and fire officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

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B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$25.00 plus fire department expense up to \$500.00
Second offense	\$50.00 plus fire department expense up to \$500.00
Third offense	\$100.00 plus fire department expense up to \$500.00
Fourth and subsequent offenses	\$200.00 plus fire department expense up to \$500.00

Offenses shall be counted on a calendar year basis.

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$50.00 plus fire department expense up to \$500.00 maximum.
Second offense	\$100.00 plus fire department expense up to \$500.00 maximum.
Third offense	\$200.00 plus fire department expense up to \$500.00 maximum.
Fourth and subsequent offenses	\$400.00 plus fire department expense up to \$500.00 maximum.

Offenses shall be counted on a calendar year basis.

D. Fire department expenses shall be as follows:

1. Pumper at one hundred dollars (\$100) per hour each;
2. Tanker at seventy-five dollars (\$75) per hour each;
3. Minimum of one (1) hour of pay for each firefighter responding to the call.

E. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 6/17/96 (part))

## Chapter 5.16

### LITTERING

#### Sections:

#### 5.16.010 Unlawful littering or dumping activities.

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## 5.16.020 Exemptions.

### 5.16.030 Violation—Evidence—Penalty.

#### 5.16.010 Unlawful littering or dumping activities.

A person shall not throw, dump, deposit or cause to be thrown, dumped or deposited, bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, old automobiles or parts thereof, refuse of whatever nature, or any noxious thing, on lands of others or within three hundred feet (300') of the lands of others, public or private, or into the waters of this state, or on the shores or banks thereof, or on or within view of a public highway. (Ord. passed 6/3/96 (part): § 1 of Ord. passed 5/18/81)

## 5.16.020 Exemptions.

Nothing in this chapter shall be construed as affecting the operation of an automobile graveyard or junkyard, as defined in Section 2241, Title 24, Vermont Statutes, nor shall anything in this chapter be construed as prohibiting the installation and use of appropriate receptacles for solid waste provided by the state or towns. Sanitary landfills, recycling centers and incinerators maintained pursuant to Section 2202 of Title 24, and solid waste from mining, quarrying, farming operations are exempt from the restriction set forth above concerning the distance of three hundred feet and visibility from a public highway. (Ord. passed 6/3/96 (part): § 2 (part) of Ord. passed 5/18/81)

### 5.16.030 Violation—Evidence—Penalty.

A. A person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

1. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$ 25.00
Second offense	\$50.00
Third offense	\$100.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis.

2. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$ 50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth and subsequent offenses	\$400.00

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Offenses shall be counted on a calendar year basis.

3. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

B. If the throwing, placing or depositing was done from a motor vehicle, except a motorbus, it shall be prima facie evidence that the throwing, placing or depositing was done by the driver of such motor vehicle. (Ord. passed 6/3/96 (part): § 2 (part) of Ord. passed 5/18/81)

## Chapter 5.20

### SWIMMING POOLS\*

#### Sections:

**5.20.010 Definitions.**

**5.20.020 Fences and walls—Required.**

**5.20.030 Access control not required when.**

**5.20.040 Above-ground pools—Requirements.**

**5.20.050 Above-ground pools—Location.**

**5.20.060 In-ground pools.**

**5.20.070 Barriers and lights during construction.**

**5.20.080 Violation—Penalty.**

\*Prior ordinance history: Ordinances passed 6/15/81 and 10/17/88.

#### **5.20.010 Definitions.**

For the purpose of this chapter:

A. "Above-ground pool" means any pool described in subsection C of this section which is not more than twelve (12) inches below the surrounding ground level.

B. "Below-ground pool" means any pool described in subsection C of this section which is more than twelve (12) inches below surrounding ground level and has a wall less than forty-two (42) inches in height above ground level.

C. "Pool" means and is described as any walled area greater than six (6) feet in diameter, containing twelve (12) inches or more of water, maintained out of doors for bathing, swimming or wading, and any such device or structure with a depth of twenty-four (24) inches or greater below ground level, whether or not any water is contained therein. (Ord. passed 6/3/96(part))

#### **5.20.020 Fences and walls—Required.**

No individual, partnership or corporation, public or private, shall construct or maintain a swimming pool without fence or walls, as further described herein, properly erected and maintained to prevent accidental access by any persons to such swimming pool, or access by minor children as described in the preamble to the ordinance codified in this chapter as "unaware by reason of lack of mature judgment,

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inability to recognize danger to themselves, physically and otherwise to save themselves from such danger, as well as to other persons so restricted in judgment and physical limitations who may accidentally become exposed to such threat,” without climbing, burrowing or unlatching gates. (Ord. passed 6/3/96 (part))

### **5.20.030 Access control not required when.**

Any reference herein to structures within five (5) feet of enclosure shall not pertain to homes or garages when used as one or more sides of the enclosure; however, access control as required by Section 5.20.020 must be provided for. (Ord. passed 6/3/96 (part))

### **5.20.040 Above-ground pools—Requirements.**

Above-the-ground pools greater than twelve (12) inches and less than forty-two (42) inches in wall height shall meet the same requirements as below-ground pools. (Ord. passed 6/3/96 (part))

### **5.20.050 Above-ground pools—Location.**

Above-ground pools forty-two (42) inches in wall height or higher shall be located so that a wall height of forty-two (42) inches is maintained above all points of land or solid objects, or structures within five feet (5) from any point of the perimeter of the pool. All ladders or steps shall be removed or elevated to forty-two (42) inches above ground when unattended and secured by a safety latch. (Ord. passed 6/3/96 (part))

### **5.20.060 In-ground pools.**

A. In-the-ground pools shall be surrounded by a fence or wall at least forty-two (42) inches in height and equipped with a swinging or sliding gate which may not be unlatched from the outside without reaching over the gate into the enclosure.

B. Such fence or wall may have no openings which do not have one dimension which is less than three (3) inches. Such fence or wall shall be located at least four (4) feet from pool edge and maintained forty-two (42) inches minimum above the surrounding terrain or any structure or solid objects. (Ord. passed 6/3/96 (part))

### **5.20.070 Barriers and lights during construction.**

No person may construct a below-ground pool without providing adequate barriers and lights at all times during construction. (Ord. passed 6/3/96 (part))

### **5.20.080 Violation—Penalty.**

Any person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

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B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$25.00
Second offense	\$50.00
Third offense	\$100.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis.

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth and subsequent offenses	\$400.00

Offenses shall be counted on a calendar year basis.

D. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 6/3/96 (part))

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## **Title 6**

### **PUBLIC PEACE, MORALS AND WELFARE**

#### **Chapters:**

**6.04 Alcoholic Beverages at Public Gatherings**

**6.05 Criminal Records Checks for Liquor License Application**

**6.08 Firearms**

**6.12 Public Indecency**

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## Chapter 6.04

### ALCOHOLIC BEVERAGES AT PUBLIC GATHERINGS

#### Sections:

#### 6.04.010 Purpose of provisions.

#### 6.04.020 Definitions.

#### 6.04.030 Authority to prohibit alcoholic beverages.

#### 6.04.040 Chapter provisions applicable where.

#### 6.04.050 Enforcement as condition of license.

#### 6.04.060 Violation—Penalty.

#### 6.04.010 Purpose of provisions.

It is the intent of the ordinance codified in this chapter to provide for control of alcoholic beverages at public affairs and gatherings when the owners or operators wish to prohibit its use or possession entirely, or when under certain circumstances use and possession is limited to certain portions. (Ord. passed 6/3/96 (part): Preamble of Ord. passed 5/24/82)

#### 6.04.020 Definitions.

As used in this chapter:

A. "Alcoholic beverages" means and shall include the product of distillation of any fermented liquor rectified one or more times, and includes malt beverages, vinous beverages, spirituous liquor and rum, but shall not include methyl alcohol, ethyl alcohol or other non-potable forms of alcohol.

B. "Licensee" means any person, association or corporation which is licensed under Title 7 of the VERMONT STATUTES ANNOTATED to sell alcoholic beverages at the location.

C. "Signs" means a notice erected and maintained at all main entrances which reads "possession of alcoholic beverages prohibited under local ordinance, Town of Essex" in block letters not less than three (3) inches high in black against a white background. (Ord. passed 6/3/96 (part): § 4 of Ord. passed 5/24/82)

#### 6.04.030 Authority to prohibit alcoholic beverages.

Any owner, operator or governmental agent or agency having control may prohibit the possession or consumption of alcoholic beverages at all times, or at particular times, on property under their control. (Ord. passed 6/3/96 (part): § 2 of Ord. passed 5/24/82)

#### 6.04.040 Chapter provisions applicable where.

The provisions of this chapter shall apply equally to all lands public and private used for parks, dances, circuses, fairs, bazaars, recreation fields, flea markets, drama shows, and any similar outdoor or indoor/outdoor combination activity where the general public is invited to use such facilities with or without paid admission; provided, the provisions of this chapter shall apply to private or public property when the owner, operator or governmental agent or agency having charge thereof so indicates by placement of signs at all main entrances, which entrances shall be properly controlled by fences or channeling devices which require the public to pass such signs. Such signed entrances need only be

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provided where access is from the public highway or parking lots. (Ord. passed 6/3/96 (part): § 1 (part) of Ord. passed 5/24/82)

## **6.04.050 Enforcement as condition of license.**

The provisions and prohibition within this chapter shall be put in force by the owners, operators or licensee as a condition to an alcoholic beverage license on the remaining portions of the same property open to the public and not described in the license application as an area for sales and consumption, which areas shall be separated by fencing with limited ingress and egress. (Ord. passed 6/3/96 (part): § 1 (part) of Ord. passed 5/24/82)

## **6.04.060 Violation—Penalty.**

A. Any person not licensed to sell who shall possess, consume or provide to others in violation of a prohibition consistent with this chapter any alcoholic beverage, may be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$ 25.00
Second offense	\$ 50.00
Third offense	\$100.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis.

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth and subsequent offenses	\$400.00

Offenses shall be counted on a calendar year basis.

D. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 6/3/96 (part): § 3 of Ord. passed 5/24/82)

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## Chapter 6.05

### CRIMINAL RECORD CHECKS FOR LIQUOR LICENSE APPLICATION

#### Sections:

#### 6.05.010 Purpose of provisions.

#### 6.05.020 Procedure.

#### 6.05.010 Purpose of provisions.

Pursuant to the requirements of the Vermont Criminal Information Center for conducting criminal record checks on liquor license applicants, the Town of Essex Selectboard is required to adopt an ordinance authorizing the police department to conduct these checks. The purpose of this chapter is to ensure the public safety, health and welfare of the citizens of the Town of Essex by providing background information on prospective liquor license applicants to enable the Town to make an informed decision on the likelihood that applicants who operate establishments that sell alcohol will do so in a responsible manner. (Ord. passed 10/20/97 (part))

#### 6.05.020 Procedure.

The Selectboard of the Town of Essex ordains that the police department shall conduct criminal record checks on all persons who are applicants for a liquor license. (Ord. passed 10/20/97 (part))

## Chapter 6.08

### FIREARMS\*

#### Sections:

#### 6.08.000 Definition of firearm

#### 6.08.010 Discharging firearms— Prohibited area.

#### 6.08.020 Exemptions—Acts authorized by statute.

#### 6.08.030 Exemptions—Possession of firearms.

#### 6.08.040 Indoor shooting range Conditions.

#### 6.08.050 Discharging firearms— Hours prohibited.

#### 6.08.060 Licensed trapper exemptions.

#### 6.08.070 Violation—penalty.

\*Prior ordinance history: Ordinances passed 2/6/84, 1/8/90, 5/15/95, and 6/3/96.

#### 6.08.000 Definition of firearm

Firearm shall mean any weapon from which a projectile(s), such as a single slug, bullet, or loose shot, is discharged by an explosion. The term "Firearm" includes but is not limited to muzzle loading weapons, but does not include things like BB guns, pellet guns, air-soft guns, and bow and arrow. (Ord. passed 10/7/19)

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### **6.08.010 Discharging firearms— Prohibited area designated.**

A. It is ordained by the Selectboard of the town of Essex that within the area of prohibition described herein, no person shall, for any reason except as provided herein, discharge a firearm.

B. The area of prohibition is bounded and described as follows: An area bounded by a line described as beginning at the intersection of the Colchester town line and the center line of Gentes Road and running southerly in said road to its intersection with the Central Vermont Railway tracks; thence continuing generally southerly in and along the center line of the railroad tracks to the intersection of Old Colchester Road; thence continuing in the center line of Old Colchester Road to the Village of Essex Junction; thence proceeding easterly and then southerly along the town/village boundary line to a point 250 feet westerly of the center line of Vermont Route 15 (at a point northerly of Athens Drive); thence proceeding in a generally northerly direction parallel to and 250 feet westerly of Vermont Route 15 to Butler's Corners, so-called, and thence 250 feet westerly of Old Stage Road from Butler's Corners to the center line of Brigham Hill Road; thence proceeding easterly across Old Stage Road and following Colonel Page Road along its center line to its intersection with the center line of Chapin Road; thence proceeding in a straight line to its intersection with the thread of Browns River with the center line of Browns River Road as measured in a straight line; thence proceeding generally southeasterly in the thread of Browns River Road; thence turning generally easterly and following the center line of Browns River Road to the intersection of Weed Road; thence mining southeasterly and following the center line of Weed Road for 1,700 feet, more or less, thence proceeding northeasterly for 2,000 feet, more or less; thence turning and proceeding southeasterly for 800 feet, more or less; thence turning and proceeding southwesterly to the center line of Weed Road (the last three courses encompassing the residential parcels along Essex Highlands); thence turning easterly and following the center line of Weed Road to its intersection with Naylor Road; thence mining south and following the center line of Naylor Road; thence turning west, following the center line of Route 15 until it intersects with Browns River; thence following Browns River easterly until it intersects with the Jericho border; thence turning southerly along 27 the town border for 1,900 feet, more or less; thence turning and proceeding northwesterly along the division line between lands of the Deer Crossing Development and Whitcomb to the center line of Saxon Hill Road; thence proceeding in a generally southerly direction in the center line of Saxon Hill Road and the old roadbed which runs from the terminus of Saxon Hill Road to Vermont Route 117; thence proceeding easterly along Vermont Route 117 to North Williston Road; thence proceeding southerly along said North Williston Road to the Winooski River; thence proceeding generally westerly along the center line of the Winooski River to the Colchester town line; thence proceeding generally northerly in and along the Colchester/Essex town line to the point or place of beginning.

In addition to the foregoing, the area of prohibition also shall include the entirety of the Tree Farm Recreational Facility (Tax Map 6, Parcel 2; 81 Old Colchester Road).

In addition to the foregoing, the area of prohibition also shall include the entirety of both Indian Brook Park (Tax Map 10, Parcel 22; 150 Indian Brook Road) and the 90-acre Saxon Hill school parcel (Tax Map 8, Parcel 1; 95 Saxon Hill Road) for the entirety of the year, except that hunting with firearms shall be permitted by licensed hunters from October 15 to December 15 in accordance with valid hunting

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seasons established by the State of Vermont. The dates during which discharge of firearms is permitted at Indian Brook Park shall not apply to the hunting safety zone described in Section 9.08.080 B.

C. The above-described area is designated on a plan made a part of this section and filed with the Essex town clerk. (Ord. passed 10/7/19 (part))

### **6.08.020 Exemptions—Acts Authorized by statute.**

Nothing contained herein shall be construed to limit the rights or immunities given under VERMONT STATUTES ANNOTATED, Title 13, Section 2305, or any statute similarly constructed which allows the use of deadly force for the protection of life, or the suppression of a person or persons attempting to commit murder, sexual assault, aggravated sexual assault, burglary or robbery with force or violence. Any person found blameless by competent proper legal authority under the provisions of such statute also shall be equally immune from prosecution under this chapter. (Ord. passed 6/3/96 (part))

### **6.08.030 Exemptions—Possession of Firearms.**

Nothing contained herein shall be construed to limit the mere possession of firearms. (Ord. passed 6/3/96 (part))

### **6.08.040 Indoor shooting range Conditions.**

Indoor shooting ranges may be allowed in the area of prohibition subject to approval of the Selectboard. This requirement of approval by the Selectboard should be construed to be in addition to the provisions of other ordinance of law. (Ord. passed 6/3/96 (part))

### **6.08.050 Discharging firearms—hours Prohibited—exemptions.**

No person shall discharge a firearm within the town of Essex between the hours of sunset and sunrise except when such hours are prescribed for hunting of game birds or animals, and then such privilege shall extend only to licensed hunters for the sole purposes of taking game. (Ord. passed 6/3/96 (part))

### **6.08.060 Licensed trapper exemptions.**

Licensed trappers shall be permitted the use of pistols of not greater than .22 caliber, using rim fire ammunition, to kill animals trapped. (Ord. passed 6/3/96 (part))

### **6.08.070 Violation—Penalty.**

A. Any person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers of the town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

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First offense	\$50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth and subsequent offenses	\$400.00

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$100.00
Second offense	\$200.00
Third offense	\$400.00
Fourth and subsequent offenses	\$500.00

D. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 10/7/19 (part))

## Chapter 6.11

### PUBLIC NUISANCE

#### Sections:

- 6.11.000 Authority
- 6.11.010 Purpose
- 6.11.020 Definitions
- 6.11.030 Disorderly Conduct
- 6.11.040 Excessive Sound
- 6.11.050 Public Urination / Defecation
- 6.11.060 Public Nudity
- 6.11.070 Soliciting – General Provisions
- 6.11.080 Soliciting - Regulations
- 6.11.090 Soliciting – Violations
- 6.11.110 Defacing Buildings, Structures and signs
- 6.11.120 Alcohol
- 6.11.130 Open Fires
- 6.11.140 Fireworks
- 6.11.150 Enforcement
- 6.11.160 Violations – Penalties
- 6.11.170 Severability

(Ordinance passed 11/7/22)

# TOWN OF ESSEX MUNICIPAL CODE

## 6.11.000 Authority.

- A. This ordinance is enacted pursuant to 24 VERMONT STATUTES ANNOTATED., Section 2291, et seq. It shall constitute a civil ordinance within the meaning of 24 VERMONT STATUTES ANNOTATED., Chapter 59.

## 6.11.010 Purpose.

- A. The purpose of this ordinance is to preserve the public health, safety and welfare by prohibiting general nuisance behavior, which is unreasonable or unsuitable for a particular time and place. Such behavior is detrimental to the peace and good order of the community. Typically, nuisance behavior disrupts the public peace and affects the quality of life within the Town of Essex.

## 6.11.020 Definitions.

- A. **Aggressive manner** shall mean any of the following:
- a. Approaching or speaking to a person, or following a person before, during or after soliciting if that conduct is intended or is likely to cause a reasonable person to fear bodily harm to oneself or to another or damage to or loss of property or otherwise be intimidated into giving money or other thing of value.
  - b. Continuing to solicit from a person or continuing to engage that person after the person has given a negative response to such soliciting.
  - c. Intentionally or recklessly touching or causing physical contact with another person or that person's property without that person's consent in the course of soliciting.
  - d. Intentionally or recklessly blocking or interfering with the safe or free passage of a pedestrian or vehicle by any means, including unreasonably causing a pedestrian or vehicle operator to take evasive action to avoid physical contact.
  - e. Using violent, obscene or threatening gestures toward a person solicited.
  - f. Following the person being solicited, with the intent of asking that person for money or other things of value.
  - g. Speaking in a volume unreasonably loud under the circumstances.
  - h. Soliciting from anyone who is waiting in line.
- B. **Average sound level:** A sound level during a given period of time found by the general rule of combination of sound levels. Also called equivalent sound level.

## TOWN OF ESSEX MUNICIPAL CODE

- C. **Decibel (dB)**: means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).
- D. **Fireworks**: shall mean any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, including blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used, balloons that are propelled by explosives, firecrackers, torpedoes, sky rockets, Roman candles, cherry bombs, or other fireworks of like construction and any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance, except sparklers. The term "fireworks" does not include toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper or plastic caps that contain less than 0.2 grains of explosive mixture. The term "fireworks" does not include fixed ammunition for firearms, or primers for firearms. The term "sparkler" means a sparkling item that is in compliance with the United States Consumer Product Safety Commission regulations and is one of the following:
- a. A hand-held wire or wood sparkler that is less than 14 inches and has no more than 20 grams of pyrotechnic mixture; or
  - b. A snake, party popper, glow worm, smoke device, string popper, snapper, or drop pop with no more than 0.25 grains of explosive mixture.
- Cross References:*  
*See 20 VERMONT STATUTES ANNOTATED. § 3131.*
- E. **Food**: shall have its usual and ordinary meaning and shall include all items designed for human consumption, including, but not limited to, candy, coffee, gum, popcorn, hot dogs, sandwiches, peanuts, soft drinks and dairy products.
- F. **Instantaneous maximum sound**: means either a single pressure peak or a single burst (multiple pressure peaks) that has duration of less than one second.
- G. **Merchandise**: shall have its usual and ordinary meaning, including, but not limited to, such items as tools, clothing, furniture, toys, and appliances.
- H. **Mobile ice cream vendor**: means a person, firm or corporation, either as a principal or agent, which engages in the mobile vending of ice cream and/or frozen novelty items for immediate human consumption.
- I. **Mobile vending**: means offering food, merchandise or services for sale to the general public from a vehicle, conveyance, or a nonpermanent structure or place of business.
- J. **Mobile vendor**: means the person, firm or corporation, either as a principal or agent, which engages in mobile vending as defined herein.

## TOWN OF ESSEX MUNICIPAL CODE

- K. **Nudity**: shall mean the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- L. **Open beverage container**: A container, bottle, can or vessel containing malt or vinous beverages or spirituous liquors, which is opened.
- M. **Plainly audible**: shall mean any sound that can be detected by a person using his or her unaided hearing faculties. The detection of the rhythmic base component of the music is sufficient to constitute a plainly audible sound.
- N. **Premises**: shall mean any building, structure, land, utility or portion thereof, including all appurtenances, and shall also include yards, lots, courts, inner yards and real properties without buildings or improvements, owned or controlled by a person.
- O. **Property line** shall mean that real or imaginary line and its vertical extension which separates real property owned or controlled by any person from contiguous real property owned or controlled by another person. The vertical and horizontal boundaries of a dwelling unit in a multi-dwelling-unit building, condominium, or townhouse complex shall not be considered property lines separating one (1) premises from another.
- P. **Public celebration**: means Independence Day activities or any other time of public celebration designated by the municipality, such as Memorial Day or such events as sidewalk sales, parades, and street fairs which are officially authorized by the legislative body.
- Q. **Public Place**: shall mean any indoor or outdoor space or area that is open temporarily or permanently to the public or general circulation of traffic or pedestrians; this does not include private residential property or private offices or workspaces that are not open to customers or public visitors within the Town of Essex.
- R. **Receiving Property**: The location that is receiving the sound in question.
- S. **Sample period**: shall mean 15 minutes of continuous monitoring.
- T. **Services**: shall have its usual and ordinary meaning and shall include the performance of any act done for compensation, including, but not limited to the acts of cleaning, repairing, entertaining, delivering, advising, adjusting, moving, insuring, protecting, and/or maintaining.
- U. **Solicitation or Soliciting**: shall mean asking for money or objects of value, selling, offering or exposing for sale, or trading, dealing, or trafficking in any personal property, food, merchandise, or service, either at wholesale or retail, in the town by going from house to house, business to business, or from place to place or by indiscriminately approaching individuals, businesses, or organizations, including sales by sample or for future delivery.

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- V. **Solicitor:** means the person, firm or corporation, either as a principal or agent, which engages in solicitation as defined herein.
- W. **Sound measurement standards:** Sound shall be measured in accordance with standards specified by the American National Standards Institute (ANSI).
- X. **Source premises:** shall mean the premises (residential, commercial, industrial, or public) as listed in Table A that is emitting **Sound** that is crossing one (1) or more property lines and impacting the receiving property.
- Y. **Sponsor:** Any individual, business or organization with which a solicitor or peddler is economically affiliated, in relation to soliciting, in an employer-employee, master-servant, independent contractor, agency, joint venture of similar arrangement.
- Z. **Standard working day:** means Monday through Friday, 8:00 a.m. to 5:00 p.m., except weekends and holidays.
- AA. **Unreasonable Sound:** shall mean any excessive or unusually loud sound which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of a reasonable person of normal sensibilities.

## 6.11.030 Disorderly Conduct

- A. No person in a public place shall behave in a rude or disorderly manner or use indecent, profane, or insulting language with the intent to annoy or disturb another person.
- B. No person shall make graffiti, indecent figures, letters, words or write indecent or obscene words upon a fence, building, sidewalk, or public place.
- C. No person, shall, by sound, gesture, or other means, wantonly and designedly frighten a horse in a street or other public place.
- D. No person shall throw stones or other missiles in or upon a public street, common, or other ground belonging to the municipality.

*Cross References. Breach of the Peace,  
See, Disorderly Conduct 13 VERMONT STATUTES ANNOTATED. § 1026.*

## 6.11.040 Excessive Sound

- A. General Prohibition:

## TOWN OF ESSEX MUNICIPAL CODE

- a. It shall be unlawful for any person to make or cause to be made, assist in making or continue any excessive or unreasonable loud sound. Sound shall be deemed unreasonable when it disturbs, injures, or endangers the comfort, peace or health of a person in the immediate vicinity of the sound disturbance.
- b. It shall be considered a sound disturbance and public nuisance provided the sound source is plainly audible from the receiving property line.

### B. Express Prohibitions:

- a. The following acts, which enumerations shall not be deemed to be exclusive, are declared to be sound disturbances:
  - i. Operating or permitting the use or operation of radios, television sets, musical instruments, phonographs and similar devices. The operation or permitting the use or operation of any musical instrument, radio, television, phonograph, or other device for the production or reproduction of sound in such a manner as to be plainly audible through walls between units within the same building, from another property or from the street between the hours of 10:00 p.m. and 7:00 a.m. or in such a manner as to unreasonably disturb the peace, quiet or comfort of the public.
  - ii. The operation or permitting the operation of any radio, stereo or other sound amplification equipment from a motor vehicle that is audible at twenty-five (25) feet from such vehicle. The term "motor vehicle" shall mean any car, truck, or motorcycle.
  - iii. Parties and other social events. Notwithstanding section (a)(i), it shall be unlawful for any person who is participating in a party or other social event to actively make unreasonably loud sound. A party or other social event is defined as a gathering upon the premises of one or more persons not residing at the premises. Unreasonably loud sound is sound that unreasonably interferes with the peace or health of members of the public or is plainly audible between the hours of 10:00 p.m. and 7:00 a.m. through the walls between units within the same building, from another property or from the street. It shall also be unlawful for any resident of a premise to allow a party or other social event occurring in or about the premises to produce unreasonably loud sound. There is a rebuttable presumption that all residents of the premises have allowed such party or other social event to occur in or about the premises. All residents of the premises are responsible for such unreasonable sound made, each having joint and several liability.
  - iv. Machinery. The operation or permitting or directing the operation of any power equipment or machinery outdoors between the hours of 9:00 p.m. and 6:00 a.m. except in emergency situations, ex: Construction sound. The excavation, demolition, erection, construction, alteration or repair of any premises or structure between the hours of 9:00 p.m. and 6:00 a.m. except in emergency situations.

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- v. Loudspeakers, amplifiers. The use of loudspeakers or other sound amplification equipment upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or site.
- vi. The removal of household and commercial trash by authorized commercial trash haulers utilizing mechanized conveyances within 500 feet of a residential property between the hours of 9:00 p.m. and 6:00 a.m. is prohibited.
- vii. Defect in vehicle or operation of a vehicle. The operation of an automobile or motorcycle which creates squealing, squealing of tires, loud and unnecessary grating, grinding, exploding type, rattling or other sounds.
- viii. Dogs, cats and other animals. The keeping of any dog, cat or other animal which shall become a nuisance to another person in the vicinity where such dog, cat or other animal is kept, by frequent or continued barking, howling, yelping or screaming, except as permitted at kennels or boarding facilities in accordance with Section 4.04.080.

### C. Prohibitions for Residential Premises

- a. It shall be a violation of this section for anyone to create or allow the creation of sound not otherwise specified under General Provisions, in excess of the following stated limits (Table A) during the stated time periods for the sound generated on the properties being used for other than residential purposes.
- b. Sound measurements shall be made at the receiving property line.
- c. This standard shall not apply to unoccupied receiving properties.
- d. Sound level measurements shall be taken with a sound level meter meeting the minimum American Standards Institute (ANSI) requirements for Type I or Type II accuracy, and shall have a fast response setting.
- e. Nothing in this section shall prevent the Town of Essex from imposing additional sound control measures beyond that needed to reach the limits below.

### D. Prohibitions for Non-Residential Premises

- a. It shall be a violation of this section for anyone to create or allow the creation of sound not otherwise specified under General Prohibitions or Expressed Prohibitions, in excess of the sample period (15 continuous minutes) for sound generated on properties being used for other than residential purposes. Refer to Table A.
- b. Sound measurements shall be made at the property line of the receiving premises.

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- c. Sampling will be conducted with a sound level instrument using sound measurement standards. (American National Standards Institute (ANSI))
- d. Nothing in this section shall prevent the Town of Essex from imposing additional sound control measures beyond that needed to reach the limits below.

E. *Table A: Allowable Sound Levels (in dB) with Time of Day Allowance*

	Residential Receiving Premises			
	Sample Period (15 mins)		Instantaneous Maximum (db)	
Source Premises	7am-10pm	10pm-7am	7am-10pm	10pm-7am
<b>Residential</b>	60	55	80	60
<b>Commercial</b>	65	60	80	60
<b>Industrial</b>	80	75	90	70

F. Notification by Property Owners of Rental Housing.

- a. Owners of rental housing shall be required to provide a copy of this section to a tenant at the start of the tenancy. However, the failure of an owner to provide a copy of the ordinance shall not be a defense to a violation of this section.

G. Exemptions:

- a. Sound from the following sources shall be exempt from the prohibitions specified herein:
  - i. Any person or organization that has obtained a sound waiver from the Town of Essex. (Parade, block parties, fireworks, etc.)
  - ii. All safety signals and warning devices or any other device used to alert persons to any emergency or used during the conduct of emergency work, including, but not limited to, police, fire and rescue vehicle sirens.
  - iii. The repair and maintenance to the Town of Essex facilities, services, or public utilities when such work must be accomplished outside of daytime hours.

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- iv. Any construction activity that has obtained approval from the Town of Essex to occur between the hours of 9:00 p.m. and 6:00 a.m. and that is deemed to be in the best interest of public health, safety, and welfare.
- v. Equipment for maintenance of lawn and grounds during the hours of 6:00 a.m. to 9:00 p.m. (including but not limited to lawn mowers, hedge trimmers, weed trimmers, chain saws, snow blowers and leaf blowers) assuming they are properly muffled.
- vi. Snow removal equipment operated within the manufacturer's specifications and in proper operating condition.
- vii. Musical, recreational, and athletic events conducted by and on the site of a school or educational institution or is sponsored by the Town of Essex, state or federal government.
- viii. Events and activities conducted by or permitted by the Town of Essex. Persons operating an event or activity under authority of an entertainment permit, parade/street event permit, solid waste license, or parks special use permit shall comply with all conditions of such permits or licenses with respect to sound control issues.
- ix. Construction or repair work which must be done to address an emergency health or safety concern and that cannot be accomplished during daytime hours and is not work which includes normal maintenance and repair.
- x. Sound associated with standard agricultural operations.
- xi. Sounds created by bell, carillons, or chimes associated with specific religious observances.
- xii. The use of firearms when used for hunting in accordance with state Fish and Wildlife laws.

*Cross References. Breach of the Peace; Disturbances.*

*See Noise in the nighttime 13 VERMONT STATUTES ANNOTATED. § 1022;*

*See Disorderly conduct 13 VERMONT STATUTES ANNOTATED. § 1026.*

### **6.11.050 Public Urination / Defecation**

- A. No person shall urinate or defecate on any street, sidewalk, parking lot, recreational path, in a park or other public place.

### **6.11.060 Public Nudity**

- A. No person shall knowingly or intentionally in a public place:

# TOWN OF ESSEX MUNICIPAL CODE

- a. Engage in sexual intercourse.
  - b. Appear in a state of nudity.
  - c. Fondle his/her/their genitals.
  - d. Fondle the genitals of another person.
  - e. Fondle his/her/their breasts.
  - f. Fondle the breasts of another person.
- B. No person who owns, leases or controls property shall knowingly allow any person to engage in the conduct described in subsection (A) of this section at any time such property is open to the public.

*Cross References. Obscenity.*

*See Obscenity 13 VERMONT STATUTES ANNOTATED. § 2801 et seq.*

## 6.11.070 Soliciting General Provisions

- A. **Purposes:** To regulate the activities of solicitors and peddlers within the Town of Essex for the protection of the public health, safety, welfare, and convenience, and to protect the residents of the Town of Essex from unscrupulous, fraudulent, and immoral business practices.
- B. **Exclusions :** This ordinance shall not be construed as impairing the rights conferred by 24 VERMONT STATUTES ANNOTATED. Section 2181. (Sale of Produce. Owners and renters of land shall have the right to vend or sell all products of such land without obtaining licenses from such towns).

## 6.11.080 Soliciting - Regulations

- A. No solicitor shall conduct business without first obtaining a permit from the Town of Essex Clerk office.
- a. The following information shall be gathered:
    - i. The full name, address and telephone of the group, business or organization.
    - ii. The full name, address and telephone of a contact person for the group, business or organization.
    - iii. The purpose of the solicitations to be conducted in the Town of Essex.
    - iv. The description of services, food or merchandise being offered for sale.
    - v. A list of the full names, contact information and identification of the persons acting on behalf of the group, business or organization and the dates and times during which they will be soliciting in the municipality.
    - vi. The license plate and description of the vehicle used in transporting persons who will be soliciting.
- B. Persons acting on behalf of the group, business or organization qualifying under this subsection shall always during the solicitations wear identification clearly showing their affiliation with said group or organization.

## TOWN OF ESSEX MUNICIPAL CODE

- C. Sound. No solicitor or peddler shall shout, cry out, or use any sound-making device (including horns, bells, loudspeakers, sound amplifying systems) from the town's streets, sidewalks, or other public property in a manner which unreasonably disturbs the peace or constitutes a public nuisance.
- D. Offensive Practices. No solicitor or peddler shall physically accost, restrain or otherwise interfere with the free movement of any individual during the course of the solicitor's or peddler's activities.
- E. Conduct on Private Property. No solicitor or peddler shall enter upon private property which contains a sign or other notice that soliciting is prohibited. Solicitors and peddlers shall promptly depart from private property upon the request of the owner or resident thereof.
- F. Hours: No solicitor or peddler shall solicit between the hours of 9 p.m. and 7 a.m.

### 6.11.090 Soliciting – Violations

- A. Failure to comply with any of the above requirements, or the following, shall be a violation of this chapter:
  - a. Failure to obtain a permit.
  - b. Parking regulations as contained Title 7.
  - c. Shall not, by causing a congregation of people, obstruct the passage along any sidewalk, street, alley or parking lot, annoy, injure or endanger the public safety, health, or comfort; nor unreasonably disturb the peace.
  - d. Shall not sell on the street side of the vehicle or conveyance.
  - e. Shall comply will all clauses and regulations of State of Vermont Department of Health regarding food handling.
  - f. Shall not misrepresent facts to the town clerk / police department or to the public.
  - g. Shall not sell, operate or supply any good or service unless properly licensed by the state and/or county.
  - h. Shall not shout, cry out, or use sound making devices (including horns, whistles, bells, loudspeakers sound amplification systems).
  - i. Shall not physically accost, restrain or otherwise interfere with the free movement of any individual.
  - j. Shall not enter upon private property that contains a sign or notice that soliciting is prohibited. Solicitors shall also promptly leave when requested by the owner or resident.
  - k. Shall comply with all requirements enumerated in this chapter.
- B. Violations will be issued in a manner described in 6.11.160 of this chapter.
- C. Violations may be cause for the Town Clerk to revoke the permit and privileges to solicit.

### 6.11.110 Defacing Buildings, Structures and Signs

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- A. No person shall apply or cause to be applied any paint, varnish, lead, crayon, wax, ink, dye or other indelible substance, nor shall any person carve, chisel or write any figure or letter on the exterior or interior walls or on the windows of any building or structure or deface or any sign or signal without having authority from the owner or authorized agent.

*Cross References. Trespass and Malicious Injuries to Property.  
See, Unlawful Mischief 13 VERMONT STATUTES ANNOTATED. § 3701;  
See, Interference with devices or signals 23 VERMONT STATUTES ANNOTATED. § 1028.*

### **6.11.120 Alcohol**

- A. No person shall have constructive or actual possession of an open beverage container in any public place or in any motor vehicle located in a public place.
- B. No person shall consume the contents of an open beverage container in any public place or in any motor vehicle in a public place.
- C. Notwithstanding subsections (1) to (2) hereof, it shall not be unlawful to possess an open beverage container or to consume the contents where permits have been issued by the Town of Essex.
- D. Violations of this section are punishable by the penalties listed below. However, the penalty shall be waived upon the successful completion of a restorative or reparative justice program through the Community Justice Center.

*Cross References. Operation of Vehicles,  
See, Open Container 23 VERMONT STATUTES ANNOTATED. § 1134(a)*

### **6.11.130 Open Fires**

- A. Burning materials other than-brush, grass, natural unpainted, unstained, untreated dimension lumber and wood products is not allowed in the Town of Essex.
- B. Materials such as tires, solid waste, composite materials, treated, painted or stained, pressure treated materials, other like materials and/or trash are specifically prohibited.
- C. Residents wishing to burn brush, grass, natural unpainted, unstained, untreated dimension lumber, wood products shall obtain a permit using the manner (online or in person) specified by the Essex Fire Department prior to burning. The times of burning will be allowed by the fire warden or fire chief.
- D. Individuals with a valid permit are responsible for control of the fire at all times preventing its escape from their property. Fires must have extinguishment resource within twenty (20) feet of

# TOWN OF ESSEX MUNICIPAL CODE

the fire. Fires must be ten (10) feet away from a structure and must be built where they will not escape.

- E. Cooking or outdoor fireplaces are allowed with proper fuels to include charcoal, firewood, liquid propane (LP) or natural gas.
- F. This prohibition shall not include training exercises by the Essex Junction Fire and Essex Town Fire Departments. The Legislative body, with the concurrence of the Essex Town Fire Chief, may approve a burn permit for a community event provided that the Essex Town Fire Department is present.

## 6.11.140 Fireworks

- A. Except as hereinafter provided it shall be unlawful for any person, firm, co-partnership or corporation to offer for sale, expose for sale, sell at retail or wholesale, possess, use or explode any fireworks; and it shall also be unlawful for any person, firm, co-partnership or corporation to transport fireworks except in interstate commerce.

*Cross References. Internal Security and Public Safety,  
See, Fireworks, 20 VERMONT STATUTES ANNOTATED. § 3132 et seq.*

## 6.11.150 Enforcement

- A. This is a civil ordinance and shall be enforced in accordance with 24 VERMONT STATUTES ANNOTATED. § 1974a et seq. and 1977.

## 6.11.160 Violations – Penalties

- A. Any person in violation of any provisions of this chapter shall be considered a civil violation. If any violation continues, each day shall constitute a new violation. Offenses shall be counted on a calendar year basis.

- a. Waiver Fees

An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First Offense	\$50.00
Second Offense	\$100.00
Third Offense	\$200.00
Fourth and subsequent Offense	\$400.00

- *Fire calls only - fine plus fire department expense up to \$800.00*

- b. Civil Penalties

# TOWN OF ESSEX MUNICIPAL CODE

An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First Offense	\$100.00
Second Offense	\$200.00
Third Offense	\$400.00
Fourth and subsequent Offense	\$800.00

- *Fire calls only - fine plus fire department expense up to \$800.00.*

- c. Fire Department expenses
  - i. Fire Engine \$200.00 per hour including crew.
  - ii. Tanker \$125.00 per hour including crew.
  - iii. Utility vehicles \$75.00 per hour including crew.

- B. In addition to the enforcement procedures available before the Judicial Bureau, the Manager or their designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law.

## **6.11.170 Severability**

- A. If any portion of this ordinance and any amendments made hereto are held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and amendments made hereto shall not be affected and shall remain in full force and effect. If any statute referred to in this ordinance shall be amended this ordinance shall be deemed to refer to such statute as amended.

## **Chapter 6.12**

### **PUBLIC INDECENCY**

#### **Sections:**

**6.12.010 Authority.**

**6.12.020 Purpose of provisions.**

**6.12.030 Definitions.**

**6.12.040 Public indecency.**

**6.12.050 Violation—Penalty.**

#### **6.12.010 Authority.**

This chapter is enacted pursuant to the authority granted to the Town of Essex to promote the public health, safety, welfare, and convenience contained in 24 VERMONT STATUTES ANNOTATED and Section 2291 and Section 103 of the Town of Essex Charter. This ordinance shall be a civil ordinance within the meaning of 24 VERMONT STATUTES ANNOTATED Chapter 59. (Ord. passed 7/15/96 (part))

# TOWN OF ESSEX MUNICIPAL CODE

## 6.12.020 Purpose of provisions.

It is the purpose of this chapter to regulate public indecency, including public nudity, which is deemed to be a public nuisance. (Ord. passed 7/15/96 (part))

## 6.12.030 Definitions.

As used in this chapter, the following terms are defined in this section:

“Nudity” shall mean the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion of the nipple, or the depiction of covered male genitals in a discernibly turgid state. (Ord. passed 7/15/96 (part))

## 6.12.040 Public indecency.

A. No person shall knowingly or intentionally in a public place:

1. Engage in sexual intercourse; or
2. Appear in a state of nudity; or
3. Fondle his/her genitals; or
4. Fondle the genitals of another person; or
5. Fondle his/her breasts; or
6. Fondle the breasts of another person.

B. No person who owns, leases or controls property shall knowingly allow any person to engage in the conduct described in subsection (A) of this section at any time such property is open to the public. (Ord. passed 7/15/96 (part))

## 6.12.050 Violation—Penalty.

A. Any person who violates this section shall be subject to a civil penalty of up to five hundred dollars (\$500) per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not contest the municipal complaint and pays the waiver fee. Police officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation.

First offense	\$25.00
Second offense	\$50.00
Third offense	\$100.00
Fourth and subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis.

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

## TOWN OF ESSEX MUNICIPAL CODE

First offense	\$50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth and subsequent offenses	\$400.00

Offenses shall be counted on a calendar year basis.

D. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 7/15/96 (part))

# TOWN OF ESSEX MUNICIPAL CODE

## Title 7

### MOTOR VEHICLES, TRAFFIC AND PARKING

#### Chapters:

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# TOWN OF ESSEX MUNICIPAL CODE

## Chapter 7.01

### GENERAL PROVISIONS

#### Sections:

**7.01.010 Adoption Authority**

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\*Prior ordinance history: Ordinance passed 6/7/21

#### **7.01.010 Adoption authority**

- A. Pursuant to the provisions of Title 23, Chapter 13, Subchapter 1 and Title 24, Chapter 59, VERMONT STATUTES ANNOTATED, and the Charter of the Town of Essex, the Legislative body of the Town of Essex hereby ordains that the following Motor Vehicles, Traffic and Parking Ordinance is adopted for the Town of Essex and is designated as a civil ordinance.
- B. The adoption of this ordinance shall not affect prosecution for violations committed prior to the effective date of this ordinance, does not waive any fee or penalty due or not paid on the effective date and does not affect the validity of any bond, letter of credit or cash deposit posted, filed or deposited pursuant to the requirements of any other ordinance.

#### **7.01.020 Purpose**

- A. In the interest of the public health, safety and welfare of the Town of Essex, this ordinance is adopted to establish special traffic and parking regulations on the public highways within the Town of Essex, Vermont.

#### **7.01.030 Definitions**

- A. Word and/ or phrases when used in the ordinance shall, for purposes of this ordinance, have the meanings respectively ascribed to them herein, except when the context otherwise requires.
- B. Whenever any words and/ or phrases used herein are not defined, but are defined in the state statute regulating the operation of vehicles, any such definition therein shall be deemed to apply to such words or phrases used herein, except when the context otherwise requires.

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- C. The definitions of Title 23, section 4, VERMONT STATUTES ANNOTATED are incorporated herein by reference.

## **7.01.040 Enforcement**

- A. This is a civil ordinance and shall be enforced by enforcement officials in the Vermont Judicial Bureau in accordance with Title 24, Chapter 59 and Title 23, Chapter 13, VERMONT STATUTES ANNOTATED.

## **7.01.050 Violations – Penalties**

- A. Any person who violates any provision of this Title 7, Chapters 7.04 through 7.16 shall be considered to have committed a civil traffic violation that falls under the jurisdiction of the Vermont Judicial Bureau and penalties shall be assessed according to the Judicial Bureau Waiver Penalty schedule of fines in effect at the time of the violation, as the same shall be amended from time to time.

## **7.01.060 Severability**

- A. If any portion of this ordinance and any amendments hereto are found unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and amendments made hereto shall not be affected by such finding, and shall remain in full force and effect. If any statute referred to in this ordinance shall be amended this ordinance shall be deemed to refer to such statute as amended.

## **CHAPTER 7.02**

[Reserved]

## **CHAPTER 7.03**

[Reserved]

## **Chapter 7.04**

### **TRAFFIC LIGHTS AND STOP SIGNS**

#### **Sections:**

**7.04.010 Traffic Control Signals - Meaning**

**7.04.020 Traffic Control Signals - Location**

**7.04.030 Additional Traffic-Control Devices**

**7.04.040 Stop signs—Locations designated**

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## 7.04.050 Yield signs—Locations designated

\*Prior ordinance history: Ordinances passed 5/15/89, 1/22/90, 8/4/90, 8/5/91, 12/16/91, 3/20/95, 11/20/95, 6/17/96, 12/16/96, 12/97, 9/1/98, 10/5/98, 10/4/99, 9/10/01, 1/19/09, 1/10/11, 6/7/21.

## 7.04.010 Traffic Control Signals – Meaning

- A. Whenever traffic is controlled by traffic-control signals exhibiting the words “Go,” “Caution,” or “Stop,” or exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, only the following colors shall be used, except for special pedestrian signals carrying a word legend, and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as follows:
  - a. Vehicular traffic facing the signal, except when prohibited by law from passing a stopped school bus, may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. Vehicular traffic, including vehicles turning right or left, shall yield the right of way to other vehicles or to pedestrians lawfully within the intersection or on an adjacent crosswalk at the time such signal is exhibited.
  - b. Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.
- C. Steady yellow signal:
  - a. Vehicular traffic facing the signal is thereby warned that a red signal will be exhibited immediately thereafter, and such vehicular traffic shall not enter the intersection.
  - b. Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal, are advised that there is insufficient time to cross the roadway before a red signal is shown, and no pedestrian shall start to cross the roadway.
- D. Steady red signal:
  - a. Vehicular traffic facing the signal shall stop at a clearly marked stop line and / or before entering the crosswalk on the near side of the intersection, but if none, then before entering the intersection.
  - b. Except when a sign or signal is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping as required in subsection (a). This traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection. No motorist shall turn right when

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facing a red arrow signal indication unless a regulatory sign is present which permits the movement.

- c. Unless otherwise directed by a pedestrian-control signal, no pedestrian facing the signal alone shall enter the roadway.

E. Red with green arrow:

- a. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians and to other traffic lawfully using the intersection.

F. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as follows:

- a. Flashing red: When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. This section does not apply to railroad grade crossings.
- b. Flashing yellow: When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed only with caution.

**7.04.020 Traffic Control Signals – Location**

- A. Permanent traffic-control lights now or hereafter located and in operation at the following intersections are authorized to continue in use and operation:

	<b><u>STREET NAME</u></b>	<b><u>INTERSECTING STREET(s)</u></b>
1.	Allen Martin Drive	Jericho Road (VT-15); <i>** effective upon completion</i>
2.	Billie Butler Drive	Upper Main Street (VT-15);
3.	Blair Road	Susie Wilson Bypass, Kellogg Road, Susie Wilson Road;
4.	Browns River Road (VT-128)	Center Road (VT-15), Towers Road and Jericho Road (VT-15);
5.	Center Road (VT-15)	Old Stage Road, Upper Main Street (VT-15), Commonwealth Avenue;
6.	Center Road (VT-15)	Essex Way;
7.	Center Road (VT-15)	Essex Shopping Center (90 Center Road), residence at 95 Center Road;
8.	Center Road (VT-15)	Towers Road, Browns River Road (VT-128), Jericho Road (VT -15);

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9.	Circumferential Highway (VT-289) Exit 7 westbound	Colchester Road (VT-2A);
10.	Circumferential Highway (VT-289) Exit 9 east/westbound	Upper Main Street (VT-15);
11.	Circumferential Highway (VT-289) Exit 10 east/westbound	1. Essex Way;
12.	Circumferential Highway (VT-289) Exit 12 eastbound	River Road (VT-117);
13.	Commonwealth Avenue	Center Road (VT-15), Old Stage Road, Upper Main Street (VT-15);
14.	Colchester Road (VT-2A)	Susie Wilson Bypass, Circumferential Highway (VT-289) (7 entrance ramp);
15.	Colchester Road (VT 2A)	Circumferential Highway (VT-289) - exit ramp at 7;
16.	Essex Way	Circumferential Highway (VT-289) - entrance / exit ramps at 10;
17.	Essex Way	Center Road (VT-15);
18.	Ethan Allen Avenue	Fort Parkway (VT-15);
19.	Fort Parkway (VT-15)	Ethan Allen Avenue;
20.	Fort Parkway (VT-15)	Pearl Street, Susie Wilson Road;
21.	Gauthier Drive	Kellogg Road, Morse Drive;
22.	Jericho Road (VT15)	Browns River Road (VT-128), Center Road (VT-15), Towers Road;
23.	Jericho Road (VT-15)	Sand Hill Road <i>**effective upon completion;</i>
24.	Jericho Road (VT-15)	Allen Martin Drive <i>**effective upon completion;</i>
25.	Joshua Way	Susie Wilson Road, Sunderland Way;
26.	Kellogg Road	Susie Wilson Road, Blair Road, Susie Wilson Bypass;
27.	Kellogg Road	Morse Drive, Gauthier Drive;
28.	Kellogg Road	New England Drive;
29.	Morse Drive	Kellogg Road, Gauthier Drive;
30.	New England Drive	Kellogg Road;
31.	Old Stage Road	Upper Main Street (VT-15), Commonwealth Avenue, Center Road (VT-15);
32.	Pinecrest Drive	Susie Wilson Road; 10 Susie Wilson Road;
33.	River Road (VT-117)	Sand Hill Road;
34.	Sunderland Way	Susie Wilson Road, Joshua Way;
35.	Sand Hill Road	Jericho Road; <i>**effective upon completion</i>
36.	Susie Wilson Bypass	Kellogg Road; Susie Wilson Road, Blair Road,
37.	Susie Wilson Road	Fort Parkway (VT-15), Pearl Street;
38.	Susie Wilson Road	Joshua Way, Sunderland Way;
39.	Susie Wilson Road	Pinecrest Drive; 10 Susie Wilson Road;
40.	Susie Wilson Road	Market Place, David Drive;

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41.	Susie Wilson Road	Blair Road, Susie Wilson Bypass, Kellogg Road;
42.	10 Susie Wilson Road	Susie Wilson Road, Pinecrest Drive;
43.	Towers Road	Center Road (VT-15), Jericho Road (VT-15), Browns River Road (VT-128);
44.	Upper Main Street (VT-15)	Circumferential Highway (VT-289) entrance / exit ramps eastbound and westbound at 9;
45.	Upper Main Street (VT-15)	Billie Butler Road / 72 Upper Main Street;
46.	Upper Main Street (VT-15)	Old Stage Road, Commonwealth Avenue, Center Road (VT-15).

### 7.04.030 Additional traffic-control devices

- A. Other traffic-control devices of a mobile or portable nature may temporarily be utilized by the police, fire and public works departments for emergency situations as they deem necessary.

### 7.04.040 Stop signs—Locations designated

- A. The following streets, avenues and roads shall have erected thereon stop signs to control the traffic as stated below. All vehicles, motorcycles and other forms of common conveyance shall be caused to come to a full stop by the operators thereof in obedience to the traffic-control signs. Such vehicles shall not proceed from the stop position until the road onto which it is proceeding is clear.

<u>STREET NAME</u>	<u>INTERSECTING STREET(S)</u>
1. Abare Avenue	Susie Wilson Road;
2. Abare Avenue	Damon Drive;
3. Alder Lane	Browns River Road (VT-128);
4. Alder Lane	Jericho Road (VT-15);
5. Alderbrook Road	Greenbriar Drive;
6. Allen Martin Drive	Jericho Road (VT-15) (East / Westbound);
7. Allen Martin Parkway	Sand Hill Road;
8. Andrew Avenue	Gauthier Drive;
9. Baker Street	Greenfield Road;
10. Baker Street	Logwood Circle;
11. Bashaw Drive	Sydney Drive (East and West);
12. Billie Butler Drive	Billie Butler Drive; Carmichael Street;
13. Billie Butler Drive	Carmichael Street (South);
14. Blackberry Lane	Bobolink Circle;
15. Blair Road	Pioneer Street;
16. Blair Road	Susie Wilson Road;
17. Bluestem Road	Clover Drive;
18. Bluestem Road	Cedar Street;
19. Bixby Hill Road	Browns River Road (VT-128);
20. Bobolink Circle	Clover Drive (North and South);

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21. Brigham Hill Lane	Brigham Hill Road;
22. Brigham Hill Road	Old Stage Road;
23. Bushey Lane	Gauthier Drive;
24. Butternut Court	Margaret Street;
25. Button Drive	Jackson Heights;
26. Button Drive	Pioneer Street;
27. Cabot Drive	Old Stage Road;
28. Cabot Drive	Chelsea Road;
29. Carmichael Street	Billie Butler Drive;
30. Carmichael Street	Essex Way;
31. Carmichael Street	Commonwealth Avenue (North and *South) <i>*effective upon</i> <i>acceptance;</i>
32. Catella Road	Osgood Hill Road;
33. Cavendish Court	Peacham Lane;
34. Cavendish Court	Weathersfield Bow;
35. Cedar Court	Cedar Street;
36. Cedar Street	Clover Drive;
37. Cemetery Road	Sand Hill Road;
38. Chapin Road	Towers Road;
39. Chase Court	Jericho Road (VT-15);
40. Chelsea Road	Cabot Drive;
41. Cindy Lane	Tanglewood Drive;
42. Circle Drive	Jericho Road (VT-15);
43. Clara Hill Lane	Sand Hill Road;
44. Clover Drive	Towers Road;
45. Colbert Street	Abare Avenue;
46. Colbert Street	Blair Road;
47. Colonel Page Road	Old Stage Road;
48. Colonel Page Road	Chapin Road;
49. Commonwealth Avenue	Carmichael Street (East and West) <i>*effective upon</i> <i>acceptance;</i>
50. Corporate Drive	Allen Martin Drive;
51. Craftsbury Court	Cabot Drive;
52. Craftsbury Court	Old Stage Road;
53. Creek Road	Rustic Drive;
54. Creek Road	Wildwood Drive;
55. Crestview Road	Drury Drive;
56. Dalton Drive	Dalton Drive;
57. Dalton Drive	Ethan Allen Avenue;
58. Damon Drive	Prescott Street;
59. Dartmoor Court	Hampshire Court;
60. David Drive	Susie Wilson Road;
61. Debra Drive	Sydney Drive (East and West);

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62. Deer Crossing Lane	Saxon Hill Road;
63. Devon Hill Court	Southdown Court;
64. Discovery Road	Lamore Road;
65. Doon Way	South Street;
66. Douglas Road	Towers Road;
67. Essex Commons	Jericho Road (VT-15)
68. Essex Highlands	Weed Road;
69. Essex Way	Stannard Drive;
70. Essex Way	Lang Drive;
71. Ethan Allen Avenue	Dalton Drive (Westbound);
72. Evergreen Drive	Stonebrook Circle (North and South) *effective upon acceptance;
73. Ewing Place	Susie Wilson Road;
74. Fern Hollow Road	Tanglewood Drive;
75. Fox Run Road	Weathersfield Bow;
76. Fleury Road	Towers Road;
77. Forest Road	Skyline Drive;
78. Foster Road	Sand Hill Road;
79. Founders Road	Sand Hill Road;
80. Freeman Woods	Essex Way;
81. Frederick Road	Lamell Avenue;
82. Gardenside Lane	Colchester Road (VT-2A);
83. Gentes Road	Colchester Road (VT-2A);
84. Gentes Road	Lamore Road (North and South);
85. Glenwood Drive	Tanglewood Drive (East and West);
86. Goodrich Lane	Brigham Hill Road;
87. Greenbriar Drive	Sand Hill Road;
88. Greenbriar Drive	Alderbrook Road (North and South);
89. Greenfield Road Extension	Greenbriar Drive;
90. Greenfield Road Extension	Greenfield Road;
91. Greenfield Road	River Road (VT-117);
92. Greenfield Court	Greenfield Road;
93. Griffin Lane	Gardenside Lane;
94. Griffin Lane	Colchester Road (VT-2A);
95. Hagan Drive	Lang Drive;
96. Hampshire Court	Suffolk Lane;
97. Hanley Lane	Osgood Hill Road;
98. Heatherbush Road	Valleyview Drive;
99. Heatherbush Road	Timberlane Drive;
100. Hickory Lane	Allen Martin Parkway;
101. Hickory Lane	Sage Circle;
102. High View Drive	Lamore Road;
103. Hillside Circle	Saxon Hollow Drive (North and South);

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104. Indian Brook Road	Old Stage Road;
105. Ira Allen Drive	Pioneer Street;
106. Ira Allen Drive	Jackson Heights;
107. Irene Avenue	Browns River Road (VT-128);
108. Irene Avenue	Marion Avenue;
109. Iris Street	Bixby Hill Road;
110. Iris Street	Bobolink Circle;
111. Jackson Heights	Pioneer Street;
112. Jackson Heights	Pinecrest Drive;
113. Jackson Street	Jackson Street;
114. Joseph Lane	Thomas Lane;
115. Joshua Way	Pinecrest Drive;
116. Kimberly Drive	Pinecrest Drive;
117. Kurk Drive	Pinewood Drive;
118. Lamell Avenue	Richard Street;
119. Lamoille Street	East Street;
120. Lamore Road	Gentes Road;
121. Landfill Road	Colchester Road (VT-2A);
122. Lang Drive	Essex Way;
123. Lang Drive	Hagan Drive;
124. Lang Farm Center	Essex Way;
125. Lasalle Road	Margaret Street;
126. Lasalle Road	Sand Hill Road;
127. Laurel Drive	Allen Martin Parkway;
128. Laurel Drive	Laurel Drive;
129. Lavigne Road	Sand Hill Road;
130. Leo Drive	Jericho Road (VT-15);
131. Lida Drive	Lang Drive;
132. Lida Drive	Repa Drive;
133. Lilac Lane	Jericho Road (VT-15);
134. Linden Lane	Glenwood Drive;
135. Locust Lane	Hubbells Falls Drive;
136. Locust Lane	Beech Street;
137. Logwood Circle	Greenbriar Drive;
138. Logwood Circle	Logwood Circle;
139. Londonderry Lane	Center Road (VT-15);
140. Londonderry Lane	Chelsea Road;
141. Lost Nation Road	Discovery Road;
142. Lost Nation Road	Old Stage Road;
143. Maplelawn Drive	Sand Hill Road (North and South);
144. Margaret Street	Sand Hill Road;
145. Marion Avenue	Irene Avenue;
146. Marion Avenue	Frederick Road;

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147. Market Place	Pinecrest Drive;
148. Market Place	Susie Wilson Road;
149. McGee Road	Lost Nation Road;
150. Naylor Road	Weed Road;
151. Naylor Road	Jericho Road (VT-15);
152. New England Drive	Gauthier Drive;
153. North Hillcrest Road	Hillcrest Road;
154. North Williston Road	River Road (VT-117);
155. Oakwood Lane	Tanglewood Drive;
156. Old Colchester Road	Colchester Road (VT-2A);
157. Old Pump Road	Old Pump Road (East and West);
158. Oliver Wight Drive	Allen Martin Drive;
159. Orleans Road	Upper Main Street (VT-15) *effective upon completion;
160. Orleans Road	Juniper Ridge Road *effective upon completion;
161. Osgood Hill Road	Browns River Road (VT-128);
162. Parizo Drive	Pinecrest Drive;
163. Patricia Place	Margaret Street;
164. Partridge Drive	Allen Martin Parkway;
165. Partridge Drive	Partridge Drive;
166. Peacham Lane	Willoughby Drive;
167. Peacham Lane	Old Stage Road;
168. Peacham Lane	Peacham Lane;
169. Perkins Drive	River View Drive (North and South);
170. Perry Drive	Lavigne Road;
171. Pettingill Road	Browns River Road (VT-128);
172. Pinecrest Drive	Colchester Road (VT-2A);
173. Pinewood Drive	River Road (VT-117);
174. Pinewood Drive	Valleyview Drive;
175. Pioneer Street	Abare Avenue;
176. Pioneer Street	Pinecrest Drive;
177. Prescott Street	Abare Avenue;
178. Pool Road	Sand Hill Road;
179. Pomfret Lane	Fox Run Road;
180. Raymond Drive	Winterlane Circle;
181. Raymond Drive	River View Drive;
182. Red Pine Circle	Thompson Drive; *effective upon acceptance;
183. Repa Drive	Essex Way;
184. Repa Drive	Hagan Drive;
185. Richard Street	Jericho Road (VT-15);
186. Ridge Road	Skyline Drive;
187. Ridge Road	Valleyview Drive;
188. River View Drive	Pinewood Drive (North and South);
189. Ronald Court	Lamell Avenue;

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190. Rosewood Trail	Tanglewood Drive;
191. Royal Park	Pinecrest Drive;
192. Rustic Drive	Forest Road;
193. Sage Circle	Butternut Court;
194. Sand Hill Road	Jericho Road (VT-15) (East and West); * <i>deleted upon completion of traffic signals;</i>
195. Sand Hill Road	Allen Martin Drive (North and South); * <i>deleted upon completion of traffic signals;</i>
196. Sand Hill Road	River Road (VT-117);
197. Sand Hill Road -Northbound	Sand Hill Road;
198. Sand Hill Road- Southbound	Sand Hill Road; Allen Martin Drive;
199. Saybrook Road	Center Road (VT-15);
200. Sawmill Road	Sawmill Road (North and South);
201. Saxon Hill Road	Jericho Road (VT-15);
202. Saxon Hollow Drive	Allen Martin Parkway;
203. Saxon Hollow Drive	Greenbriar Drive;
204. Skyline Drive	Forest Road;
205. Skyline Drive	Valleyview Drive;
206. Sleepy Hollow Road	Weed Road;
207. Southdown Court	Suffolk Lane;
208. Stannard Drive	Essex Way (North and South);
209. Stanton Drive	River Street;
210. Stearns Avenue	Jackson Heights;
211. Stearns Avenue	Pioneer Street;
212. Steeplebush Road	Bobolink Circle;
213. Steeplebush Road	Cedar Street;
214. Stonebrook Circle	Windridge Road;
215. Suffolk Lane	Pinecrest Drive (East and West);
216. Sunset Drive	Center Road (VT-15);
217. Tanglewood Drive	Sand Hill Road;
218. Thistle Lane	Fox Run Road;
219. Thomas Lane	Browns River Road (VT-128);
220. Thomas Lane	Thomas Lane;
221. Thompson Drive	Allen Martin Drive;
222. Towers Road	Old Stage Road;
223. Towers Road Extension	Old Stage Road;
224. Turcotte Road	Gauthier Drive;
225. Vale Drive	Countryside Drive;
226. Vale Drive	Brickyard Road;
227. Valleyview Drive	River Road (VT-117);
228. Valleyview Drive	Windridge Road;
229. Washington Circle	Orleans Road (North and South); * <i>effective upon acceptance</i>
230. Walden Woods	Indian Brook Road;

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231. Weathersfield Bow	Willoughby Drive;
232. Weed Road	Browns River Road (VT-128);
233. Weed Road	Jericho Road (VT-15);
234. West Sleepy Hollow Road	Browns River Road (VT-128);
235. Whitcomb Meadows Lane	Jericho Road (VT-15);
236. Whitetail Lane	Deer Crossing Lane;
237. Wildwood Drive	Forest Road;
238. Willoughby Drive	Old Stage Road;
239. Windridge Road	Wildwood Drive;
240. Winterlane Circle	Timberlane Drive;
241. Wolfe Drive	River View Drive;
242. Woodlawn Court	Woodlawn Drive;
243. Woodlawn Drive	Tanglewood Drive;

## 7.04.050 Yield signs—Locations designated

- A. The following streets, avenues and roads shall have erected thereon yield signs so as to control the traffic as stated below. All vehicles, motorcycles and other forms of common conveyance shall yield to all traffic and assure that the way is clear of all motor vehicles, bicycles and pedestrians before entering the following streets or highways, when a yield sign so indicating is installed:

<u>STREET NAME</u>	<u>INTERSECTING STREET</u>
1. Billie Butler Drive	Upper Main Street (VT-15);
2. Carmichael Street	Billie Butler Drive (west side of triangle);
3. Dalton Drive	Ethan Allen Avenue;
4. Lamore Road	Lost Nation Road;
5. Lost Nation Road	Curve Hill Road, Lost Nation Road;
6. Kellogg Road	Susie Wilson Road (southbound);
7. Osgood Hill Road	Osgood Hill Road at the triangle.

## Chapter 7.08

### ONE-WAY STREETS AND TURNING MOVEMENTS

#### Sections:

#### 7.08.010 One-Way Streets

#### 7.08.020 Do Not Enter

#### 7.08.030 Passing on One-Way Street; Marked Lanes

#### 7.08.040 Turning restrictions—Locations

#### 7.08.050 Bicycle path use restrictions

\*Prior ordinance history: Ordinances passed 5/15/89, 11/20/95, 6/17/96, 6/10/99, 6/7/21.

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## 7.08.010 One-Way Streets

- A. The following streets are hereby designated as one-way streets, and all traffic and travel thereon, except pedestrians, shall pass in the directions indicated, and not otherwise.

<u>STREET NAME</u>	<u>STARTING POINT</u>	<u>ENDING POINT</u>
1. Billie Butler Drive	Upper Main Street (VT-15)	Carmichael Street;
2. Billie Butler Drive	Carmichael Street	Upper Main Street (VT-15);
3. Lavigne Road	Perry Drive	Sand Hill Road;
4. Perry Drive	Jericho Road (VT-15)	Lavigne Road.

## 7.08.020 Do Not Enter

- A. The following streets are hereby designated as “Do Not Enter” and all traffic and travel thereon shall not pass.

<u>STREET NAME</u>	<u>INTERSECTION STREET</u>
1. Griffin Lane	Colchester Road (VT-2A);
2. Lavigne Road	Sand Hill Road;
3. Sand Hill Road	Jericho Road (VT-15) west intersection;
4. Susie Wilson Road	Susie Wilson Bypass.

## 7.08.030 Passing on One-Way Street; Marked Lanes

- A. On the streets and roads in the Town of Essex designated as one-way traffic, and on those streets and roads where, by appropriate pavement, street markings or signs more than one lane of traffic is designated in the same direction, it shall become lawful to overtake and pass a vehicle proceeding in the same direction on either side thereof. The operator of any such vehicle, upon any such street shall, before turning their vehicle from one traffic lane into another traffic lane, indicate by hand signal or directional light their intentions so to do, and shall turn into the other lane only after using due care and caution to avoid accidents.
- B. Where traffic lanes are so marked to indicate their use for a right turn only, left turn only, through traffic only, or a combination of the above of same, no person shall operate a vehicle except in the direction so indicated by such markings.

## 7.08.040 Turning restrictions—Locations

- A. No vehicle of any type, motorcycle, or other form of common conveyance, shall make left-hand turns from:

<u>STREET NAME</u>	<u>INTERSECTING STREET</u>
a. Griffin Lane	Colchester Road (VT-2A);



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- a. Fort Parkway (VT-15) westbound      Ethan Allen Avenue;

## 7.08.050 Bicycle path use restrictions

- A. No motor vehicle of any type shall be within all areas designated as a bicycle lane, multi-use recreation path or sidewalk.

## Chapter 7.12

### SPEED LIMITS

#### Sections:

#### 7.12.010 Twenty-five Miles per Hour Speed Limit

#### 7.12.020 Speed Limits above 25 Miles per Hour

#### 7.12.030 Exemptions for emergency vehicles

#### 7.12.040 Penalties

\*Prior ordinance history: Ordinances passed 4/17/72, 5/15/89, 5/4/92, 11/1/93, 3/20/95, 11/20/95, 6/3/96, 6/17/96, 12/16/96, 12/97, 9/1/98, 9/10/01, 1/27/03, 1/19/09, 1/10/11, 6/7/21.

#### 7.12.010 Twenty-five Miles per Hour Speed Limit

- A. No vehicle of any type, motorcycle, or other form of common conveyance, shall be operated at a speed in excess of twenty-five miles per hour on any road in the Town of Essex except as provided in section 7.12.020.

#### 7.12.020 Speed Limits above Twenty-five Miles per Hour

- A. No vehicle of any type, motorcycle, or other form of common conveyance, shall be operated at a speed in excess of that listed below and posted on the streets and roads named:

<u>STREET NAME</u>	<u>STARTING POINT</u>	<u>ENDING POINT</u>	<u>SPEED LIMIT</u>
Allen Martin Drive	Sand Hill Road	Jericho Road (VT-15)	35
Allen Martin Parkway	Sand Hill Road	To the End of Road	30
Browns River Road (VT-128)	Jericho Road (VT-15)	0.15± miles N of Bixby Hill Road	30
Browns River Road (VT-128)	.15± miles N of Bixby Hill Road	0.55± miles S of Weed Road	40
Browns River Road (VT-128)	0.55± miles S of Weed Road	Westford Town Line	50
Brigham Hill Road	Old Stage Road	Colchester Town Line	30

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Center Road (VT-15)	Old Stage Road	0.10± miles W of Sunset Drive	40
Center Road (VT-15)	.10± W of Sunset Drive	Jericho Road (VT-15)	35
Chapin Road	Towers Road	Westford Town Line	35
Cilley Hill Road	Jericho Town Line	Westford Town Line	30
Circumferential Highway (VT-289)	Colchester Road (VT-2A)	River Road (VT-117)	50
Clover Drive	Towers Road	To cul de sac	30
Colchester Road (VT-2A)	Village Limits	0.062 ± miles North of Village Limits	35
Colchester Road (VT-2A)	0.62± miles N of Village limits	0.14± miles North of Gentes Road	40
Colchester Road (VT-2A)	0.14± miles N of Gentes Road	Colchester Town line	50
Corporate Drive	Allen Martin Drive	To the end of road	35
Curve Hill Road	Lost Nation Road	Colchester Town Line	30
Discovery Road	Lamore Road	Lost Nation Road	35
Essex Way	Center Road (VT-15)	Lang Drive	35
Essex Way	Lang Drive	Sydney Drive	30
Fort Parkway (V-15) EB	Colchester Town Line	Susie Wilson Road	45
Fort Parkway (VT-15) WB	Susie Wilson Road	Colchester Town Line	45
Gauthier Drive	Kellogg Road	To cul de sac	30
Gentes Road	Colchester Road (VT-2A)	Colchester Town Line	35
Jericho Road (VT -15)	Center Road (VT-15)	0.15± miles E of Sand Hill Road	35
Jericho Road (VT -15)	0.15± miles E of Sand Hill Road	0.12± mi E of Whitcomb Meadows Lane	40
Jericho Road (VT -15)	0.12± miles E of Whitcomb Meadows Lane	Jericho town line	50
Kellogg Road	Susie Wilson Road	450± ft W of Gauthier Drive	30
Kellogg Road	450± ft W of Gauthier Drive	Colchester Town Line	35
Lamore Road	Gentes Road	Lost Nation Road	35
Lincoln Street	0.043 ± mi N of North Street	Village limits	35
Lost Nation Road	Old Stage Road	To end of road	35
Naylor Road	Jericho Road (VT-15)	Weed Road	30
New England Drive	Kellogg Road	Gauthier Drive	30
North Williston Road	River Road (VT-117)	Williston Town Line	30
Old Pump Road	Sleepy Hollow Road	Jericho Town Line	30
Old Stage Road	Center Road (VT-15)	400± ft N of Willoughby Drive	30
Old Stage Road	400ft N of Willoughby Drive	Westford Town Line	40
Osgood Hill Road	Browns River Road (VT-128)	Westford Town Line	35
Pearl Street (VT-15) EB	Susie Wilson Road	Essex Junction Village Limits	45
Pettingill Road	Browns River Road (VT-128)	Westford Town Line	30
Pinecrest Drive	Susie Wilson Road	Colchester Road (VT-2A)	30
Pinewood Drive	River Road (VT-117)	Valleyview Drive	35
River Road (VT-117)	Village Limits	0.20± miles E of Sand Hill Rd	40

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River Road (VT-117)	0.20± miles East of Sand Hill Rd	0.20± miles E of North Williston Rd	45
River Road (VT-117)	0.20± miles E of N. Williston Rd.	Jericho Town line	50
River Street	Park Street (VT-2A)	Robinson Parkway	35
Sand Hill Road	Jericho Road (VT-15)	700±ft N of Founders Road	30
Sand Hill Road	1300±FT S of Founders Road	Allen Martin Drive	30
Sand Hill Road	Allen Martin Drive	River Road (VT-117)	35
Sawmill Road	Jericho Town line	End of Road	30
Saxon Hill Road	Jericho Road (VT-15)	Deer Crossing Lane	30
Susie Wilson Road	Pearl Street (VT-15)	Susie Wilson Bypass	35
Susie Wilson Bypass	Susie Wilson Road	Colchester Road (VT-2A)	40
Thompson Drive	Allen Martin Drive	To the end of road	35
Towers Road	Center Road (VT-15)	Clover Drive	30
Towers Road	Clover Drive	Old Stage Road	40
Upper Main Street (VT-15)	Village Limits	Old Stage Road	40
Weed Road	Jericho Road (VT-15)	Browns River Road (Route 127)	35
Willoughby Drive	Old Stage Road	Pomfret Lane	30

### 7.12.030 Exemptions for emergency vehicles

- A. Drivers of authorized emergency vehicles are exempt from the provisions of this chapter as set forth in Title 23, section 1015, VERMONT STATUTES ANNOTATED.

## Chapter 7.16

### WEIGHT LIMITS AND CONTROL OF THRU-TRUCK TRAFFIC

#### Sections:

**7.16.010 No Overweight Permits issued**

**7.16.020 Annual Overweight Permits - issued**

**7.16.025 Annual Overweight Permit - limitations**

**7.16.030 Overweight Permit - exclusions**

**7.16.040 Posting of permitted legal load limit**

**7.16.045 Posting for "No Thru Truck Traffic"**

**7.16.050 Weight Restrictions – Registered weight**

**7.16.060 Overweight violations - Penalties**

\*Prior ordinance history: Ordinances passed 5/15/89, 4/15/91, 2/6/95, 9/1/98, 6/10/99, 10/4/99, 6/7/21.

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## 7.16.010 No Overweight Permits Issued

- A. No vehicle or other form of common conveyance shall operate on Gentes Road Bridge at a weight in excess of twenty-four thousand pounds and no overweight permits will be issued for Gentes Road Bridge in excess of twenty-four thousand pounds.

## 7.16.020 Annual Overweight Permits – Issued

- A. No vehicle or other form of common conveyance shall operate on any Class 2, 3 or 4 Town Street, highway or bridge at a weight in excess of twenty-four thousand pounds, without an overweight permit issued by the town, except as excluded under Section 7.16.030.

## 7.16.025 Annual Overweight permits – Limitations

- A. The town may issue annual overweight permits for all Class 2, 3 and 4 town highways, streets and bridges with limited use restrictions as determined by the manager, the director of public works, or a designated representative of either official.
- B. Town overweight permits shall only be issued up to the legal state limits, as set forth in Title 23, Subchapter 15, VERMONT STATUTES ANNOTATED.
- C. All issued overweight permits shall contain a provision limiting vehicles to fifteen thousand pounds (two axle), eighteen thousand pounds (three axle) and twenty thousand pounds (tractor trailer only) on gravel roads during posted seasonal period(s) of weakened structural road conditions (such as mud season).

## 7.16.030 Overweight Permit - exclusions

- A. Overweight permits shall not be required for:
  - a. School buses,
  - b. Public agency transportation vehicles,
  - c. Emergency vehicles, or
  - d. Vehicles owned by or performing work for the Town of Essex.
- B. This article shall not apply to tractor, trailer, semi-trailer, motor trucks or any other motor vehicle making deliveries or emergency vehicles. This exemption shall also apply to motor vehicles originating from properties located on such street.
- C. Overweight permits shall not be required for emergency situations recognized by the manager, the director of public works, or a designated representative of either official, or chief of police or, in their absence, the shift supervisor; and vehicles with specific waivers granted by the legislative body, as the best interests of the town may require.

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## 7.16.040 Posting of permitted legal load limit

- A. Town roads shall be posted to notify drivers of weight requirements.
- B. Town roads, accessible only from other town roads with similar posted weight limits shall not be required to be signed, since vehicular access to the non-signed roads can only occur over posted (signed) roads.

## 7.16.045 Posting for “No Thru Truck Traffic”

- A. The following roads shall have signs posted with the designation: “No Thru Truck Traffic”:

<u>STREET NAME</u>	<u>STARTING POINT</u>	<u>ENDING POINT</u>
a. Alder Lane	Browns River Road (VT-128)	Jericho Road (VT-15);
b. Osgood Hill Road	Browns River Road (VT-128)	Westford Town Line;
c. Peacham Lane Extension	Old Stage Road	Willoughby Drive;
d. Sand Hill Road	Jericho Road (VT-15)	Allen Martin Drive;
e. Weed Road	Browns River Road (VT-128)	Jericho Road (VT-15).

- B. Exemptions are allowed at the discretion of the public works director or designee.

## 7.16.060 Overweight violations – Penalties

- A. Penalties for violations shall be in accordance with the schedule established by Title 23, section 1391a, VERMONT STATUTES ANNOTATED, Penalties for overweight operation.

## Chapter 7.20

### PARKING

#### Sections:

#### 7.20.005 Authority

#### 7.20.010 No parking—Both sides of street

#### 7.20.020 No parking—Single side of street

#### 7.20.030 Restricted parking

#### 7.20.040 Winter parking ban - December 1st through April 1st

#### 7.20.050 Abandoned Vehicles

#### 7.20.060 General parking restrictions

#### 7.20.070 Scoff law - Establishment and Maintenance of Scofflaw List

#### 7.20.080 Enforcement

#### 7.20.090 Parking Violations – Penalties

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\*Prior ordinance history: Ordinances passed 5/15/89, 10/5/92, 8/23/93, 12/16/96, 9/1/98, 9/10/01, 9/8/03, 10/4/04, 6/7/21.

## 7.20.005 Authority

- A. Violations of this Chapter 7.20 shall be brought as civil violations pursuant to Title 24, section 1974a, VERMONT STATUTES ANNOTATED.

## 7.20.010 No parking—both sides of street

- A. The following streets are designated no parking on either side of the street right-of-way:

<u>STREET NAME</u>	<u>STARTING / ENDING POINT</u>
a. Alder Lane	the entire length;
b. Allen Martin Parkway	the entire length;
c. Essex Way	Center Road (VT-15) to Lang Drive / Stannard Drive;
d. Ewing Place	Susie Wilson Road to the cul-de-sac;
e. Gauthier Drive	Kellogg Road to Turcotte Drive;
f. Hanley Lane	the entire length;
g. Hillcrest Road	to a point 90± feet south of Prospect Street;
h. Kellogg Road	Susie Wilson Road to the Colchester Town line;
i. Market Place	the entire length;
j. McGee Road	the entire length, except where designated;
k. Morse Drive	to a point 400 ± feet from Kellogg Road;
l. New England Drive	the entire length;
m. Old Colchester Road	Village limits to Colchester Road;
n. Old Stage Road	the entire length;
o. Pinecrest Drive	Susie Wilson Road to Colchester Road (VT-2A);
p. Red Pine Circle	the entire length;
q. Sand Hill Road	From Jericho Road (VT-15) to Allen Martin Drive;
r. Saybrook Road	Center Road (VT-15) to a point 195± feet south);
s. Sleepy Hollow Road	the entire length;
t. Susie Wilson Road	Pearl Street (VT-15) to Susie Wilson Bypass;
u. Susie Wilson Road	Blair Road to the cul-de-sac;
v. Thompson Drive	the entire length, excluding 1508± ft to 2480± ft from Allen Martin Drive on north side of Thompson Drive;
w. Towers Road	Browns River Road (VT-128) to Old Stage Road;
x. West Sleepy Hollow Road	from a point 630±ft south to the cul-de-sac;

## 7.20.020 No parking—Single side of street

- A. The following streets are hereby designated no parking on single side of street:

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<u>STREET NAME</u>	<u>SIDE / STARTING / ENDING POINT</u>
--------------------	---------------------------------------

- |                       |   |
|-----------------------|---|
| a. Dalton Drive       | south side, Ethan Allen Avenue to Colchester Town line;     |
| b. Ethan Allen Avenue | north side, Fort Parkway (VT-15) to Colchester Town line;   |
| c. Foster Road        | north side, 37 Foster Road to and including the cul-de-sac; |
| d. Fox Run Road       | north side, Pomfret Lane to Thistle Lane.                   |

## 7.20.030 RESTRICTED PARKING

- A. For this section, it shall be prima facie proof the registered owner of the vehicle on record with Vermont Department of Motor Vehicles is a resident of such street.
- B. Nothing in this section shall prevent residents from having family or friends visit.
- C. **Municipal Parking Lots:** No parking shall be permitted in the municipal parking lots between the hours of 12:00 midnight and 6:00 am. A person who is actively charging their vehicle at a charging station is exempt. However, the exemption does not apply during the winter parking ban, which is from December 1 through April 1.
- D. Vehicles parked as permitted under this section shall be subject to all other parking requirements of this Ordinance.

## 7.20.040 WINTER PARKING BAN - December 1st through April 1st

- A. No person shall park or leave unattended a vehicle of any type on any street, road, or right-of-way in the Town of Essex during the period of December 1st through April 1st of the next year between the hours of 12:00 midnight and 7:00 a.m. The parking or leaving of any vehicle in violation of this section is hereby declared to be a public nuisance.
- B. Exemptions
  - a. Exemptions may be granted by the chief of police or, in their absence, the shift supervisor on duty. All exemptions will be entered into a spreadsheet maintained with police dispatch that will contain:
    - i. The start and end date of the exemption;
    - ii. The street location;
    - iii. The supervisor approving exemption;
    - iv. The make, model and color of vehicle;
    - v. The registration and issuing state;
    - vi. The phone number of the person requesting exemption; and
    - vii. The owner of the vehicle.

## 7.20.050 Abandoned Vehicles

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- A. Leaving dismantled, non-operating, unregistered vehicles or trailers within the public right-of-way is prohibited. No person shall leave any partially dismantled, non-operative, wrecked, junked, unregistered vehicle or trailer on any street or highway within the Town of Essex.

### **7.20.060 General Parking Restrictions**

- A. No operator or driver shall stop, stand or park a motor vehicle or other vehicle on any street under any of the following conditions:
  - a. on a sidewalk or bike lane;
  - b. within an intersection;
  - c. on a crosswalk;
  - d. on any railroad tracks;
  - e. any place where official signs prohibit stopping, standing or parking;
  - f. in front of a public or private driveway;
  - g. within fifteen feet of a fire hydrant;
  - h. within any designated fire lane;
  - i. within thirty feet of an intersection with another street or road or designated crosswalk;
  - k. in any manner to impede or obstruct emergency vehicles;
  - l. on a two-way roadway except when the vehicle's right-hand wheels (passenger side of vehicle) are parallel to and within 12 inches of the right-hand curb or if there is no curb, within 12 inches of the edge of the roadway.
  - m. on a one-way roadway except when the vehicle is parallel to and within 12 inches of a curb or, if there is no curb, within 12 inches of the edge of the roadway, in the direction of authorized traffic movement
  - n. in any manner that blocks any intersection, street, lane, or alley identified by cross hatch marks and/or signs that say "Do not block";
  - o. parking or storage of equipment or unregistered vehicles or trailers within the municipality's right-of-way is prohibited;
  - p. in any space specified as reserved for a bus stop;
  - q. in any space specified as handicap w/out a valid permit.

### **7.20.070 SCOFFLAW -Establishment and Maintenance of Scofflaw List**

- A. The chief of police or designee is hereby authorized to create and maintain a list of all vehicles which have accumulated within the preceding thirty-six months, three or more unpaid parking violations. Before placing any vehicle on said list, the chief of police or designee shall notify the registered owner of this proposed action. The notice will be sent by first class mail or delivered by a designee, to the address on record at the State Department of Motor Vehicles, on forms prescribed and provided by the chief of police and shall:
  - a. describe the year, make and vehicle identification number of the vehicle;
  - b. contain a list of the unpaid tickets and the total amount of accumulated charges; and

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- c. provide a warning that unless said charges are paid within fifteen (15) days of the date of the notice, said vehicles will be placed on the scofflaw list forthwith.
- B. Removal and Storage of Vehicles
  - a. Any vehicle which has been placed on the scofflaw list and is parked on any public street or in any other place within the Town of Essex where the parking or leaving of said vehicle is governed by town ordinance may be removed and stored until the charges for all outstanding fines are paid.
- C. Record of Removed Vehicle
  - a. The chief of police and the owner of any public garage to which such vehicle is removed shall keep a record of each vehicle so removed by manufacturer's trade name or make, registration number or vehicle identification number if the vehicle is not registered, registered owner if the vehicle bears Vermont registration, such other descriptive matter as may be necessary to identify such vehicle, and the name and address of any claimant thereof. The chief of police or designee shall, in addition, keep a record showing date of such removal, place to which such removal is made and the reason for such removal. All such records shall be open to public inspection during normal business hours, and the chief of police or designee shall publish in a media forums in the town the record of any vehicle which shall remain unclaimed for a period of five days.
- D. Reclaiming of Vehicle
  - a. Before the owner shall be permitted to reclaim a vehicle, which has been removed, the owner shall:
    - i. Furnish satisfactory evidence to the chief of police or designee and to the owner or person in charge of such public garage of owner's identity and of their ownership of such vehicle;
    - ii. Pay to the police department all charges for removing said vehicle and all charges for the storing or parking thereof, the publication of record of removal and all outstanding fines; and
    - iii. Sign a written receipt acknowledging delivery of said vehicle.
- E. Charges
  - a. No charges made or incurred hereunder shall be in excess of the rate ordinarily charged by the person making such removal or doing such storing or parking, and if such removal, storing or parking is done by the police department, such charges shall not exceed the amount established by the manager.

## **7.20.080 Enforcement**

- A. Violations of the provisions in this Chapter 7.20 are considered to be civil traffic violations that fall under the jurisdiction of the Vermont Judicial Bureau in accordance with Title 24, sections 1974a and 1977, VERMONT STATUTES ANNOTATED.

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- B. State law authorizes the court administrator to refer past-due judgments to a designated collection agency (see Title 4 section 1109(d) and Title 13, section 7171, VERMONT STATUTES ANNOTATED). Persons who fail to pay their fines within 30 days will be sent to a collection agency for collection. In addition, the vehicles of such persons may be placed on the scofflaw list established and maintained pursuant to Section 7.20.080, above.

## 7.20.090 Parking Violations – Penalties

- A. A person who is charged with committing a parking violation shall submit a fine in the amount established under subsection (C) of this section.
- B. It shall be prima facie proof the registered owner, rental agency or company was in control of the vehicle at the time of the violation.
- C. Fines for parking violations will be as follows:

<b>Violations</b>	<b>Section</b>	<b>Waiver Fine</b>	<b>Civil Penalty</b>
ABANDONED VEHICLE	7.20.050(A)	\$25.00	\$50.00
UNREGISTERED VEHICLE/TRAILER/ EQUIPMENT	7.20.060(A)(o)	\$25.00	\$50.00
BLOCKING INTERSECTION	7.20.060(A)(b)	\$50.00	\$100.00
DO NOT BLOCK- STREET/ALLEY/DRIVEWAY	7.20.060(A)(f/n)	\$50.00	\$100.00
BUS STOP	7.20.060(A)(p)	\$25.00	\$50.00
FIRE HYDRANT	7.20.060(A)(g)	\$50.00	\$100.00
FIRE LANE	7.20.060(A)(h)	\$50.00	\$100.00
HANDICAPPED	7.20.060(A)(q)	\$100.00	\$200.00
NO PARKING -BOTH SIDES OF STREETS	7.20.010(A)	\$25.00	\$50.00
NO PARKING – SINGLE SIDE OF STREET	7.20.020(A)	\$25.00	\$50.00
NO PARKING – SIGNS	7.20.060(A)(e)	\$25.00	\$50.00
TOO CLOSE TO INTERSECTION	7.20.060(A)(i)	\$25.00	\$50.00
VEHICLE ON CROSSWALK	7.20.060(A)(c)	\$50.00	\$100.00
RESTRICTED PARKING	7.20.030	\$25.00	\$50.00
VEHICLE OBSTRUCTING SIDEWALK / BIKE PATH	7.20.060(A)(a)	\$50.00	\$100.00
PARKED LEFT OF CURB	7.20.060(A)(l)	\$25.00	\$50.00
ONE- WAY STREET PARKING	7.20.060(A)(m)	\$25.00	\$50.00
PARKED W/ WHEEL ON TOP OF CURB/ TOO FAR FROM CURB	7.20.060(A)(l)	\$25.00	\$50.00

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PARKED ON RAILROAD TRACKS	7.20.060(A)(d)	\$50.00	\$100.00
WINTER PARKING BAN	7.20.040(A)	\$25.00	\$50.00
IMPEDING EMERGENCY VEHICLES	7.20.060(A)(k)	\$150.00	\$300.00

**D. Authority to Remove vehicles**

- a. The parking or leaving of any vehicle in violation of this Chapter 7.20 is hereby declared to be a public nuisance. The chief of police or designee may remove any vehicle parked, or cause it to be removed, at the sole expense of the registered owner of such vehicle.
- b. Any vehicle removed for violating this Chapter 7.20 shall be impounded until lawfully claimed by the owner thereof or legally disposed of.

**E. Charges**

- a. No charges made or incurred shall be in excess of the rate ordinarily charged by the person making such removal or doing such storing or parking, and if such removal, storing or parking is done by the police department, such charges shall not exceed the amount established by the manager.

**Chapter 7.30**

**CLOSURE OF HIGHWAYS – FLOODING OR OTHER EMERGENCY EVENTS**

**Sections:**

**7.30.010 Persons responsible for closure order**

**7.30.020 Written permission required**

**7.30.030 Prohibited action on closure order**

**7.30.040 Penalties**

**7.30.050 Applicability to other ordinance section**

\*Prior ordinance history: Ordinances passed 9/10/01, 9/01/10, 6/7/21.

**7.30.010 Persons responsible for closure order**

- A. The public works director or chief of police or a designated representative(s) in their absence may order the closure of any town highway when the highway is, or it appears will become unsafe for public travel by virtue of flooding or other emergency events.

**7.30.020 Written permission required**

- A. Except with the written permission of the public works director or chief of police or designated representative(s) in their absence, no person shall drive a vehicle over any highway across which there is a gate or barrier indicating that the highway is closed to public travel.

**7.30.030 Prohibited action on closure order**

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- A. After closure, no person shall drive through or around any closed gate or barrier on the highway, open or attempt to remove any such gate or barrier or cause any damage to the gate or barrier.

## **7.30.040 Penalty for violation**

- A. Any person who violates the provisions of Section 7.30.030 hereof shall be liable for all costs incurred by the town for the repair or replacement costs incurred by the town, including the cost of emergency services or towing made necessary by violation of this ordinance.

## **7.30.050 Applicability to other ordinance sections**

- A. The foregoing provisions are separate from and in addition to any other ordinance of the Town of Essex or Vermont Statutes regulating traffic or highway use.

## **Chapter 7.40**

### **SPECIAL OCCASIONS**

#### **Section:**

#### **7.40.010 Authority**

#### **7.40.020 Purpose**

#### **7.40.030 Exceptions to the speed limit – provisions**

#### **7.40.040 Permit to close or obstruct public highway**

\*Prior ordinance history: Ordinances passed 9/10/01, 6/7/21.

#### **7.40.010 Authority**

- A. This ordinance is enacted by the Town of Essex legislative body to promote the public good, health, safety, and welfare of the Town and Title 23, section 1010, VERMONT STATUTES ANNOTATED, and pursuant to its authority under Sections 103 of the Town Charter.

#### **7.40.020 Purpose of provision**

- A. The purpose of this ordinance is to regulate traffic in the event there is a public occasion, maintenance or repair to a town highway or state aid streets and highways to prevent accident or injury to people. The legislative body finds that whenever there is a public occasion or repair or maintenance on a public highway, it appears that traffic will be congested by reason of such events. In order to ensure the public good, the town finds that it is necessary to pass a special regulation set forth in the section below.
- B. The Public Works or Police Departments may close such street to parking of vehicles by causing signs to be posted thereon in conspicuous locations indicating the prohibition of parking and the hours of the ban is in effect.

#### **7.40.030 Exceptions to the speed limit ordinance provisions**

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- A. During such time that there is any maintenance, construction or repair to any public highway, the speed limit of such public highway may be changed and/or motor vehicular traffic may be excluded for such public highway and such changes in the speed limit or exclusion of motor vehicles from public highways shall be conspicuously posted near all affected areas.

### **7.40.040 Permit to close or obstruct a public highway**

- A. A permit shall be obtained from the town by person or person(s) requesting such closure prior to the closure or obstruction of a highway (excluding the town workforce in the performance of their duties). The town may charge a permit fee or require a financial deposit for services performed by the town relative to terms and conditions of the permit.

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**Title 8**

**(RESERVED)**

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## **Title 9**

### **STREETS, SIDEWALKS AND PUBLIC PLACES**

#### **Chapters:**

**9.02 Highways**

**9.04 Parks**

**9.08 Indian Brook Park**

**9.12 Use of Public Land**

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## Chapter 9.02

### HIGHWAYS

#### Sections:

**9.02.010 Classification of highways.**

**9.02.020 General policy.**

**9.02.030 Maintenance of Class 4 town highways.**

**9.02.040 Improvement of Class 4 town highways.**

**9.02.050 Frontage on Class 4 town highways.**

**9.02.060 Upgrade of Class 4 town highways.**

**9.02.070 Upgrade of classification.**

**9.02.080 Waivers.**

**9.02.090 No liability.**

#### **9.02.010 Classification of highways.**

All highways in the Town of Essex are classified as Class 1, 2, 3 or 4, as specified in 19 VERMONT STATUTES ANNOTATED, Section 302. The purpose of each class and the town's responsibilities thereto are as follows:

A. Class 1. Town highways are those highways which form the extension of a state highway route and which carry a state route number. Maintenance and improvement of Class 1 highways are the responsibility of the Vermont Agency of Transportation.

B. Class 2. Town highways are those highways selected as the most important highways in town. As far as practicable, they shall be selected with the purpose of securing trunk lines of improved highways from town to town and to places which, by their nature, have more than the normal amount of traffic. The Selectboard, with the approval of the Vermont Agency of Transportation, determines which highways are to be Class 2 highways.

C. Class 3. Town highways are all public highways other than Class 1 or Class 2 highways in town. The Selectboard, after conference with a representative of the Vermont Agency of Transportation, determines which highways are Class 3 highways. The minimum standards for Class 3 highways are a highway negotiable, under normal conditions, all seasons of the year by a standard manufactured pleasure car. This would include, but not be limited to, sufficient surface and base, adequate drainage and sufficient width capable to provide winter maintenance.

D. Class 4. Town highways are all highways other than Class 1, 2 or 3. The Selectboard determines which highways are Class 4 highways. (Ord. passed 2/3/92)

#### **9.02.020 General policy.**

All new highways constructed in the town shall meet the minimum standards of the public works department highway specifications. For those highways for which subdivision approval is required from the planning commission, all requirements of the zoning regulations and subdivision regulations shall be met.

To the extent any new construction involves existing town highways, all expenses (including but not limited to surveying, engineering and legal) shall be borne by the applicant in the process of upgrading

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or resurveying town highways, and intersections thereto, installation of culverts, signs, et cetera. Additionally, all expenses incurred by the town in connection with these activities shall be borne by the applicant. (Ord. passed 2/3/92)

### **9.02.030 Maintenance of Class 4 town highways.**

Under 19 VERMONT STATUTES ANNOTATED, Section 310, "...Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town..."

It is the policy of the Town of Essex that no improvements or maintenance will be made by the town to any Class 4 roads not currently being maintained, as of the date of adoption of the ordinance codified in this chapter. This chapter is to ensure that the expense of upgrading these roads to accommodate additional development is not borne by the residents of the town. (Ord. passed 2/3/92)

### **9.02.040 Improvement of Class 4 town highways.**

The town does not encourage residential or commercial construction utilizing a Class 4 highway as primary access, as such development leads to scattered growth, burdens on municipal services and access problems for school buses, fire trucks and other emergency vehicles. Accordingly, it is the policy of the town to prohibit development on Class 4 highways until they are upgraded by other interested parties to the public works department highway specifications. (Ord. passed 2/3/92)

### **9.02.050 Frontage on Class 4 town highways.**

A Class 4 town highway is considered a highway for the purpose of land development and, therefore, abutting property owners have frontage on a town highway. (Ord. passed 2/3/92)

### **9.02.060 Upgrade of Class 4 town highways.**

A person seeking to upgrade a Class 4 highway, or a portion thereof, must apply to the Selectboard for permission to improve said road, using the procedures outlined in this section. This application is in addition to any other applications for development required by subdivision or zoning regulations.

A. Applicants must submit a written request to upgrade a Class 4 town highway to the public works director. The written request must include the name and address of the individual(s) or entity requesting the upgrade, a nonrefundable processing fee of fifty dollars, a list of names of all property owners abutting the portion to be upgraded, three copies of a survey map of the town highway prepared by a Vermont licensed surveyor and based on the original recorded description and on the existing roadbed, and three copies of a plan prepared and stamped by a Vermont licensed professional engineer for the proposed upgrade showing grade line, plan and profile of road and drainage layout (location and size). Calculations substantiating the proposed drainage system shall be provided. Any deviation from the public works specifications or this chapter shall be noted on the plan and waivers requested from the director of public works where necessary. (If the town survey of the highway has not been properly recorded, if the record has not been preserved or if its termination and boundaries cannot be ascertained, the applicant may request the town to resurvey the highway pursuant to 19 VERMONT STATUTES ANNOTATED Chapter 33. Any expenses incurred by the town for any resurvey work shall be borne by the applicant. The Selectboard may require prepayment of anticipated expenses as a condition of undertaking a resurvey.)

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In some cases, it may be in the best interest of the applicant and all abutting property owners to cooperate in the upgrade process. In this case, the survey based on the town survey or description may be omitted and replaced with a new survey of the proposed upgraded highway and commitments from all abutting property owners to convey the necessary land and easements to the town, free and clear of encumbrance, except existing waterline, sewer line, power line or telephone line easements which do not interfere with use or maintenance of the highway may be allowed at the discretion of the Selectboard. The conveyance shall include necessary easements for maintenance of watercourses or other drainage structures at desired locations outside the limits of the highway right of way.

The applicant (and participating property owners) shall, to the extent of land area owned by them, convey land to the town to create a road with a three-rod width.

B. At the time of application, the centerline of the highway shall be flagged at fifty-foot intervals and the location of all culverts shall be flagged.

C. If only a portion of a highway is to be upgraded by the applicant or the road is not a through highway, a turn-around (cul-de-sac or tee-shaped) must be provided at the end of the upgraded portion meeting the requirements of the public works specifications. The turn-around shall not be a portion of a driveway and shall be removed or altered if the road is further extended in the future. The party responsible for requesting the extension of the existing road shall bear the expense of removal or reconstruction of existing cul-de-sacs or turn-arounds. Upon notification of acceptance by the town, unencumbered marketable title shall be conveyed to the town by warranty deed, including a metes and bounds description of the limits of the right of way and any additional lands used in the turn-around with adequate lands to cover the slopes and drainage. The maximum length of a dead-end road shall be nine hundred feet, consistent with town subdivision regulations, with the exception that Class 4 town highways which have continuous highway right of way from one Class 3 or higher class road to another Class 3 or higher class road may exceed the nine hundred feet length.

D. In instances where the proposed upgrade will impact adversely on existing town facilities, e.g., ditches and culverts or the roadway itself, the applicant will be responsible for, and pay the costs of, any upgrade of said town facilities necessitated by the applicant's proposed design. The Selectboard shall determine which, if any, existing town facilities will require upgrade.

E. The Selectboard shall inspect the highway to be upgraded and, within forty-five days of receipt of the completed application, shall hold a public hearing to receive suggestions and recommendations on the proposed upgrade. Affected property owners will receive not less than thirty days notice of the hearing, notice shall be posted in the town clerk's office, provided to the planning commission and published in the local newspaper of record not less than ten days before the hearing.

F. A decision on the application, including findings of fact, in writing, shall be made by the Selectboard within sixty days of the last public hearing.

G. A performance bond or other security satisfactory to the town manager for the anticipated cost of construction and town inspection shall be provided prior to commencement of construction.

H. Prior to construction, the contractor shall provide to the town a certificate of comprehensive general liability insurance and/or other insurance acceptable to the Selectboard, to be in effect for the duration of the project. The minimum amount of coverage shall be one million dollars/three hundred dollars bodily injury and property damage per occurrence and aggregate. The Selectboard may require higher limits of coverage when, in their judgment, such limits are necessary.

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The contractor shall also carry suitable automobile insurance and workman's compensation insurance.

I. No roads will be inspected or accepted between October 15th and May 1st.

J. Public works department specifications in effect at the time of the submission of a complete application as modified by the specifications outlined in this chapter will govern consideration of the application. It is the intent of the Selectboard to require all improved Class 4 town highways to be constructed to the following standards:

1. For the first two zoning permits issued for construction of new residences utilizing a Class 4 town highway for access after the date of adoption of the ordinance codified in this chapter, the standard shall be the same as a shared residential driveway. The standard of construction shall be as outlined in public works specifications for a Type III unpaved rural road, except that the driveway width shall be fifteen feet (see Figure 4 of the public works specifications). In this case, the requirements of Section 9.02.060(E) through (H) are waived.

2. Subsequent to issuance of two zoning permits for new residential construction utilizing a Class 4 town highway after the adoption of said ordinance, the standard shall be a Type III unpaved rural road, as set forth in the public works department specifications, Figure 4, with the following changes:

a. The width of travelled way shall be twenty feet.

b. The shoulder width shall be one foot each side.

c. The drainage ditches and other required features will be constructed within available right-of-way, but must be adequate to function properly.

3. For any development on a Class 4 town highway requiring approval by the planning commission or zoning board, the standards herein contained in subdivisions (1) and (2) of this subsection shall be considered minimum standards for a low volume road. A low volume gravel road in Essex is defined as a road with a two-way daily traffic count of one hundred or less. The planning commission/zoning board may require higher standards up to and including installation of pavement for situations which result from the daily traffic count exceeding that of a low volume road.

K. Upon completion of construction, the director of public works will cause the driveway or highway to be inspected for compliance with highway specifications and adequacy of construction.

L. The applicant shall correct any defects or deficiencies in said roadway observed within one year of completion of construction. (Ord. passed 2/3/92)

## **9.02.070 Upgrade of classification.**

The Selectboard reserve and retain the sole right to determine the timing and conditions under which a Class 4 town highway will be accepted as a Class 3 or higher town highway. Until such time as the Class 4 town highway is accepted by the board as a higher road class, the board will require each party requesting to utilize the Class 4 town highway for access to enter into an agreement stating that:

A. Any use of the Class 4 town highway is nonexclusive;

B. The town shall incur no obligation for opening, improving, maintaining or plowing the Class 4 town highway or driveway installed within the right-of-way limits.

C. The applicant, heirs, successors and assignees shall be solely responsible for upgrading the Class 4 town highway to the standards of this chapter and for year-round maintenance along the applicant's frontage, including winter snow removal. No certificate of occupancy shall be issued, nor

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shall any structure be occupied for residential purposes, until such time as the highway has been upgraded to the specified standards and inspected.

D. By acceptance of the agreement, the applicant, heirs, successors and assignees, waive any right to petition the town to upgrade the highway to Class 3, or equivalent standard, or to request maintenance or plowing services from the town. The foregoing limitation shall be included in any conveyance of the parcel of land served by the highway.

E. In the event the Class 4 town highway is discontinued as a town highway, the town will provide sufficient right of way for continuance of an access to the applicant and his assignees.

F. The applicant shall, to the extent of land area owned by the applicant, provide sufficient additional right-of-way width to the town to create a full three rod width. (Ord. passed 2/3/92)

## **9.02.080 Waivers.**

The Selectboard, upon written request, may waive all or any portions of this chapter, for good cause shown, for the public good of the community consistent with state statutes. The board shall receive comment on waivers from the town administration prior to granting the waiver. (Ord. passed 2/3/92)

## **9.02.090 No liability.**

The Selectboard expressly disclaims any liability of the town arising from travel on Class 4 town highways and specifically in the case where driveway access is provided within the limits of the Class 4 town highway, the town assumes no liability, real or implied, for any party utilizing the driveway within the limits of the Class 4 road right-of-way. (Ord. passed 2/3/92)

## **Chapter 9.04**

### **PARKS**

#### **Sections:**

- 9.04.010 Parks defined.**
- 9.04.020 Administration and operation.**
- 9.04.030 Permit—Required when—Application and fees.**
- 9.04.040 Groups may not impose use charges.**
- 9.04.050 Permit a binding contract—Liability limitations.**
- 9.04.060 Permit—Cancellation conditions.**
- 9.04.070 Motor vehicle restrictions.**
- 9.04.080 Hours of operation—Trespassing and camping prohibited.**
- 9.04.090 Indian Brook Park rules and regulations.**
- 9.04.100 Prohibited activities designated.**

\*Prior ordinance history: Ordinances passed 8/29/88, 5/18/98, 10/7/19.

#### **9.04.010 Parks defined.**

The term “parks” as used in this chapter is defined to include all recreational facilities and land owned by the town of Essex and used for open space and recreation. It includes, but is not limited to, playgrounds,

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ballfields, tennis courts, trails, pathways, picnic areas, pools, drives and parking lots, whether such public grounds are developed or undeveloped. (Ord. passed 5/18/98 (part): § 1(a) of Ord. passed 8/29/88)

## **9.04.020 Administration and operation.**

All town parks will be operated, maintained and administered under the direct control and supervision of the director of the parks and recreation department (hereinafter “director”). (Ord. passed 5/18/98 (part): § 1(b) of Ord. passed 8/29/88)

## **9.04.030 Permit—Required when—Application and fees.**

A. Permits shall be acquired by any group totaling thirty or more persons, including organizations and teams, who desire to use the various areas of the town parks. These areas must be reserved in advance through the director, and reasonable fees may be charged in accord with the rules and regulations as established by the select-board.

B. Application for permits must be signed by an authorized representative of the group, who will be accountable for any damage or loss of property arising from such use.

C. Groups or teams may also be required to post a deposit in advance if the director deems it advisable. (Ord. passed 5/18/98 (part): § 2(a)—(c) of Ord. passed 8/29/88)

## **9.04.040 Groups may not impose use charges.**

No group or team may impose charges on persons or parties using the park or recreation facilities. (§ 2(e) of Ord. passed 8/29/88)

## **9.04.050 Permit a binding contract—Liability limitations.**

A. No person to whom a permit is issued shall be released from any personal liability because of the issuing of a permit, and shall hold and save the Town of Essex and its employees free and harmless thereby.

B. Any permit issued shall be a binding agreement or contract between the persons to whom it was issued and the parks and recreation department.

C. Whenever such permit is revoked for cause, no part of the fee paid therefor shall be returned. (Ord. passed 5/18/98 (part): § 7(b) of Ord. passed 8/29/88)

## **9.04.060 Permit—Cancellation conditions.**

Permits may be canceled by the director or town manager if the intent of the permit is violated or if the permit holders/users violate any of the park rules and regulations. (Ord. passed 5/18/98 (part): § 2(d) of Ord. passed 8/29/88)

## **9.04.070 Motor vehicle restrictions.**

A. All state statutes regulating motor vehicle operation shall be applicable within the confines of any park.

B. The director may allow vehicles in prohibited areas for special events occurring in such areas.

C. Posted handicapped parking areas are so designed for use only by vehicles with handicapped registration or other appropriate identification.

D. Parking is allowed only in designated areas or as directed by town personnel. Violators may be towed at the owner’s expense.

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E. The maximum motor vehicle speed within any park shall be fifteen miles per hour. (Ord. passed 5/18/98 (part): § 4 of Ord. passed 8/29/88)

### **9.04.080 Hours of operation—Trespassing and camping prohibited.**

A. All parks and recreation areas shall be closed and off limits between nine p.m. and seven a.m. unless a permit for other hours is obtained in advance from the parks and recreation department. Trespassing signs shall be posted at each park in accordance with state statutes.

B. Motorized vehicles of any type are allowed only within the areas provided for public parking. No vehicle shall be parked in any public park between nine p.m. and seven a.m. and may be towed away at the owner's expense.

C. No camping shall be allowed within park boundaries except as provided in subsection B of Section 9.08.010. (Ord. passed 5/18/98 (part): § 5 of Ord. passed 8/29/88)

### **9.04.090 Indian Brook Park rules and regulations.**

These subsections are covered in various sections of Chapter 9.08, Indian Brook Park. (Ord. passed 5/18/98 (part): § 6 of Ord. passed 8/29/88)

### **9.04.100 Prohibited activities designated.**

A. No alcoholic beverages or other controlled substances shall be permitted within park boundaries.

B. No glass bottles shall be permitted within park boundaries.

C. No unruly person will be permitted to remain within the parks, and no person shall disturb the peace, endanger the public safety, use obscene or profane language, or prevent the use of the park by others.

D. No products of any kind may be sold within park boundaries without a special permit secured in advance.

E. No area of any park may be roped off without prior approval from the director.

F. Posting bills without permission of the director, cutting, peeling, defacing, writing upon, destroying or damaging any building, sign, tree, plant, rock or other natural or manmade structure or object is prohibited.

G. No plant may be uprooted or cut without a written permit from the director.

H. Removing bathing apparel or swimwear in public view is prohibited. "Bathing apparel or clothing" includes bathing suits or clothing worn for bathing purposes including, but not limited to shorts, cutoffs, or swim trunks.

I. Fires shall only be built in a properly cared for cooking unit or in grills provided in the picnic areas. No fire shall be left unattended.

J. All town parks, with the exception of Indian Brook Park, the Ray Unsworth Parcel (Tax Map 10, Parcel 57), Myers Natural Area (Tax Map 8, Parcel 18-2), and the Horton property (Tax Map 12, Parcel 2), fall within the area where discharge of firearms is prohibited. Indian Brook Park has restrictions on firearms discharge as outlined in Chapter 6.08 of these Ordinances.

K. A person who intends to set a trap for any animal on any Essex town park property shall, prior to setting the trap, notify the selectboard of the prospective location of the trap. The selectboard may, at any time, refuse to grant permission to set a trap or revoke the permission if previously granted as outlined in VERMONT STATUTES ANNOTATED 1997 Section 4707 Traps; notice.

L. Discharge of firearms for the purpose of target shooting is prohibited within park boundaries. (Ord. passed 5/18/98 (part): § 3 of Ord. passed 8/29/88. Ord. passed 10/7/19)

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## Chapter 9.08

### INDIAN BROOK PARK

#### Sections:

#### 9.08.010 Park hours.

#### 9.08.020 Sanitation requirements.

#### 9.08.030 Apparel for bathing and swimming.

#### 9.08.040 Traffic regulations.

#### 9.08.050 Vessels and aircraft.

#### 9.08.060 Fishing and outboard motors.

#### 9.08.070 Cutting or harvesting plants or seeds.

#### 9.08.080 Hunting and trapping.

#### 9.08.090 Vending and soliciting prohibited.

#### 9.08.100 Posting bills and injuring property.

#### 9.08.110 Disorderly conduct, drugs and alcohol possession.

#### 9.08.120 Fire restrictions.

#### 9.08.130 Firearms, fireworks and weapons.

#### 9.08.140 Violation—Penalties.

#### 9.08.010 Park hours.

A. Indian Brook Park will be open to the public from seven a.m. to nine p.m. unless a permit for other hours is obtained in advance by permission of the director of the parks and recreation department or his/her designee (hereinafter called "director"). A yearly park use permit valid January 1 through December 31 or biennial park use permit valid for a two-year period January 1 through December 31 must be purchased at the parks and recreation department.

B. Camping is allowed at Indian Brook Park at the discretion of the director. A permit must be obtained in advance from the parks and recreation department during normal business hours Monday through Friday. Individuals possessing a valid camping permit are not required to possess a season pass. (Ord. passed 1/28/02; Ord. passed 1/17/00 (part); Ord. passed 5/18/98 (part): § 7.1 of Ord. passed 12/21/87)

#### 9.08.020 Sanitation requirements.

A. Recreation areas are to be kept in a neat, clean and sanitary condition at all times.

B. Glass containers are prohibited in all areas of the Indian Brook Park.

C. All refuse, including but not limited to bottles, cans, paper or rubbish, shall be placed in receptacles provided for that purpose. If receptacles are not available, all refuse is to be carried out of the park. (Ord. passed 5/18/98 (part): §§ 6.1—6.3 of Ord. passed 12/21/87)

#### 9.08.030 Apparel for bathing and swimming.

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Removing appropriate bathing apparel is prohibited in public view. "Bathing apparel or clothing" includes bathing suits or clothing worn for bathing purposes including, but not limited to, shorts, cutoffs, or swim trunks. (Ord. passed 5/18/98 (part): § 5.1 of Ord. passed 12/21/87)

## **9.08.040 Traffic regulations.**

- A. All persons driving in Indian Brook Park shall obey all traffic signs and directions.
- B. Motor vehicles shall be excluded from the confines of Indian Brook Park between nine p.m. and seven a.m. except by permit in conjunction with subsection A of Section 9.08.010.
- C. All state statutes regulating motor vehicle operation shall be applicable within the confines of the park. All motor vehicles must be registered with the Vermont Department of Motor Vehicles (or in the state of the owner's residence) and display current license plates or tags.
- D. The maximum vehicle speed within the park shall be fifteen miles per hour.
- E. The director may allow vehicles in prohibited areas for special events occurring in such areas.
- F. Horseback riding shall be permitted on roadways, trails and other designated areas unless posted by the director.
- G. Posted handicapped parking areas are so designated for use only by vehicles with handicapped registration or other appropriate identification.
- H. Parking is allowed only in designated areas or as directed by town personnel. Violators may be towed at the owner's expense. (§§ 9.1, 9.2 of Ord. passed 12/21/87)

## **9.08.050 Vessels and aircraft.**

- A. Each vessel using the reservoir shall carry for each person aboard an approved personal flotation device, as per Title 25, VERMONT STATUTES ANNOTATED, Chapter 306.
- B. Aircraft, including ultra-lights, helicopters and floatplanes, are prohibited from landing or taking off from the Indian Brook Park property or reservoir. (Ord. passed 5/18/98 (part): § 7(b) of Ord. Passed 8/29/88)

## **9.080.060 Fishing and outboard motors**

- A. All persons interested in fishing in the Indian Brook reservoir must adhere to current fishing laws as outlined in the Vermont Digest of Hunting, Fishing and Trapping laws.
- B. Use of outboard motors, except electric trolling motors, shall be prohibited except by town employees in the official pursuit of their designated duties. (§§ 11.1-11.2 of Ord. passed 12/21/87)

## **9.080.070 Cutting or harvesting plants or seeds.**

- A. No plant may be uprooted or cut without a written permit from the director.
- B. Wild berries, fruits, seeds, nuts or mushrooms may be collected only for personal use at the risk of the collector, and must be consumed on park property. Commercial harvesting of such items for profit is allowed only with a special permit from the director. (§§1.2-1.3 or Ord. passed 12/21/87)

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## **9.08.080 Hunting and trapping.**

A. A person who intends to set a trap for any animal on Indian Brook Park property shall, prior to setting the trap, notify the selectboard of the prospective location of the trap. The selectboard may, at any time, refuse to grant permission to set a trap or revoke the permission if previously granted as outlined in VERMONT STATUTES ANNOTATED 1997 §4707 Traps; notice.

B. A hunting safety zone of five hundred feet will be established around the high water mark of the entire reservoir. (§6 of Ord. passed 8/29/88)

## **9.08.090 Vending and soliciting prohibited.**

Soliciting, vending, sale or rental of goods, wares or services in Indian Brook Park is prohibited. (Ord. passed 5/18/98 (part): § 8.1 of Ord. passed 12/21/87)

## **9.08.100 Posting bills and injuring property.**

Posting bills without permission of the director, cutting, peeling, defacing, writing upon, destroying or damaging any building, sign, tree, plant, rock or other natural or manmade structure or object is prohibited. (Ord. passed 5/18/98 (part): § 1.1 of Ord. passed 12/21/87)

## **9.08.110 Disorderly conduct, drugs and alcohol possession.**

A. Disorderly conduct is prohibited. This includes, but is not limited to, indecent, coarse language, disturbing other persons, or intoxication. Violation may mean ejection, arrest and prosecution under state law.

B. Unlawful possession of regulated drugs is prohibited.

C. Alcoholic beverages shall be prohibited at all times. (Ord. passed 5/18/98 (part): §§ 10.1—10.3 of Ord. passed 12/21/87)

## **9.08.120 Fire restrictions.**

A. Fires shall be built only in fire pits, fireplaces or charcoal grills at picnic and camping areas except as otherwise provided in these rules and regulations or unless a permit for other areas is obtained in advance from the director.

B. All fires must be attended and under control at all times. (Ord. passed 5/18/98 (part): §§ 2.1, 2.2 of Ord. passed 12/21/87)

## **9.08.130 Firearms, fireworks and weapons.**

A. No firecrackers or other explosive devices shall be displayed or discharged in the park.

B. Individuals wishing to hunt on Indian Brook property must adhere to current hunting laws as outlined in the Vermont Digest of Hunting, Fishing and Trapping Laws and to the hunting safety zone as outlined in subsection B of Section 9.08.080. (Ord. passed 5/18/98 (part): § 4.1 of Ord. passed 12/21/87)

## **9.08.140 Violation—Penalties.**

A. Any person who violates a provision of this chapter shall be subject to a civil penalty of up to five hundred dollars per day for each day that such violation continues, with a mandatory minimum civil penalty that shall not be less than the civil penalty set for that offense unless the person does not

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contest the municipal complaint and pays the waiver fees. Police officers of the Town of Essex shall be authorized to act as issuing municipal officials to issue and pursue before the traffic and municipal ordinance bureau a municipal complaint.

B. An issuing municipal official is authorized to recover a waiver fee, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amount for each violation:

First offense	\$ 25.00
Second offense	\$50.00
Third offense	\$100.00
Fourth & subsequent offenses	\$200.00

Offenses shall be counted on a calendar year basis.

C. An issuing municipal official is authorized to recover civil penalties in the following amounts for each violation:

First offense	\$ 50.00
Second offense	\$100.00
Third offense	\$200.00
Fourth & subsequent offenses	\$400.00

Offenses shall be counted on a calendar year basis.

D. In addition to the enforcement procedures available before the traffic and municipal ordinance bureau, the town manager or designee is authorized to commence a civil action to obtain injunctive and other appropriate relief, or to pursue any other remedy authorized by law. (Ord. passed 1/17/01 (part))

## Chapter 9.12

### USE OF PUBLIC LAND

#### Sections:

- 9.12.010 Purpose of provisions.
- 9.12.020 Application of provisions.
- 9.12.030 Use regulations—Town Manager authority.
- 9.12.040 Use regulations—Additional rules—Signs.
- 9.12.050 Facility use fees and identification procedures.
- 9.12.060 Entering land or buildings—Compliance required.
- 9.12.070 Unlawful dumping and other activities.
- 9.12.080 Vandalism and tampering prohibited.
- 9.12.090 Firearm target limitations.
- 9.12.100 Enforcement authority.

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## **9.12.110 Violation—Penalty.**

### **9.12.010 Purpose of provisions.**

In order to protect the public health, safety and welfare, and to prevent nuisances from noise, smoke and littering, and to prevent damage or loss from theft, fire or injury, the ordinance set out in this chapter is adopted by the Selectboard of the Town of Essex prescribing conduct within and upon all land owned and operated for public use. ((Part) of Ord. passed 8/7/78)

### **9.12.020 Application of provisions.**

This chapter shall apply to all land designated as to use for “recreation” purposes, or for “facilities” such as highway garages, fire stations, sewer plants, and “service,” including all buildings, appurtenances and materials stored therein, and to service structures such as electrical, water and sewer conduits, roads, bridges, lighting, highway signs and all vehicles, whenever such property is owned, leased or controlled by the Town of Essex. ((Part) of Ord. passed 8/7/78)

### **9.12.030 Use regulations—Town Manager authority.**

The town manager shall be authorized to provide limitations on the use of all public lands with regard to hours of operation, use by vehicles, parking, speed limits, discharge of firearms, camping, fires, use of amplification systems, and may cause the posting of signs so regulating use. ((Part) of Ord. passed 8/7/78)

### **9.12.040 Use regulations—Additional rules—Signs.**

A. All rules and regulations promulgated by the town manager shall be in addition to and not in conflict with rules and regulations prescribed by ordinance or otherwise by the Selectboard.

B. Signs or devices for the implementation of rules and regulations or the specific provisions of this chapter may be erected where applicable. Failure to have such signs erected shall not diminish the effect of this ordinance, and persons informed of the regulation verbally by an enforcement officer or properly identified agent of the town who fail to desist immediately or to abate such violation shall be liable to prosecution. ((Part) of Ord. passed 8/7/78)

### **9.12.050 Facility use fees and identification procedures.**

The town manager shall initiate and implement a system of identification or use of tickets, coupons or stickers, or other devices for the collection of fees, when such fees are established by the Selectboard for use of service or recreation lands or buildings; attempts to evade payment as prescribed shall be a violation of this chapter. ((Part) of Ord. passed 8/7/78)

### **9.12.060 Entering land or buildings—Compliance required.**

No person shall enter upon or into service support land or buildings except during normal hours and for the intended purpose, and in compliance with all regulations pertaining thereto. ((Part) of Ord. passed 8/7/78)

### **9.12.070 Unlawful dumping and other activities.**

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No person shall deposit or leave any material or device then in disuse, with intent to discard, on town land except properly at the landfill, so designated, during hours and according to the rules prescribed therefor. No person shall leave in trash containers anything to be discarded, or domestic wastes, except those things which fall into disuse through the proper and lawful use of the town land. ((Part) of Ord. passed 8/7/78)

## **9.12.080 Vandalism and tampering prohibited.**

No person shall vandalize or use or tamper with any service structure except as properly authorized. ((Part) of Ord. passed 8/7/78)

## **9.12.090 Firearm target limitations.**

No person in the use of firearms, where designated, shall use glass containers, cans or similar devices as targets, and all targets properly in use shall thereafter be properly disposed of in trash containers. ((Part) of Ord. passed 8/7/78)

## **9.12.100 Enforcement authority.**

This chapter shall be enforceable by any sheriff, deputy sheriff, constable, state or local police officer. ((Part) of Ord. passed 8/7/78)

## **9.12.110 Violation—Penalty.**

Each person found to be in violation of this chapter, or the rules or regulations promulgated by its authority, shall be liable to a fine of not more than one hundred dollars, or be imprisoned for six months, or both. ((Part) of Ord. passed 8/7/78)

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## Title 10

### WATER, SEWERS AND PUBLIC SERVICES

#### Chapters:

- 10.04 Individual Sewage Disposal Systems**
- 10.08 Disposal of Septage**
- 10.09 Procedures and Policies for Managing Sewer Backups**
- 10.12 Water Use**
- 10.16 Sewer Use**
- 10.18 Sewer Allocation**

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## Chapter 10.04

### INDIVIDUAL SEWAGE DISPOSAL SYSTEMS

#### Sections:

- 10.04.010 Purpose.**
- 10.04.020 Applicability.**
- 10.04.030 Definitions.**
- 10.04.040 Applicability of provisions.**
- 10.04.050 Permit procedure.**
- 10.04.060 Terms and conditions of the permits.**
- 10.04.070 Revocation of permits.**
- 10.04.080 Certificate of compliance.**
- 10.04.090 Appeals.**
- 10.04.100 Other applicable regulations.**
- 10.04.110 Enforcement.**
- 10.04.120 Severability.**

#### **10.04.010 Purpose.**

This ordinance is adopted under Title 24 VERMONT STATUTES ANNOTATED, Chapter 102 (On-Site Sewage Systems). The purpose of this ordinance is to preserve the public health, prevent pollution and to secure the sanitary protection of waters. This ordinance is intended to ensure that sewage is discharged into an approved sewage treatment system and to accomplish the following:

- A. Prevent the creation of health hazards which include, but are not limited to surfacing sewage; contaminated drinking water, ground water and surface water;
- B. Ensure adequate drainage related to the proper function of sewage disposal; and
- C. Ensure that facilities are designed, constructed, operated and maintained in a manner which will promote sanitary and healthful conditions. (§ 1 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 1 of Ord. passed 11/26/83)

#### **10.04.020 Applicability.**

This ordinance shall apply to the construction, alteration and repair of all sewage disposal systems, regardless of lot size. (§ 2 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part))

#### **10.04.030 Definitions.**

As used in this chapter:

- A. "Applicant" means the legal owner of the property requiring a sewage disposal system construction permit.
- B. "Assistant Sewage Officer" means a legally designated authority of the town acting under authority of this ordinance. He/she shall work in partnership with the sewage officer, or in absence of sewage officer, where directed by the town manager. The assistant sewage officer shall be appointed by the Selectboard and is subject to the town's personnel policies. He/she may be the town's health officer, administrative officer, or other town official.

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- C. "Central disposal system" means one that serves more than one residential building.
- D. "Minor modification" means generally understood to be work on or replacement of septic tank or the piping between the septic tank or the pump chamber and the house. The sewage officer shall decide what constitutes a minor modification on a case-by-case basis.
- E. "Municipal system" means a sewage disposal collection system operated by the municipality.
- F. "Permit" means a written authorization issued by the town.
- G. "Person" means any institution, public or private corporation, individual, partnership or other entity.
- H. "Primitive camps" are camps on their own individual lots with no interior plumbing that are used for no more than three consecutive weeks per year and no more than a total of sixty days per year.
- I. "Sewage disposal system" means a system for a disposal of waste using undisturbed soil on-site as a disposal medium, including a tank for collection of solids and leach area for liquids or any other system which disposes of waste water on-site. This shall include multiple-family, two-family, commercial and industrial on-site disposal systems, as well as individual single-family homes and seasonal dwellings.

The sewage officer may permit off-site systems for pre-existing small lots with pre-existing residential or commercial structures, when it is found that the on-site soils do not meet the minimum requirements of the "Wastewater system and potable water supply rules" and off-site soils do meet the minimum requirements. In such cases the sewage officer shall require that permanent easements are obtained for the off-site systems.
- J. "Sewage officer" means the legally designated authority of the town acting under authority of this ordinance. The sewage officer shall be appointed by the Selectboard. The sewage officer may be the town's health officer, administrative officer, or other town official.
- K. "Single-family" means a group of persons living together as a single household.
- L. "Single-family dwelling" means separate living quarters with cooking, sleeping and sanitary facilities provided within a dwelling unit for the use of a single-family maintaining a household.
- M. "Wastewater system and potable water supply rules, effective August 16, 2002" means promulgated by the Vermont Department of Environmental Conservation. These rules are incorporated into this ordinance by reference. (§ 3 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 1 of Ord. passed 11/26/83)

### **10.04.040 Applicability of provisions.**

All sewage disposal systems shall be built, altered, repaired and used in accordance with this ordinance. This includes, but is not limited to, sewage disposal systems for seasonal dwellings, single, two-family, and multiple-family homes and commercial and industrial properties.

A. Single-family residential structures. All single-family residences shall receive a disposal system construction permit (Section 10.04.050) before commencement of construction on the property.

Construction shall be understood to mean:

1. The construction or change of use of any structure, including, but not limited to, foundation, excavation or building construction;
2. Site work which involves or may affect any portion of existing or proposed sewage disposal or water supply facilities for the structure and any change in the use of the structure; and
3. Reconstruction, structural alteration, relocation or enlargement of any structure to the extent that such activity increases or otherwise alters the use of any existing sewage disposal system.

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B. Single-family residential structure disposal system alterations. No sewage disposal system shall be altered, repaired, or re-built in any way except as provided in subsection C of this section until a disposal system construction permit has been issued.

C. Exceptions: Minor modifications. When a minor modification (see definitions) to an existing system for a single-family dwelling is proposed, the sewage officer may waive the disposal system construction permit requirements on a case-by-case basis and issue a waiver in writing. The sewage officer will determine what constitutes a minor modification.

D. Multiple (including duplexes) family dwellings. All multiple-family dwellings shall submit an approved water supply and wastewater disposal permit issued by the state before commencement of construction on the property.

Such permits shall be deemed to satisfy the permit requirements of Section 10.04.050 and Section 10.04.060 of this ordinance unless evidence is submitted that the permit is based on false, fraudulent or misleading information. Applicants are still required to file an application and pay the appropriate permit fee.

All multiple-family dwellings shall obtain a certificate of compliance as required by Section 10.04.080 of this ordinance.

E. Commercial and industrial structures. All commercial and industrial structures shall submit an approved water supply and wastewater disposal state permit prior to commencement of construction on the property. Such permits shall be deemed to satisfy the permit requirements of Section 10.04.050 of this ordinance unless evidence is submitted that the permit is based on false, fraudulent or misleading information. Applicants are still required to file an application and pay the appropriate permit fee.

All commercial and industrial structures shall obtain a certificate of compliance as required by Section 10.04.080 of this ordinance.

F. Primitive camps.

1. Primitive camps, are camps on their own individual lots with no interior plumbing that are used for no more than three consecutive weeks per year and no more than a total of sixty days per year.

2. A primitive camp constructed prior to enactment of this ordinance shall not be required to have a sewage disposal system provided no health hazard, nuisance or surface or ground water pollution exists. The sewage officer or health officer shall determine if such conditions do exist. If such conditions exist, a disposal system shall be installed or upgraded (if one already exists) to meet the standards of this ordinance to the extent possible or the running water shall be removed and the generation of sewage ended.

G. Change of use.

1. Change of use shall include, but is not limited to, the addition of plumbing or running water, the addition of bedrooms, conversion of primitive camps to single-family or multiple-family residential structures, conversion of single-family residential structure to multiple or commercial or industrial use.

2. No structure shall be altered in any way so as to change the use of the structure unless the sewage disposal system and all proposed alterations meet the minimum standards of this ordinance.

H. Existing single-family dwellings and primitive camps sewage disposal systems in compliance with the "Health Ordinance for the Town of Essex, VT Relating to Individual Sewage Disposal Systems," dated November 26, 1983, or the small-scale wastewater treatment and disposal rules dated August 8, 1996, at the time of the effective date of this ordinance are approved, provided that such systems do

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not create a health hazard, nuisance or pollute surface or groundwater. Whether an existing system is causing a health hazard, nuisance or is polluting surface or groundwater shall be determined by the sewage officer, or health officer. Existing systems determined to be a health hazard, nuisance or polluting surface or groundwater shall be upgraded to meet the standards of this ordinance to the extent possible.

I. Replacement systems.

1. Before a failed system is replaced it is important that the cause of failure be determined to assure that a subsequent failure is avoided.

2. A disposal system construction permit must be obtained prior to installing a replacement system. A certificate of compliance shall be obtained within a reasonable period of time following the commencement of the installation of the system.

3. Replacement systems for single-family homes and seasonal dwellings which have an approved replacement or continuous area shall be installed in the approved area in accordance with the original permit issued unless a new location meeting the current standards can be approved.

4. Replacement systems for multiple-family dwellings and commercial and industrial structures shall be constructed in accordance with relevant state regulations. An approved state permit shall be submitted and approved by the sewage officer, prior to commencement of construction of the replacement system. (§ 4 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

### **10.04.050 Permit procedure.**

A. Application fees. Application fees for permits shall be established by the Selectboard.

B. Disposal system construction permit. The owner of any property, the useful occupancy of which requires a sewage disposal system shall apply for a disposal systems construction permit. The owner of any property on which a sewage disposal system is proposed to be built, altered or replaced shall apply for a disposal system construction permit. The application shall contain soil and site information as required by the Wastewater System and Potable Water Supply Rules and a design for the disposal system and a replacement system. The system shall be designed as specified by the Wastewater System and Potable Water Supply Rules. The basis for the disposal system design shall be a peak flow of one hundred and forty gallons per day per bedroom. Wells must be properly isolated from septic systems, in accordance with the Wastewater System and Potable Water Supply Rules.

C. The sewage officer shall review the application to ensure compliance with this ordinance. In his or her sole discretion, the sewage officer may rely on plans and specifications certified by an engineer or site technician and properly licensed by the State of Vermont, to be in compliance with this ordinance.

D. System designer qualifications. The disposal system design and technical information for the application shall be prepared by a certified site technician B or a professional engineer registered in the State of Vermont and practicing in septic system testing and design.

E. Permit approval and term. The construction permit shall be granted or denied by the sewage officer. If the disposal system is not constructed within two years of the date the permit was issued, the permit must be renewed (see Section 10.04.060 Terms and conditions of permits). (§ 5 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

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## **10.04.060 Terms and conditions of the permits.**

A. If the disposal system is not constructed within two years of the date the disposal system construction permit was issued, the permit must be renewed. Renewal shall occur prior to the time of construction of the disposal system. The sewage officer can set terms and conditions on the renewal permit. The permit may be renewed when the applicant submits a report to the sewage officer that verifies the original permit conditions can be met, that the system design meets the standards of any amended sewage disposal regulations that are in effect at the time of renewal, site conditions have remained the same, and water supplies have not been altered and can be used without any redesign or alterations. The sewage officer may require the applicant to submit a recommendation prepared by a qualified consultant (subsection 10.04.050(C)) if information is needed to certify that site conditions have not changed and that the original permit conditions can be met, or other information is needed to make an adequate assessment. Permits shall be renewed unless they are found to be based on false, fraudulent or misleading information or the original permit conditions can no longer be met.

B. Permits denied renewal are void. A new application must be made for a permit. The conditions of the ordinance in effect at the time of the new application shall apply to this new permit.

C. Conditions of construction or use may be placed on the disposal system construction permit, or the certificate of compliance.

D. All permits run with the land and are binding upon each and subsequent owners. At the discretion of the sewage officer all permits issued under this chapter, or those permits with conditions of use issued pursuant to this chapter, may be filed in the town land records.

E. Minor permits—Simplified application process for minor modifications and structures not requiring a sewage disposal system. The owner of any property intending to make a minor modification (see subsection 10.04.040(C)) or construct a structure, the useful occupancy of which shall not require running water, shall make an application for a minor permit on the prescribed form. Such minor modifications shall not include changes of use as described in subsection 10.04.040(G)). Such application shall contain sufficient information to enable the sewage officer to evaluate the project. Application shall be made prior to commencement of construction. (§ 6 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 2 (part) of Ord. passed 11/26/83)

## **10.04.070 Revocation of permits.**

A. A disposal system construction permit or a certificate of compliance may be revoked by the sewage officer for any of the following reasons:

1. False, fraudulent, or misleading information contained in the permit application;
2. Installation of a system which does not comply with the conditions of the permit;
3. Alteration of the proposed septic system site or replacement areas including effluent dispersion areas so that the proposed septic system does not comply with this ordinance;
4. Information which shows the proposed septic system will not comply with this ordinance, including but not limited to, insufficient isolation distances to water supplies;
5. Failure to comply with this ordinance or any terms or conditions of permits issued under this ordinance;

B. Petition for revocation. A written petition for revocation shall be addressed to the sewage officer and shall set forth the name and address of the petitioner, the petitioner's interest in the matter,

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and a brief statement outlining the basis for revocation of permit. Revocation shall only proceed based on the standards established in subsections 10.04.070(A)(1) and (5).

C. The municipality may file a petition and participate in revocation proceedings.

D. The Selectboard shall notify the permit holder in writing of petition for revocation of permit within seventy-two hours.

E. Receipt of the petition shall initiate the revocation procedure. The Selectboard shall hold a hearing within thirty days of the sewage officer receiving a revocation petition. The Selectboard shall render a decision within fifteen days of the conclusion of the hearing.

F. The sewage officer shall give the permit holder written notice of revocation of the permit within seventy-two hours of revocation. All sewage disposal system work and any use of the sewage disposal system must cease immediately upon notification of revocation of permit. (§ 7 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 3 (1) of Ord. passed 11/26/83)

### **10.04.080 Certificate of compliance.**

The sewage officer or his/her designee shall inspect all on-site systems before they are covered with soil. The sewage officer may request to inspect systems at different stages during installation. The town shall receive a minimum of forty-eight hours' notice based upon Town of Essex workdays for a final inspection. The disposal system designer (subsection 10.04.050(D)) shall submit a final inspection report to the sewage officer. Such report shall certify that the disposal system has been installed as approved or variations from the approved design shall be noted in the report. The sewage officer shall issue a certificate of compliance permit when satisfied with the installed sewage system. The newly constructed dwelling shall not be occupied until the certificate of compliance has been issued. Existing dwellings, which require a replacement system may be occupied provided a certificate of compliance is obtained within a reasonable period of time from commencement of installation of the system. The sewage officer shall decide what is a reasonable amount of time. As built plans shall be submitted upon completion of all systems. (§ 8 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 3 (2) of Ord. passed 11/26/83)

### **10.04.090 Appeals.**

Any applicant aggrieved by a decision of the sewage officer may appeal that decision in writing to the Selectboard within thirty days of such decision. The Selectboard shall hold a hearing within thirty days of such an appeal and shall render a decision within fifteen days after the close of such hearing. Following a Selectboard's hearing, any person aggrieved by a decision of the Selectboard may appeal that decision to the superior court. The administrative process must be exhausted before appeal to superior court. (§ 9 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 4 of Ord. passed 11/26/83)

### **10.04.100 Other applicable regulations.**

In case of any other applicable regulation, bylaw, ordinance or statute which differs from this ordinance, the stricter shall apply. It should be noted that this includes the requirement that where municipal sewage systems are available for connection, that all buildings for which the useful occupancy requires water shall be connected to said municipal system pursuant to the Town of Essex "Sewer Use Ordinance." (§ 10 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

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## **10.04.110 Enforcement.**

A person who neglects or refuses to comply with the provision of this ordinance may be fined not more than five hundred dollars for each offense by the superior court. Each day that a violation is continued shall constitute a separate offense (24 VERMONT STATUTES ANNOTATED, Section 1974; or its successor). (§ 11 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

## **10.04.120 Severability.**

If any portion of this ordinance is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

Approval of any sewage disposal system design and installation by the granting of a disposal system construction permit and certificate of compliance shall not imply that the approved system will be free from malfunction. Proper maintenance of septic systems is vital to their proper functioning. The provisions of this ordinance shall not create liability on the part of the town, of any town official, or employee for the sewage disposal system. (§ 12 of Ord. passed 5/03/04: Ord. passed 2/26/01 (part); § 5 (part) of Ord. passed 11/26/83)

## **Chapter 10.08**

### **DISPOSAL OF SEPTAGE**

#### **Sections:**

- 10.08.010 Purpose and statutory authority of provisions.**
- 10.08.020 Definitions.**
- 10.08.030 Statement of necessity.**
- 10.08.040 Septage disposal restrictions.**
- 10.08.050 Hindering authorized work—Penalty.**
- 10.08.060 Enforcement procedures—Violation—Penalty.**

#### **10.08.010 Purpose and statutory authority of provisions.**

The ordinance codified in this chapter is adopted pursuant to the authority of Chapter 11 of Title 18, VERMONT STATUTES ANNOTATED. The purpose of this chapter is to:

- A. Prevent the creation of health hazards;
- B. Prevent the contamination of potable water supplies, groundwater, and surface water;
- C. Insure that all septage disposed of in the Town of Essex is done safely and properly to protect against contagious and infectious diseases. (§ 1 of Ord. passed 3/9/85)

#### **10.08.020 Definitions.**

As used in this chapter:

- A. “Essex board of health” means the Essex health officer, deputy health officer(s), and the Selectboard of the Town of Essex.

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B. “Essex health officer/deputy health officer” means the designated health authority of the Town of Essex as appointed by the State Board of Health.

C. “Persons” includes any institution, public or private corporation, individual, partnership or other entity.

D. “Septage” means any material removed from any portion of a waste disposal system including sewage and other domestic or commercial wastes. For the purpose of this regulations, this shall not include sludge which is a product of a wastewater treatment facility. (§ 3 of Ord. passed 3/9/85)

### **10.08.030 Statement of necessity.**

The ordinance codified in this chapter has been adopted to complement the sewer use ordinance and, due to the absence of appropriate land septage disposal areas in the Town of Essex as a result of residential and commercial development. In addition, a safe and inexpensive alternative disposal area exists at the sewage treatment plant located in the village of Essex Junction. (§ 3 of Ord. passed 3/9/85)

### **10.08.040 Septage disposal restrictions.**

No septage shall be disposed of, upon or under any land surfaces, whether buried or not, within the boundaries of the Town of Essex, Vermont. All septage disposal in the Town of Essex shall be at the septage disposal facility at the sewage treatment plant on Cascade Street, village of Essex Junction, or other municipal facility hereafter designated by the board of health. (§ 4 of Ord. passed 3/9/85)

### **10.08.050 Hindering authorized work—Penalty.**

Any person who attempts to hinder the work of the Essex health officer or his authorized agent or the Essex board of health, shall be fined not more than five hundred dollars for each offense. (§ 6 of Ord. passed 3/9/85)

### **10.08.060 Enforcement procedures—Violation—Penalty.**

A. The Essex health officer or deputy health officer or the board of health may order compliance with this chapter, including abatement and removal of septage disposed of in violation of this chapter.

B. A person who neglects or refuses to comply with a written order of the Essex board of health, the Essex health officer, or his authorized agent, may be fined no more than five hundred dollars for each offense. Each day that a violation exists shall constitute a separate offense.

C. Request for or imposition of a fine shall not preclude actions for abatement, restoration or rehabilitation of land, or recovery of expenses incurred by the town for the abatement of any nuisance, or for recovery of damage to property.

D. Upon such neglect or refusal, the Essex board of health may prevent, remove or destroy any unhealthful conditions or causes of sickness. Expenses incurred by such action shall be recovered from the person whose legal duty it was to comply with such order. However, such action shall not preclude the imposition of fines or recovery of damages prescribed in subsections B and C of this section. (§ 5 of Ord. passed 3/9/85)

## **Chapter 10.09**

# TOWN OF ESSEX MUNICIPAL CODE

## PROCEDURES AND POLICIES FOR MANAGING SEWER BACKUPS

### Sections:

#### **10.09.010 Procedures and policies for managing sewer backups.**

It is the policy of the Selectboard of the Town of Essex that the town manager, through the public works department, shall respond to requests for assistance by municipal sewer customers, in the event of a sewer backup, in the following manner:

A. An investigation shall be made to determine if the sewer blockage is in the town sewer main (i.e., between municipal manholes or at municipal manholes). This investigation is made generally by removing the manhole covers immediately upstream and downstream of the reported blockage.

1. If the sewage flow in the municipal manholes is flowing freely, the indication is that the blockage is occurring in the service connection between the building and the sewer main. The affected sewer customer(s) shall be notified and informed that the problem appears to be in the service connection. It is the responsibility of the sewer customer to correct the problem and the town will take no further repair action. The town, however, reserves the right granted under the sewer ordinance to inspect and approve all repairs that are made.

2. If the blockage is determined to be in the main sewer line or inside the municipal manhole, the town shall be responsible for removing the blockage and reestablishing flow.

B. If the sewer backup appears to have been caused by a blockage in the sewer main, the town shall:

1. Assist the sewer customer in pumping out or otherwise removing the sewage from the building; and

2. Make arrangements for and pay for a one-time cleaning of the affected area to include walls, floors, carpets and affected upholstered furniture, to a ceiling amount of one thousand dollars per dwelling or business.

C. The purpose of providing the initial cleanup services identified under subsection B.2 of this section is to provide for a minimum level of public health protection to the affected sewer customer. The risk of exposure to pathogenic bacteria and other health-related contaminants is assumed to be greater with a sewer main blockage, potentially involving many sewage customers, than blockage involving a single service.

D. The town shall not be responsible for replacement or repairs to the structure or its contents, including but not limited to walls, floors and floor coverings, heating and other mechanical systems, and furniture and furnishings.

E. If, upon inspection of the facility by the town representative, it is found that the service connection or interior house plumbing does not meet the requirements of the public works standards, the town sewer ordinance, the state plumbing code or other similar accepted standards, the town can, as a condition of continued service, require that appropriate plumbing changes be made. The town may also seek any penalties allowable under law for violation of the referenced standards.

F. The town accepts no legal responsibility for sewer backups or restitution as a result of such backup in that such backup is considered to be an act of God. Actions taken by the town are solely for the purpose of protecting the public health. (Ord. passed 11/20/95)

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## Chapter 10.12

### WATER USE

#### Article I

##### Definitions

##### Sections:

- 10.12.010 Definitions.
- 10.12.020 Abbreviations.

#### Article II

##### Mandatory Use of the Public Water System

##### Sections:

- 10.12.030 Connection required.
- 10.12.040 Extension of water service.
- 10.12.050 Onsite wells.

#### Article III

##### Private Water Supply Systems

##### Sections:

- 10.12.060 Permitted when.
- 10.12.070 Compliance with applicable regulations required.
- 10.12.080 Connection to public water line required when.
- 10.12.090 Noninterference with health officer's requirements.
- 10.12.100 Written approval required.

#### Article IV

##### Building Water Service Connections

##### Sections:

- 10.12.110 Permit required.
- 10.12.120 Application.
- 10.12.130 Costs to be borne by owner.
- 10.12.140 Corporation stop and curb stop requirements.
- 10.12.150 Construction specifications.
- 10.12.160 Inspection—Restoration of facilities.
- 10.12.170 Meters required.
- 10.12.180 Testing.
- 10.12.190 Excavations—Construction within right-of-way—Requirements.
- 10.12.200 Interference with movement of vehicular traffic.

#### Article V

##### Use of the Public Water Supply System

##### Sections:

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- 10.12.210 Primary uses.
- 10.12.220 Auxiliary uses.
- 10.12.230 Hydrant use.
- 10.12.240 Conditions on water service.
- 10.12.250 Backflow prevention.
- 10.12.260 Water mains—Standards.
- 10.12.270 Preexisting private water supply main connections to the public water supply system.

## Article VI

### Protection of Public Water System from Damage

#### Sections:

- 10.12.280 Tampering with system prohibited.

## Article VII

### Powers and Authority of Inspectors

#### Sections:

- 10.12.290 Right of entry.
- 10.12.300 Liability and indemnification.
- 10.12.310 Access to easements.

## Article VIII

### Penalties

#### Sections:

- 10.12.320 Notice of violation.
- 10.12.330 Violation—Penalty.
- 10.12.340 Remedies nonexclusive.

## Article IX

### Rates

#### Sections:

- 10.12.350 Authority to establish.
- 10.12.360 Service initiation fee.
- 10.12.370 Hydrant use fee.
- 10.12.380 User fee.
- 10.12.390 Maintenance and repair of water service connections—Shutoff and turn on fees.
- 10.12.400 Disposition of excess revenues.
- 10.12.410 Payment of charges—Delinquent when—Billing.
- 10.12.420 Review of fee structure.
- 10.12.430 Effective date for rate changes.

## Article I

### Definitions

# TOWN OF ESSEX MUNICIPAL CODE

## 10.12.010 Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

“Air-gap” means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of such vessel. An approved air-gap shall be at least double the diameter of the supply pipe, measured vertically above the top of the overflow rim of the vessel; and in no case less than one inch.

“Approved” means accepted by the town as meeting an applicable specification stated or cited in this chapter.

“Backflow” means:

1. A flow condition, induced by a differential in pressure, that causes the flow of water or other liquid into the distribution system of a potable water supply, from any source or sources other than its intended source;
2. The backing up of water through a conduit or channel in the direction opposite to normal flow.

“Backflow preventer” means a device or means designed to prevent backflow.

“Contaminant” means any physical, chemical, biological, or radiological substance or matter in water.

“Contamination” means any introduction into water of microorganisms, chemicals, wastes or wastewater in a concentration that makes the water unfit for its intended use.

“Corporation cock” means a valve for joining a service pipe to a street water main. It is owned and operated by the water utility. It cannot be operated from the surface. Also called corporation stop, or ferrule.

“Cross-connection” means any physical connection or arrangement between two otherwise separate piping systems; one of which contains potable water and the other water of unknown or questionable safety, steam, gases or chemicals whereby there may be a flow from one system to the other.

“Disinfectant” means any substance, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

“Double check valve assembly” means an assembly of two independently operating approved check valves with tightly closing shutoff valves on each end of the check valves, plus properly located test cocks for the testing of each check valve. To be approved these devices must be readily accessible for in-line testing and maintenance.

“Fire flow” means the rate of flow, usually expressed in gallons per minute, that can be delivered from a water distribution system at a specified residual pressure for firefighting. When delivery is to fire-department pumpers, the specified residual pressure is generally twenty psi.

“Industrial fluids system” means any system containing a fluid or solution which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollution or plumbing hazard if introduced into an approved water supply. This may include, but not be limited to: polluted or contaminated waters; all types of process waters and used waters originating from the public potable water system which may have deteriorated in sanitary quality; chemicals in fluid form; plating acids and alkalis, circulating cooling waters connected to an open

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cooling tower and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances; contaminated natural waters such as from wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or systems, etc.; oils, gases, glycerin, paraffins, caustic and acid solutions and other liquid and gaseous fluids used in industrial or other purposes or for fire-fighting purposes.

“Manager” means the town manager of the Town of Essex, Vermont or a representative authorized by the manager.

“Manifold” means a pipe fitting with numerous branches to convey fluids between a large pipe and several smaller pipes or to permit choice of diverting flow from one of several sources or to one of several discharge points.

“Pathogenic” means causing or capable of causing disease.

“Peak demand” means the maximum momentary load placed on a water system.

“Permit” means a written document issued by the Town of Essex pursuant to this chapter giving a designated person permission to operate and/or construct, alter, renovate or connect to or draw water from the town public water system.

“Person” means an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, municipal corporation, institution, department, division, bureau, agency or any entity recognized by law.

“Pollution” means a condition representing the presence of harmful or objectionable materials in water.

“Potable water” means water free from impurities in amounts sufficient to cause disease or harmful physiological effects, with the bacteriological, chemical, physical and radiological quality conforming to applicable regulations and standards of the State Department of Health.

“Public water system” means a water system in which all owners of abutting properties have equal rights, and is controlled by public authority.

“Reduced pressure principle device” means an assembly of two independently acting approved check valves together with a hydraulically operating, mechanically independent pressure relief valve located between the check valves and at the same time below the first check valve. The unit shall include properly located test cocks and tightly closing shutoff valves at each end of the assembly. The assembly shall operate to maintain the pressure in the zone between the two check valves at an acceptable level less than the pressure on the public water supply side of the device. At cessation of normal flow the pressure between the two check valves shall be less than the pressure on the public water supply side of the device.

In case of leakage of either of the check valves the differential relief valve shall operate to maintain the reduced pressure in the zone between the check valves by discharging to the atmosphere. When the inlet pressure is two pounds per square inch or less, the relief valve shall open to the atmosphere. To be approved these devices must be readily accessible for in-line testing and maintenance and be installed in a location where no part of the device will be submerged.

“Sampling” means the act or technique of selecting a representative part of the water supply for testing.

“Service connection” means each single water pipeline which provides water to an individual residential living unit, a commercial unit or an industrial unit from the public water system is a service connection. The service connection shall start at the corporation stop at the main water line and extend inside the building to the water meter. The service connection on new construction shall be constructed

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by the applicant to town standards. Once installed, the responsibility for maintenance and repairs on the service connection is split at the curb stop between the owner/applicant and the town. The town has responsibility for maintenance from the main line to and including the curb stop.

The owner/applicant has responsibility for maintenance and repairs from beyond the curb stop to and inside the building with the exception of the meter.

“Shall” is mandatory; “May” is permissive.

“Standard methods” means methods for examination of water and wastewater published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation or successor organizations.

“Tapping sleeves” means a split sleeve used in making a wet connection where a single branch line is to be tapped into a water main under pressure.

“Town” means the legislative body of the Town of Essex, or their designated representatives.

“Valve boxes” means a metal or concrete box or vault set over a valve stem and rising to the ground surface, to allow access to the stem in opening and closing the valve. A cover is usually provided at the surface to keep out dirt and debris.

“Wet tap” means a connection made to a main that is full or under pressure. (Ord. passed 5/5/97 Art. I(A))

## **10.12.020 Abbreviations.**

For the purpose of this chapter, the following abbreviations shall have the meaning ascribed to them under this section. References to standards of the following organizations shall refer to the latest edition of same.

“ANSI” means American National Standards Institute.

“ASME” means American Society of Mechanical Engineers.

“ASTM” means American Society of Testing and Materials.

“AWWA” means American Water Works Association.

“NPC” means National Plumbing Code. (Ord. passed 5/5/97 Art. I(B))

## **Article II**

### **Mandatory Use of the Public Water System**

#### **10.12.030 Connection required.**

A. The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the town, or outside the town in specific locations where town water is provided at the time of enactment of the ordinance codified in this chapter, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public water line of the town, is required at his/her expense to connect such property directly with the proper public water line in accordance with the provisions of this chapter within ninety days after date of official notice to do so, unless specifically exempted from this provision by the town.

B. Any property owner required to connect to the town water system may request a deferral. The request for deferral shall be in writing and shall be submitted to the Selectboard within thirty days of receipt of notice to connect. The Selectboard shall take action on the request for deferral within sixty days following receipt of the deferral. A basis for deferral shall be evidence of satisfactory compliance

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with State Health Department Drinking Water Standards on the existing water system. (Ord. passed 5/5/97 Art. II, § 1)

## **10.12.040 Extension of water service.**

Extension of water service beyond the limit of the municipal system in place at the time of enactment of this chapter shall be done as part of, and to the standards of, a municipal public water supply system (Vermont Health Regulations Chapter 5, Subchapter 12, Section 5-1250 Public Water System Regulations and subsequent amendments thereto).

A. All municipal water extensions, extended for the purpose of development shall be a minimum pipe size of eight-inch diameter unless waived by the public works director of the town and shall be extended to the furthest boundary line of the development property at a location within the town right-of-way or an easement providing for future extension of the system.

B. There shall be no reimbursement of costs to any developer by the town for developer extension of any public water main, unless approved by the legislative body.

C. The town may reimburse the developer for the difference in cost between the facilities actually needed for the development of the property (reference subsection A of this section for minimum size pipe) and the cost of facilities necessary for other future development. When further development occurs, the town may charge the appropriate portion of the additional cost as outlined in this section to that subsequent developer.

D. Extension of the municipal water system shall be designed, inspected, tested and written certification completed upon installation by a qualified professional engineer licensed in Vermont. Construction shall be done only by firms experienced in the construction of municipal water systems. The determination of qualifications is made by the town.

E. Looping of water lines shall be required unless waived by the Selectboard. (Ord. passed 5/5/97 Art. II, § 2)

## **10.12.050 Onsite wells.**

Onsite wells will not be permitted where municipal water supply is reasonably available, unless waived by the legislative body. (Ord. passed 5/5/97 Art. II, § 3)

## **Article III**

### **Private Water Supply Systems**

## **10.12.060 Permitted when.**

Where a public water system is not available under the provisions of Article II, the building water service connection shall be connected to a private water supply system complying with the provisions of this article. (Ord. passed 5/5/97 Art. III, § 1)

## **10.12.070 Compliance with applicable regulations required.**

The type, capacities, location and layout of a private water supply system shall comply with all mandates and guidelines of the state of Vermont, department of health, the subdivision and Zoning Regulations of the Town of Essex, and other appropriate legal documents of the Town of Essex and state of Vermont. (Ord. passed 5/5/97 Art. III, § 2)

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## **10.12.080 Connection to public water line required when.**

At such time as a public water line becomes available to a property served by a private water system, as provided in Article II, a direct connection shall be made to the public water line in compliance with this chapter. (Ord. passed 5/5/97 Art. III, § 3)

## **10.12.090 Noninterference with health officer's requirements.**

No provision of this article shall be construed to interfere with any additional requirements that may be imposed by the town health officer. (Ord. passed 5/5/97 Art. III, § 4)

## **10.12.100 Written approval required.**

Before commencement of construction of a private water system, the owner shall first obtain written approval from the town. The written approval may be in a form of an approved zoning permit or other permit deemed suitable for this purpose. (Ord. passed 5/5/97 Art. III, § 5)

## **Article IV**

### **Building Water Service Connections**

## **10.12.110 Permit required.**

No unauthorized person shall uncover, make any connections with, or opening into, use, alter or disturb any public water line or appurtenance thereof without first obtaining a written permit from the town. (Ord. passed 5/5/97 Art. IV, § 1)

## **10.12.120 Application.**

The owner or agent shall make application for initiation of water service on a form supplied by the town and shall identify whether the water use will be for residential, commercial or industrial purposes. The permit applications shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the town. A water service initiation fee, as set forth in Article IX shall be paid to the town at the time the application is filed. No physical construction between the water service connection piping and the main water line shall be made until the application is approved by the town and the water mains are fully tested and found to be acceptable by the town. (Ord. passed 5/5/97 Art. IV, § 2)

## **10.12.130 Costs to be borne by owner.**

All costs and expense incident to the installation and connection of the building water service connection shall be borne by the owner. The property owner/agent is responsible and must provide all necessary excavation from the main to the building or structure. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the water service connection. (Ord. passed 5/5/97 Art. IV, § 3)

## **10.12.140 Corporation stop and curb stop requirements.**

A separate and independent corporation stop and curb stop with valve box shall be provided for every building. Where one building stands at the rear of another or an interior lot and no water system

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is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the town may allow two services from a single corporation stop, providing each building has a separate curb stop and valve box. (Ord. passed 5/5/97 Art. IV, § 4)

### **10.12.150 Construction specifications.**

A. The size, depth, alignment, materials of construction of the building water service connection and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code, public works specifications or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof the materials and procedures set forth in appropriate specifications of the National Plumbing Code, Ten States Standards for Water Main and AWWA Standards, all latest editions, shall apply.

Furthermore, the following additional standards shall apply.

1. New type “k” copper shall be used for all residential service lines up to and including one and one-half inch diameter pipe from the corporation stop to the curb stop and from the curb stop to inside the structure.

2. New service connections for residential or commercial use larger than one and one-half inch diameter pipe may be PVC, schedule SDR21 rated at two hundred psi.

3. All service connections shall be laid at a minimum depth of six feet, unless specifically waived by the town.

4. Service connection taps to the main water line shall only be performed by firms qualified to perform the service connection tap. The qualification of a firm to perform this tap shall be determined by the town.

B. The Town of Essex standard specifications for construction contains additional guidelines for the installation of building water service connections. (Ord. passed 5/5/97 Art. IV, § 5)

### **10.12.160 Inspection—Restoration of facilities.**

Prior to any service connection being made to the main water line, the public works department shall be given at least one working day’s notice in order that the work can be scheduled for inspection. All service connections will be made during normal workday hours and no connection shall be made on Saturday, Sunday or legal town holidays. If the public works department has not been properly notified and the work has proceeded, the public works director shall require the completed work to be uncovered for examination, at the owner’s expense. The property owner/agent shall agree, as a condition of receiving approval for connection to the town water system, to restore the street, sidewalk, curbs, electrical lines, grassed or open areas or other features to their original conditions after the installation of the water line. Failure to comply with proper restoration of facilities may subject the property owner to penalties under Article VIII regardless of whether the installation was performed by the owner or another party. (Ord. passed 5/5/97 Art. IV, § 6)

### **10.12.170 Meters required.**

A. By July 1, 1988, all buildings connected to the Town of Essex water system shall be required to have meters installed. After July 1, 1988, those buildings without meters shall be charged on the basis of estimated user fees as provided for in Article IX.

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B. The property owner of each building shall be required to perform all interior or exterior plumbing necessary to accommodate the required meters.

C. The town will provide meter spacers on a loan basis for use in providing the proper plumbing gap for the meter to be installed. Failure to return the loaned spacer bar when requested shall require the owner to reimburse the town for the cost of the spacer bar(s).

D. The town will provide a meter or meters with outside reader in one of the following sizes for each structure:

Meter Size	Operating Range
5/8 inch X 3/4 inch (standard residential)	1—20 gpm
3/4 inch X 3/4 inch	1—30 gpm
1 inch	1—50 gpm
1-1/2 inches	2—100 gpm
2 inches	2-1/2—160 gpm

E. The provision and requirement for the number of meters in a building is as follows:

1. Single-family residential building: one meter;
2. Single-family residential building with accessory apartment (as defined in the zoning ordinance): one meter for the building;
3. Single building with multiple living units: one meter per living unit unless waived by the town;
4. Commercial/industrial building: one meter per each separate and identifiable unit within the building unless waived by the town;
5. Multiple buildings on a single parcel: each individual building shall be metered as indicated under subdivisions (1) through (4) of this subsection.
6. Mixed use building: one meter for each individual unit unless waived by the town.

Waivers. In cases where the town determines that it is not feasible or in the best interest of the town to install individual meters for each unit, the town may allow a single meter to serve multiple units. In cases where such a waiver is requested, the applicant shall provide adequate evidence to the town of legal acceptance of responsibility for use of and payment for all water supplied by the town through the single meter. The number of meters required shall be determined solely by the town. At a minimum, sufficient meters must be installed to differentiate between mixed residential, commercial, and/or industrial flows in a single building.

7. Additional meters for the purpose of identifying specific commercial/industrial flows may be installed if approved by the town. Where such additional meters are to be used by the town as a basis for billing, meters shall be installed by the town at the owner's expense.

F. Buildings existing at the time of enactment of the ordinance codified in this chapter may be waived from the requirement to provide multiple meters within one building. The requirement to install at least one meter to each structure (per subsection A of this section) however still applies to all users.

G. It is the responsibility of the town to fix, check or replace defective or nonworking meters within the town. It is the responsibility of the owner to provide town access to the building, upon request by the town, to replace, fix or check the nonworking meter. The owner shall be responsible for protecting the inside meter and outside reader from damage.

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H. Subsequent to July 1, 1997, all new association/multifamily seasonal swimming pools shall be metered. Association/multifamily seasonal swimming pools in existence prior to July 1, 1997, and unmetered shall have meters installed by the town at no charge. Plumbing costs to accommodate the meter(s) shall be borne by the pool owner.

I. Each meter installed after the effective date of the ordinance codified in this chapter shall be controlled by a curb stop directly associated with the meter unless waived by the town. (Ord. passed 5/5/97 Art. IV, § 7)

## **10.12.180 Testing.**

The town may require appropriate tests be made to the pipes and appurtenances and the plumber and contractor, at their own expense, shall furnish all necessary tools, labor, materials and assistance for such tests and shall remove or repair any defective materials when so ordered by the town. (Ord. passed 5/5/97 Art. IV, § 8)

## **10.12.190 Excavations—Construction within right-of-way—Requirements.**

All excavations for building water service connections shall be adequately guarded with barricades and lights so as to protect the public from hazard. A permit shall be obtained from the town for all construction within the highway right-of-way, which permit shall specify the times and dates of construction, the type and manner of construction, any guarantee thereof and any special safety requirements. Construction within state highway right-of-way shall require that a permit be obtained from the Agency of Transportation. (Ord. passed 5/5/97 Art. IV, § 9)

## **10.12.200 Interference with movement of vehicular traffic.**

The owner or their agent shall not block any driveway, street, road or railroad at any time without permission of the town and other controlling agencies. Every effort shall be made to permit the movement of vehicular traffic at all times. Whenever it becomes necessary to cross or interfere with roads, walks, or drives, whether public or private, the owner or their agent shall maintain, at his/her own expense, and subject to the approval of the town, safe bridges or other means of egress. (Ord. passed 5/5/97 Art. IV, § 10)

## **Article V**

### **Use of the Public Water Supply System**

#### **10.12.210 Primary uses.**

The primary uses of the public water supply system shall be for the supply of potable water to all connected users for domestic consumption and fire protection for structures within the area served by the public water supply system. (Ord. passed 5/5/97 Art. V, § 1)

#### **10.12.220 Auxiliary uses.**

Auxiliary use of the public water system, such as using hydrants to fill swimming pools, shall only be permitted when such uses are approved by the town and not in conflict with the primary uses under Section 10.12.210. Flooding of ice rinks from hydrants is not permitted as an auxiliary use. (Ord. passed 5/5/97 Art. V, § 2)

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## **10.12.230 Hydrant use.**

A. Except for hydrant use by fire departments in fighting fires or practicing for firefighting, or public works use, all use of hydrants in the Town of Essex, outside the village of Essex Junction, shall require prior approval and issuance of a hydrant use permit.

B. The public works department shall issue permits and be responsible for hooking up and disconnecting meters and hoses.

C. Hydrant permit holders shall be financially responsible for damage to municipal hydrants, meters, hoses and connections, caused by the permit holder or their agent's failure to protect such facilities during use. Permit holder shall not be held financially liable for actions by the town in hooking up and/or disconnecting meters and hoses or operating the fire hydrant.

D. The town will provide three hundred feet of fire hose; any facility which cannot be served by this length of hose will need additional hose provided by the owner. The fee schedule is as set forth in Article IX, Rates. The permit application form is provided in the appendix, attached to the ordinance codified in this chapter. (Ord. passed 5/5/97 Art. V, § 3)

## **10.12.240 Conditions on water service.**

In consideration of water service supplied by the Town of Essex, all applicants agree to be responsible for payment of all bills rendered and for all water used by the applicant, their tenants, successors in tenancy or in ownership, and all other persons at the specified location, unless and until proper notice is given to the town water department of termination of service on a specific date. The applicant shall agree to abide by all rules and regulations established by the Town of Essex water department, consistent with enforcement of the provisions of this chapter. (Ord. passed 5/5/97 Art. V, § 4)

## **10.12.250 Backflow prevention.**

A. No water service connection to any premises shall be approved or maintained by the Town of Essex unless the water supply is protected as required by state laws and regulations and this chapter. Service of water to any premises shall be discontinued if a backflow prevention device required by this chapter is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, by-passed, or if an unprotected cross-connection exists on the premises. Service will not be restored until such conditions or defects are corrected.

B. Customer's system should be open for inspection at all reasonable times to authorized representatives of the Town of Essex to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exists. When such a condition becomes known, the town shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with state and town statutes relating to plumbing and water supplies and the regulations adopted pursuant thereto.

C. An approved backflow prevention device shall also be installed on each service line to a customer's water system at or near the property line or immediately inside the building being served; but, in all cases, before the first branch line leading off the service line wherever the following conditions exist:

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1. In the case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the town, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line appropriate to the degree of hazard.

2. In the case of premises on which any industrial fluids or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system which have been subject to deterioration in quality.

3. In the case of premises having (a) internal cross-connections that cannot be permanently corrected and controlled, or (b) intricate plumbing and piping arrangements or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impractical or impossible to ascertain whether or not dangerous cross-connections exist, the public water system shall be protected against backflow from the premises by installing an approved backflow prevention device in the service line.

D. The type of protective device required under subsection (C)(1), (2) and (3) of this section shall depend upon the degree of hazard which exists as follows:

1. In the case of any premises where there is an auxiliary water supply as stated in subsection (C)(1) of this section and it is not subject to any of the following rules, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device.

2. In the case of any premises where there is water or substance that would be objectionable but not hazardous to health, if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

3. In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device. Examples of premises where these conditions will exist include sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals and mortuaries.

4. In the case of any premises where there are uncontrolled cross-connections, either actual or potential, the public water system shall be protected by an approved air-gap separation or an approved reduced pressure principle backflow prevention device at the service connection.

5. In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow from the premises by either an approved air-gap separation or an approved reduced pressure principle backflow prevention device on each service to the premises.

E. Any backflow prevention device required in this chapter shall be a model and size approved by the town. The term "approved backflow prevention device" shall mean a device that has been manufactured in full conformance with the standards established by the American Water Works Association entitled: AWWA C506-78 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices.

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F. It shall be the duty of the customer-user of any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the town deems the hazard to be great enough there may be required certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user and shall be performed by the device manufacturer's representative or by a certified tester approved by the town. The customer-user shall notify the town in advance when the tests are to be undertaken so that the town or its representative may witness the tests if so desired. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever such devices are found to be defective. Records of such tests, repairs and overhaul shall be kept and made available to the town. (Ord. passed 5/5/97 Art. V, § 5)

## **10.12.260 Water mains—Standards.**

All water mains shall be constructed, tested and disinfected in accordance with AWWA standards C-600, C-601, C-900 and the Vermont Public Water System Regulation. The test pressure for all mains shall be a minimum of two hundred psi; or one hundred fifty percent of working pressure, whichever is greater. (Ord. passed 5/5/97 Art. V, § 6)

## **10.12.270 Preexisting private water supply main connections to the public water supply system.**

A. The town responsibility for private water supply main connection to the public water system terminates at the shutoff valve(s) to the private system water mains. The town assumes no responsibility for hydrant or line maintenance, operational checks, line breaks or other similar items of work in connection with these systems.

B. The Town of Essex may assume the responsibility for operation and maintenance of the private water supply main lines, services excluded, at such time as the following conditions for acceptance are met by the owners of the private system:

1. Accurate surveyed as-builts shall be provided to the town, indicating line sizes and locations, hydrants, valves, curb stops, service connections and all other pertinent features of the system.
2. Deeds, easements or other similar legal documents shall be prepared by the owner and found to be acceptable by the Town transferring the owner's legal interest in the main lines and pertinent features.
3. The water department of the town shall conduct an inspection of the system and provide the owner, with a list of improvements which must be made to bring the water system up to municipal public work standards prior to acceptance by the town. The private water system owner shall make the necessary improvements prior to acceptance of the system by the town. (Ord. passed 5/5/97 Art. V, § 7)

## **Article VI**

### **Protection of Public Water System from Damage**

#### **10.12.280 Tampering with system prohibited.**

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the public water system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the VERMONT STATUTES ANNOTATED. Any person

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violating this article on conviction thereof shall be fined an amount not less than one hundred dollars for each violation. (Ord. passed 5/5/97 Art. VI)

## **Article VII**

### **Powers and Authority of Inspectors**

#### **10.12.290 Right of entry.**

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties within a reasonable time frame for the purposes of inspection, observation, measurement, sampling, and testing and maintenance in accordance with the provisions of this ordinance. Failure to provide reasonable access shall be considered a violation of the ordinance, subject to the penalties outlined in Article VIII. (Ord. passed 5/5/97 Art. VII, § 1)

#### **10.12.300 Liability and indemnification.**

While performing the necessary work on private properties referred to in Section 10.12.290, the town manager or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the town employees. The town employees and the town shall indemnify the owner or tenant against liability claims and demands for injury or property damage except as such may be caused by negligence or failure of the company to maintain safe premises or conditions, including conduct of agents or employees of the owner or agent, as applicable. (Ord. passed 5/5/97 Art. VII, § 2)

#### **10.12.310 Access to easements.**

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the water works lying within such easement. All entry and subsequent work, if any, on such easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. passed 5/5/97 Art. VII, § 3)

## **Article VIII**

### **Penalties**

#### **10.12.320 Notice of violation.**

Any person found to be violating any provision of this chapter except Article VI, shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violation. (Ord. passed 5/5/97 Art. VIII, § 1)

#### **10.12.330 Violation—Penalty.**

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A. Any person who shall continue any violation beyond the time limit provided for in Section 10.12.320 shall be guilty of a misdemeanor, and on conviction thereof shall be fined the maximum amount allowable under state statute. Each day in which any such violation shall continue shall be deemed a separate offense.

B. In addition to any fine imposed under subsection A of this section, any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such offense. (Ord. passed 5/5/97 Art. VIII, §§ 2, 3)

## **10.12.340 Remedies nonexclusive.**

Notwithstanding any of the foregoing provisions, the town may institute any appropriate action including injunction or other proceeding to prevent, restrain or abate violations of any provisions of this chapter, including termination of service. (Ord. passed 5/5/97 Art. VIII, § 4)

## **Article IX**

### **Rates**

#### **10.12.350 Authority to establish.**

The Selectboard shall have the authority to establish rates, including service initiation fees, hydrant use fees, user fees, turn on/shutoff fees, and other similar fees to defray the costs of construction, operations and maintenance of the system. (Ord. passed 5/5/97 Art. IX, § 1)

#### **10.12.360 Service initiation fee.**

A service initiation fee shall be paid by all new water users at time of submittal of the application for water service. The service initiation fee is established to help defray the town's past, current and future costs, both direct and indirect, of providing potable water and water for fire protection to the facility. The water initiation fee is due and payable in full upon application for a building permit. Extended payment schedules due to hardship shall require the approval of the Selectboard. The water service initiation fee schedule is:

A. One thousand seven hundred dollars per first individual residential living unit in a dwelling with one thousand two hundred dollars per additional residential living unit in a multifamily dwelling.

1. For the assessment of the service initiation fees, an individual residential living unit is a single-family dwelling or a single-family dwelling unit in a multifamily dwelling.

2. The service initiation fee applies to the building regardless of ownership or metering.

3. Any conversion of a dwelling from single-family residential to a multifamily dwelling will require the payment of the one thousand two hundred dollar service initiation fee per additional residential living unit created plus installation of additional meters as per Section 10.12.170(E).

4. A single-family residential building with an accessory apartment as defined in the Zoning Ordinance shall be considered an exception to subdivision (3) of this subsection, with the service initiation fee on an accessory apartment waived.

B. Two thousand two hundred dollars per first commercial unit in a single building with five hundred dollars per each additional commercial unit in a multi-unit commercial building.

1. A single commercial unit for the purpose of this chapter includes each individual retail store or business except as provided in subdivision (2) of this subsection within one building.

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2. A building with one or more nonretail businesses such as business offices, financial or professional offices, each of which does not manufacture, repair, process or fabricate an article, substance or commodity is considered a single commercial unit.

3. Any conversion of a commercial building to individual retail stores will require the payment of the five hundred dollar service initiation fee per additional retail store created plus installation of additional meters as per Section 10.12.170(E).

C. Four thousand two hundred dollars per industrial unit.

1. Each industrial building is considered an industrial unit.

2. An industrial facility is defined by the applicant as stated on the zoning application for approval. (Ord. passed 6/2/03 (part): Ord. passed 5/5/97 Art. IX, § 2)

### **10.12.370 Hydrant use fee.**

A hydrant use fee shall be paid by all users, (not including town departments for use of town hydrants) at the time of submittal of the application for hydrant use. The hydrant fee schedule is twenty-five dollars for use of the town hydrant at the intersection of Foster Road and Sand Hill Road and fifty dollars for use of any other town hydrant. All hydrant use must be completed during normal working hours so as to allow adequate time for hydrant shutdown and retrieval of the meter/hose. Hydrant use in excess of the standard one-day period may be approved by the manager if such use is determined not to be in conflict with Article V. In addition to payment of the hydrant use fee, the applicant shall be responsible for payment of normal user fees for all water taken from the hydrant. (Ord. passed 5/5/97 Art. IX, § 3)

### **10.12.380 User fee.**

A user fee shall be paid by all users who are physically connected to the municipal water system. The user fee shall be payable regardless of whether or not water service is physically turned on during all or part of the billing period and shall be determined as follows:

A. Standard Metered Service. System users with approved meters shall be billed based on the metered usage multiplied by the rate per thousand gallons as set by the Selectboard except as follows:

1. Users with standard metered service shall be billed a minimum of thirty-two dollars per each billing period. This minimum charge reflects the fact that all users receive some level of fire protection in addition to the benefit of potable water use. This charge is based in part on the significant portion of water system expenses that are independent of actual customer usage.

2. If in the opinion of the town, the available metered flow information is insufficient to provide an adequate basis for billing or if the metered flow cannot be reasonably obtained by the town, the user shall be billed as an unmetered service in accordance with subsection B of this section.

B. Unmetered Service. System users that do not have metered service or which are excepted from standard metered service under subsection A of this section shall be billed based on an estimated usage per Table 10.12.380 multiplied by the rate per thousand gallons set by the Selectboard except as follows:

1. If a user fails to make reasonable accommodations as determined by the town, so as to allow the installation of a meter or if a user fails to provide reasonable access to the town for the purpose of reading, inspection, installation, repair or replacement of a meter, billing shall be based on one hundred

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twenty-five percent of the estimated usage per Table 10.12.380 multiplied by the rate per thousand gallons set by the Selectboard.

2. If in the opinion of the town, sufficient metered usage history exists prior to the unmetered usage to accurately estimate current usage, such an estimate may be used in place of the estimated usage per Table 10.12.380.

**Table 10.12.380**

Establishment Classifications	Estimated Usage (gallons per day)
Single-family residence	200 gpd each residence
Mobile home	200 gpd each residence
Apartment, condominium dwelling unit	140 gpd each apartment or condominium dwelling unit
Dormitory	100 gpd each per bedroom
Laundries, self-service	400 gpd each per machine
Schools—grade K - 12:	
Daycare without shower and cafeteria	
Daycare with shower or cafeteria	14 gpd each per student 20 gpd each per student
Daycare facilities	20 gpd each child
College/university classroom building	
(non-lab)	200 gpd each building
Nursing home/home for the aged	60 gpd each patient
Hotels/motels	140 gpd each rental unit
Restaurant	
Add for lounge	32 gpd per seat 20 gpd per seat
Service station (without car washing)	300 gpd each set of gas pumps
Church	200 gpd
Barber/beauty shop	160 gpd per chair
Other categories	To be determined based upon comparable use using fixture units and the National Plumbing Code as a basis.

(Ord. passed 5/5/97 Art. IX, § 4)

**10.12.390 Maintenance and repair of water service connections—Shutoff and turn on fees.**

A. The town owns and is responsible for maintenance and repair of water service connections from the main line up to and including the curb stop, water meters except industrial/commercial meters over two inches in size and meter connection fittings. Only an authorized employee of the town may operate, repair, replace, remove or modify these items. The owner is responsible for the service line from the curb stop into the building and for all internal plumbing with the exception of town-owned water meters and meter connection fittings.

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B. All structures connected to the water system subsequent to adoption of the ordinance codified in this chapter must have an appropriate valve to allow water service to be shut off inside the building prior to any fittings and have a second valve on the opposite side of the water meter for the purpose of isolating the meter. The owner shall be responsible for all costs associated with purchase and installation of such valves. Owners of buildings that do not currently have appropriate shutoff valves are encouraged to install them.

C. There shall be service fees for curb stop shutoff/turn on services provided by the town as follows:

1. Normal Working Hours. There shall be a fee of twenty-five dollars for all shutoff/turn on services provided during normal working hours except as follows:

a. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the town portion of the service line, the curb stop, or town-owned meters.

b. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the owners portion of the service line or repair/installation of the inside shutoff valve if these services are completed during normal working hours.

c. Fees for services associated with delinquency disconnect shall be the maximum allowed under Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect.

2. Overtime Hours (Including Weekends and Town Holidays). There shall be a fee of thirty-seven dollars and fifty cents for shutoff/turn on services provided during overtime hours except as follows:

a. This fee is not applicable to shutoff/turn on services provided for the purpose of repairing the town portion of the service line, the curb stop, or town-owned meters

b. Fees for services associated with delinquency disconnect shall be the maximum allowed under Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect.

3. When multiple service calls are required for a single repair, each call shall be billed individually. (Ord. passed 5/5/97 Art. IX, § 5)

### **10.12.400 Disposition of excess revenues.**

Excess revenues may be placed into a sinking fund, accessible for use on water-system-related construction or expenses. (Ord. passed 5/5/97 Art. IX, § 6)

### **10.12.410 Payment of charges—Delinquent when—Billing.**

A. Water charges will be invoiced a minimum of twice a year. Water charges shall be payable on or before the thirtieth day following the date of the invoice or a later date as shown on the invoice.

B. In the event that such charge is not paid when due, a penalty of eight percent shall be added thereto plus the judgement rate of interest per month shall be added after the first thirty days of delinquency. If any account shall remain delinquent, the legislative body may also take any action that is consistent with the provisions of Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect, as presently constituted and as amended from time to time, to obtain payment of delinquent charges or to discontinue water service. Such charges shall be a lien upon the real estate as provided in 24 VERMONT STATUTES ANNOTATED, 3612 and 5149.

C. New water connections made during a six-month billing period shall be billed on the following basis: The billing shall be the larger of the actual metered billings or the minimum charge billing for the period.

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D. All water charges will be billed to the owner of record of the facility(s) served, unless the owner of record provides written documentation to the town accepting responsibility for payment but identifying other person(s) for receipt of billings.

E. There will be a fee of ten dollars for interim bills requested due to a change of tenants. (Ord. passed 5/5/97 Art. IX, §§ 7, 8)

## **10.12.420 Review of fee structure.**

The fee structure shall be reviewed by the legislative body as deemed necessary. (Ord. passed 5/5/97 Art. IX, § 9)

## **10.12.430 Effective date for rate changes.**

All rate changes shall be effective for water used subsequent to the spring 1997 billing. (Ord. passed 5/5/97 Art. IX, § 10)

## **Chapter 10.16**

### **SEWER USE**

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## Article IV

### Building Sewers and Connections

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## Article I

### Definitions

#### **10.16.010** Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

“Biochemical oxygen demand (BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Celsius, expressed in milligrams per liter.

“Building drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

“Building sewer” means the part of the sewerage system which receives the sewage from the house plumbing system and conveys it to the nearest end of the house connection, unless a house connection is not available, whereby the building sewer shall be extended to the nearest available “Y” branch on the main sewer.

“Combined sewer” means a sewer receiving both surface runoff and sewage.

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“Garbage” means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

“Industrial wastes” means the liquid wastes from industrial manufacturing processes, trade or business as distinct from sanitary sewage.

“Manager” means the town manager of the Town of Essex, Vermont or the manager’s authorized representative.

“Natural outlet” means any outlet into a watercourse, pond, ditch, lake or other body or surface or groundwater.

“Person” means any individual, firm, company, association, society, corporation or group.

“pH” means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

“Properly shredded garbage” means the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the slow conditions normally prevailing in public sewers, with no particle greater than one-half-inch (1.27 centimeters) in any dimension.

“Public sewer” means a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

“Sanitary sewer” means a sewer which carries sewage and to which storm, surface and groundwater are not intentionally admitted.

“Secretary” means the secretary of the Agency of Environmental Conservation, state of Vermont or his/her representatives.

“Sewage” means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

“Sewage treatment plant” means any arrangement of devices and structures used for treating sewage.

“Sewage works” means all facilities for collecting, pumping, treating and disposing of sewage.

“Sewer” means a pipe or conduit for carrying sewage.

“Shall” is mandatory; “may” is permissive.

“Slug” means any discharge of water, sewage or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes, more than five times the average twenty-four-hour concentration of flows during normal operation.

“Storm drain” (sometimes termed “storm sewer”) means a sewer which carries stormwaters and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

“Suspended solids” means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

“Town” means the legislative body of the Town of Essex, Vermont authorized under statute to act as the board of sewage disposal commissioners.

“Watercourse” means a channel in which a flow of water occurs, either continuously or intermittently. (Ord. passed 5/5/97 Art. I(A))

### **10.16.020 Abbreviations.**

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For the purpose of this chapter, the following abbreviations shall have the meaning ascribed to them under this section. References to standards of the following organizations shall refer to the latest edition of same.

“ANSI” means American National Standards Institute.

“ASME” means American Society of Mechanical Engineers.

“ASTM” means American Society of Testing and Materials.

“AWWA” means American Water Works Association.

“cm” means centimeter.

“CS” means Commercial Standards.

“Degrees C” means degrees Centigrade.

“Degrees F” means degrees Fahrenheit.

“kg” means kilograms.

“l” means liters.

“m” means meter.

“mg/l” means milligrams per liter.

“NPC” means National Plumbing Code.

“ppm” means part per million.

“sq.m” means square meters.

“WPCF” means Water Pollution Control Federation. (Ord. passed 5/5/97 Art. I(B))

## **10.16.030 Fort Ethan Allen System.**

A. The Town of Essex acquired a portion of the sanitary sewer system of the Ethan Allen Air Force Base by quit-claim deed of the United States of America dated December 17, 1964, which deed is recorded in Volume 69 at Pages 318-323 of the Town of Essex land records and Volume 165 at Pages 370-375 of the town of Colchester land records. Such deed specifically excluded from the conveyance all service laterals and/or building connections and all items of plumbing located in any of the buildings upon such Ethan Allen Air Force Base. The following sections define the public system, consistent with the public sewer in other portions of the town.

B. The “public sewer” for purposes of this chapter shall include the following pipes, conduits and manholes:

1. The eight-inch line extending generally westerly from Manhole 41 adjacent to Building 301 to and through Manholes 40, 39, 30, 22, 20, 19, 17, 16, 15, 14, 13, 12 and 9;
2. The line connecting Manhole 8 to Manhole 13;
3. The line extending from Manhole 2A adjacent to Vermont Route 15 through Manholes 1A, 8, 44, 45, 45A, 78, 79 and 84 adjacent to Building 57;
4. The line from Manhole 44 near the intersection of Barnes Street and Ethan Allen Avenue through Manholes 48, 49, 52, 56, 59, 61, 65, 65A, 70A, 70 and 69 adjacent to Building 76;
5. The line from Manhole 56 extending through Manhole 53 to Manhole 86 located in Bellew Street;
6. The line extending from Manhole 81 through Manhole 80 to the line westerly adjacent to Barnes Street.

C. The following lines are considered abandoned and not part of the sewer system:

1. The line extending northerly from Manhole 15;

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2. The line extending northerly from Manhole 74;
  3. The line extending northeasterly from Manhole 86 to Manhole 103;
  4. The line extending generally northerly from Manhole 89 through Manhole 102 to and beyond Manhole 104.
- D. All sewer lines and manholes not specifically above described are service lines which are not part of the public sewer system.
- E. Reference is made to a plan entitled "Fort Ethan Allen, Essex and Sanitary Sewer System," drawn by S. Prime, dated January 5, 1988, last revised March 1994. (Ord. passed 5/5/97 Art. I(C))

## Article II

### Mandatory Use of Public Sewers

#### 10.16.040 Unlawful acts.

- A. It is unlawful for any person to place, deposit or permit to be placed or deposited, upon public or private property within the town or in any area under the jurisdiction of the town, any human excrement, garbage or sewage.
- B. It is unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of the town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter and the laws of the state of Vermont.
- C. Except as provided in Article III of this chapter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage. (Ord. passed 5/5/97 Art. II, §§ 1—3)

#### 10.16.050 Installation of toilet facilities and connection to public sewer required.

- A. The owner of all houses, buildings or properties used for human occupancy, employment, recreation, or other purposes, situated within the town, or outside the town in specific locations where town sewers are provided at the time of enactment of the ordinance codified in this chapter, and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the town, is required at his/her expense to install suitable toilet facilities therein and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within ninety days after date of official notice to do so, unless specifically exempted from this provision by the Selectboard, provided that the property in part or in total, abuts on such street, alley or right-of-way.
- B. Where the owner is of the opinion that undue hardship would result from the requirement to connect to the sewer, the property owner shall make a request in writing to the Selectboard within thirty days of receipt of notice to connect, stating the reasons for requesting the deferral. The Selectboard shall make a determination on whether or not to grant the deferral. (Ord. passed 5/5/97 Art. II, § 4)

## Article III

### Private Sewage Disposal

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## **10.16.060 Permitted when.**

Where a public sanitary or combined sewer is not available under the provisions of Section 10.16.050, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this article. (Ord. passed 5/5/97 Art. III, § 1)

## **10.16.070 Compliance with applicable regulations required.**

The type, capacities, location and layout of a private sewage disposal system shall comply with all mandates of the state of Vermont, Department of Health or its successor, including, but not limited to those regarding wastewater treatment and disposal by individual on-site systems, and all other applicable federal, state and local regulations. No septic tank, cesspool, mound system or sewage leach field shall be permitted to discharge to any natural outlet. (Ord. passed 5/5/97 Art. III, § 2)

## **10.16.080 Disconnection and abandonment required when.**

At such time as public sewer becomes available to a property served by a private sewage disposal system, as provided in Section 10.16.050, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be pumped out, filled with suitable material, such as bank run gravel, or removed and the system shall be abandoned. (Ord. passed 5/5/97 Art. III, § 3)

## **10.16.090 Operation and maintenance requirements.**

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town. (Ord. passed 5/5/97 Art. III, § 4)

## **10.16.100 Noninterference with health officer's requirements.**

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the town health officer. (Ord. passed 5/5/97 Art. III, § 5)

## **10.16.110 Permit required.**

Before commencement of construction of a private sewage disposal system the owner shall first obtain a written permit signed by the town health officer. The application for such permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the town health officer. A permit and inspection fee as set by the Selectboard shall be paid to the town at the time the application is filed, unless waived under the provisions of Section 10.16.140. (Ord. passed 5/5/97 Art. III, § 6)

## **10.16.120 Inspection.**

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the town health officer, zoning administrator or other duly authorized agent. They shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify them when the work is ready for final inspection and before any underground portions are covered. (Ord. passed 5/5/97 Art. III, § 7)

## **Article IV**

# TOWN OF ESSEX MUNICIPAL CODE

## Building Sewers and Connections

### 10.16.130 Permit required.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the manager. Any person proposing a new discharge into the system or a substantial change in volume or character of pollutants that are being discharged into the system shall notify the manager at least thirty days prior to the proposed change or connection, unless waived. (Ord. passed 5/5/97 Art. IV, § 1)

### 10.16.140 Building sewer permits—Classes—Fees.

A. There shall be two classes of building sewer permits:

1. For residential and commercial service; and
2. For service to establishments producing industrial wastes.

B. In either case, the owner/agent shall make application on a special form furnished by the town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgement of the manager.

C. A service initiation fee to cover the cost of plan review, permit processing, inspection, system improvements and excess capacity repayment shall be paid to the town. This initiation fee shall consist of a connection fee of one thousand dollars per connection plus a capacity fee of five dollars per gallon based on estimated usage as determined by the manager using Table 10.16.510. Extended payment schedules due to hardship shall require the approval of the Selectboard. (Ord. passed 6/2/03 (part); Ord. passed 5/20/02; Ord. passed 5/5/97 Art. IV, § 2)

### 10.16.150 Costs to be borne by owner.

All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. (Ord. passed 5/20/02; Ord. passed 5/5/97 Art. IV, § 3)

### 10.16.160 Separate sewer service required—Exceptions.

A separate and independent sewer service shall be provided for every building. This requirement may be waived by the manager in special cases if independent connections are not feasible or if shared connections are in the best interest of the town. (Ord. passed 5/5/97 Art. IV, § 4)

### 10.16.170 Use of old sewers permitted when.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test made by the manager and paid for by the owner to meet all requirements of this chapter. The time frame for notification prior to inspection shall be as set forth in Section 10.16.220. (Ord. passed 5/5/97 Art. IV, § 5)

### 10.16.180 Construction specifications.

The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing the pipe, jointing, testing and backfilling the trench, shall all conform to the

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requirements of the building and plumbing code or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply and the National Plumbing Code, latest edition. Appendix 3, attached to the ordinance codified in this chapter, contains guidelines for the installation of building sewers and connections. (Ord. passed 5/5/97 Art. IV, § 6)

### **10.16.190 Building sewer elevation.**

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the sanitary sewer. (Ord. passed 5/5/97 Art. IV, § 7)

### **10.16.200 Prohibited connections.**

No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, cellar drains, basement sumps, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. (Ord. passed 5/5/97 Art. IV, § 8)

### **10.16.210 Connection requirements.**

The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the state and town or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9 and the National Plumbing Code, latest edition. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the manager before installation. (Ord. passed 5/5/97 Art. IV, § 9)

### **10.16.220 Cleanouts.**

Cleanouts shall be installed where the distance from the building to the main sewer is greater than one hundred feet or where bends greater than forty-five degrees are used in the building sewer. Cleanouts shall be made by installing a "Y" and one-eighth bends of the same diameter as the building sewer. The cleanouts shall ordinarily be installed at the point of connection between the building sewer and the outside part of the house plumbing system, at curves on the building sewer and on the straight part of the house sewer to the main sewer. The cleanout shall be brought up from the building sewer to four inches (10.2 cm) below ground level and be properly capped. Locations of all cleanouts shall be recorded and turned over to the manager. (Ord. passed 5/5/97 Art. IV, § 11)

### **10.16.230 Inspection—Notification.**

Prior to any connection to the house connection, "Y" or to the main sewer, the manager shall be given twenty-four hours' notice in order that the work may be inspected. All connections will be made during normal workday hours and no connections shall be made Saturday, Sunday or legal town holidays. If the manager has not been properly notified and work has proceeded, the work shall be uncovered for examination at the owner's expense. (Ord. passed 5/5/97 Art. IV, § 10)

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## **10.16.240 Inspection—Required.**

Before any portion of the existing plumbing system outside of the building is connected to the building sewer, the owner shall prove, to the satisfaction of the manager, that it is clean and conforms in every respect to this chapter and that all joints are watertight. The time frame for notification prior to inspection shall be as set forth in Section 10.16.220. (Ord. passed 5/5/97 Art. IV, § 12)

## **10.16.250 Testing.**

The manager shall apply appropriate tests to the pipes and the plumber and contractor, at their own expense, shall furnish all necessary tools, labor, materials and assistance for such tests and shall remove or repair any defective materials when so ordered by the manager. (Ord. passed 5/5/97 Art. IV, § 13)

## **10.16.260 Excavations—Construction within right-of-way—Requirements.**

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. A permit shall be obtained from the manager for all construction within the highway right-of-way, which permit shall specify the times and dates of construction, the type and manner of construction, any guarantee thereof and any special safety requirements. (Ord. passed 5/5/97 Art. IV, § 14)

## **10.16.270 Interference with movement of vehicular traffic.**

The contractor shall not block any driveway, street, road or railroad at any time without permission of the manager and other controlling agencies. Every effort shall be made to permit the movement of vehicular traffic at all times. Whenever it becomes necessary to cross or interfere with roads, walks or drives, whether public or private, the contractor shall maintain, at his/her own expense, and subject to the approval of the town, safe bridges or other means of egress. (Ord. passed 5/5/97 Art. IV, § 15)

## **Article V**

### **Use of the Public Sewers**

#### **Prohibited discharges to sanitary sewers.**

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water or unpolluted industrial process waters to any sanitary sewer. (Ord. passed 5/5/97 Art. V, § 1)

## **10.16.290 Discharge of stormwater and unpolluted drainage.**

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the manager. Industrial cooling water or unpolluted process waters may be discharged on approval of the manager. (Ord. passed 5/5/97 Art. V, § 2)

## **10.16.300 Discharge of certain waters or wastes prohibited.**

No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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- A. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
- B. Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant;
- C. Any waters or wastes having a pH lower than 5.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
- D. Solid or viscous substances in quantities or of such size capable of causing obstruction of the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, and other paper or fiber containers, either whole or ground by garbage grinders. (Ord. passed 5/5/97 Art. V, § 3)

### **10.16.310 Discharge of certain substances prohibited.**

No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the manager that such wastes can harm either the sewers, sewage treatment process or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, health, public property, or constitute a nuisance. In forming an opinion as to the acceptability of these wastes, the manager will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, prevailing state and federal regulations and other pertinent factors. The substances prohibited are:

- A. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit (sixty-five degrees Celsius);
- B. Any water or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two and one hundred fifty degrees Fahrenheit (between zero and six degrees Celsius);
- C. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the manager;
- D. Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;
- E. Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the manager for such materials;
- F. Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the manager as necessary, after treatment of the composite sewage to meet the requirements of the state, federal and other public agencies having jurisdiction for such discharge to the receiving waters;

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- G. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the manager in compliance with applicable state or federal regulations;
- H. Any waters or wastes having a pH in excess of 9.5;
- I. Materials which exert or cause:
  - 1. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);
  - 2. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
  - 3. Unusual BOD, chemical oxygen demand, or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works or which may cause the effluent limitations of the discharge permit to be exceeded;
  - 4. Unusual volume of flow or concentration of wastes constituting "slugs" as defined in this chapter;
- J. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters. (Ord. passed 5/5/97 Art. V, § 4)

### **10.16.320 Authority of manager to reject wastes or impose additional controls.**

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 10.16.310 of this article, and which in the judgement of the manager, may have a deleterious effect upon the sewage works, processes, equipment or receiving waters, or which otherwise create a hazard to life, health or constitute a public nuisance, the manager may:

- A. Reject the wastes;
- B. Require pretreatment to an acceptable condition for discharge to the public sewers;
- C. Require control over the quantities and rates of discharge.

If the town permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the town board of sewage commissioners and health officer, and subject to the requirements of all applicable codes, ordinances and laws and to the municipal discharge permit. Further, such pretreatment installations must be consistent with the requirements of any state pretreatment permit issued to the industry. (Ord. passed 5/5/97 Art. V, § 5)

### **10.16.330 Grease, oil, hair and sand interceptors.**

A. Grease, oil, hair and sand interceptors shall be provided when, in the opinion of the town, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the town and shall be located as to be readily and easily accessible for cleaning and inspection.

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B. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

C. Where installed, all grease, oil, hair and sand interceptors shall be maintained by the owner, at his/her expense, in continuously efficient operation at all times. Materials collected shall not be reintroduced into the public sewerage system. The owner shall provide the town with records of cleaning, maintenance and inspection as deemed necessary by the manager. (Ord. passed 5/5/97 Art. V, §§ 6—8)

### **10.16.340 Treatment or flow-equalizing facilities—Maintenance responsibility.**

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his/her expense. (Ord. passed 5/5/97 Art. V, § 9)

### **10.16.350 Control manholes.**

When required by the manager, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control manhole together with such necessary meters, and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times. (Ord. passed 5/5/97 Art. V, § 10 (part))

### **10.16.360 Monitoring of discharges—Recordkeeping required.**

All industries discharging into a public sewer shall perform such monitoring of their discharges as the manager may reasonably require, including installation, use and maintenance of monitoring equipment, keeping records and reporting the results of such monitoring to the manager. Such records shall be made available, upon request, by the manager, to other agencies having jurisdiction over discharges to the receiving waters. Where industrial pretreatment permits are issued by the state of Vermont, monitoring records must also be submitted to the Secretary in accordance with such permit. Records of any monitoring will be supplied by the manager to the secretary on request. (Ord. passed 5/5/97 Art. V, § 10 (part))

### **10.16.370 Measurements, tests and analyses—Methods.**

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at such control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb and property. (The particular analyses involved will determine whether a twenty-four-hour composite of

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all outfalls of a premises is appropriate or whether a grab sample or samples should be taken.) Normally, but not always, BOD and suspended solids analyses are obtained from twenty-four-hour composites of all outfalls whereas pH's are determined from periodic grab samples. (Ord. passed 5/5/97 Art. V, § 11)

## **10.16.380 Termination of disposal authorization for violation.**

Any industry held in violation of the provisions of this chapter may have its disposal authorization terminated. (Ord. passed 5/5/97 Art. V, § 12)

## **10.16.390 Acceptance of wastes of unusual strength for treatment allowed when.**

No statement contained in this article shall be construed as prohibiting any special agreement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment, therefor, by the industrial concern, provided that such agreements do not contravene any requirements of existing federal and state laws and regulations and sound engineering practice, and are compatible with any user charge and industrial cost recovery system in effect. (Ord. passed 5/5/97 Art. V, § 13)

## **Article VI**

### **Protection from Damage**

## **10.16.400 Tampering with public sewerage disposal system prohibited.**

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is part of the public sewerage disposal system. Any person violating this provision shall be subject to immediate arrest under the charge of unlawful mischief as set forth in Title 13, Section 3701 of the VERMONT STATUTES ANNOTATED. Any person violating this article on conviction thereof shall be fined an amount not less than one hundred dollars for each violation. (Ord. passed 5/5/97 Art. VI)

## **Article VII**

### **Powers and Authority of Inspectors**

## **10.16.410 Right of entry.**

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing in accordance with the provisions of this chapter. The town manager or his/her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment. Delays by the owner in providing reasonable access to duly authorized employees of the town enforcing the provisions of this chapter may be considered a violation of this chapter, subject to penalties outlined in Article VIII of this chapter. (Ord. passed 5/5/97 Art. VII, § 1)

## **10.16.420 Liability and indemnification.**

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While performing the necessary work on private properties referred to in Section 10.16.410, the town manager or duly authorized employees of the town shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the town employees and the town shall indemnify the company against liability claims and demands for injury or property damage asserted against the company arising from the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe premises or conditions, including conduct of agents or employees of the company. (Ord. passed 5/5/97 Art. VII, § 2)

## **10.16.430 Access to easements.**

The town manager and other duly authorized employees of the town bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works lying within such easement. All entry and subsequent work, if any, on such easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved. (Ord. passed 5/5/97 Art. VII, § 3)

## **Article VIII**

### **Penalties**

## **10.16.440 Notice of violation.**

Any person found to be violating any provision of this chapter except Article VI, shall be served by the town with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. (Ord. passed 5/5/97 Art. VIII, § 1)

## **10.16.450 Violation—Penalty.**

A. Any person who shall continue any violation beyond the time limit provided for in Section 10.16.440, shall be guilty of a misdemeanor, and on conviction thereof shall be fined the maximum amount allowable under state statutes. Each day in which any such violation shall continue shall be deemed a separate offense.

B. In addition to any fine imposed under subsection A of this section, any person violating any of the provisions of this chapter shall become liable to the town for any expense, loss or damage occasioned the town by reason of such offense. (Ord. passed 5/5/97 Art. VIII, §§ 2, 3)

## **10.16.460 Remedies nonexclusive.**

Notwithstanding any of the foregoing provisions, the town may institute any appropriate action including injunction or other proceeding to prevent, restrain or abate violations of any provisions of this chapter, including termination of water and/or sewer service. (Ord. passed 5/5/97 Art. VIII, § 4)

## **Article IX**

### **Rates**

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## **10.16.470 Authority to establish.**

The Selectboard, acting under authority as the board of sewage disposal commissioners, shall have the authority to establish reasonable sewer rates to defray the costs of construction, operation and maintenance of the system. (Ord. passed 5/5/97 Art. IX, § 1)

## **10.16.480 Rate structure.**

The rate structure shall consist of two components: a capital construction fee and an operations and maintenance fee. The capital construction fee shall be based on a system of equivalent user units as set forth in Table 10.16.510 of this article. The operations and maintenance fee shall be based on water usage per Section 10.16.510 of this article. (Ord. passed 5/5/97 Art. IX, § 2)

## **10.16.490 Capital construction fee.**

A. The capital construction fee shall include, but not be limited to, the cost of the total sewer debt service due within the fiscal period divided by the total number of equivalent users within the sewered area. The total number of equivalent users within the sewered area includes the users physically connected to the system, whether or not the facility discharges sewage into the system, parcels for which connection waivers have been granted by the Selectboard, unless specifically exempted by the Selectboard, and all other parcels required under Section 10.16.050 of Article II of this chapter to connect to the sewer system.

B. The capital construction fee for each user shall be determined by multiplying the capital construction fee per equivalent user unit by the number of equivalent user units assigned by the manager.

C. Each user will be notified at least annually of the portion of the user charges which are attributable to capital construction costs. (Ord. passed 5/5/97 Art. IX, §§ 3, 5)

## **10.16.500 Operations and maintenance fee.**

The operations and maintenance fee shall be based on water usage determined as follows:

A. Standard Metered Service. System users with approved water meters shall be billed for sewer use based on the metered water usage multiplied by the rate per thousand gallons as set by the Selectboard except as follows:

1. If in the opinion of the manager, the available metered flow information is insufficient to provide an adequate basis for billing or if the metered flow cannot be reasonably obtained by the manager, the user shall be billed as an unmetered service in accordance with subsection B of this section.

2. If in the opinion of the manager, a substantial discrepancy exists between the metered water use and the sewer discharge for a commercial/industrial building, and where such discrepancy can be quantified through the use of a measuring device furnished by the owner and approved by the manager, the manager may adjust the total gallons billed to more accurately correspond with the volume discharged to the municipal sewer system.

B. Unmetered Service. System users that do not have metered water service or which are excepted from standard metered water service under subsection (A)(1) of this section shall be billed for

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sewer use based on an estimated usage per Table 10.16.510 multiplied by the rate per thousand gallons set by the Selectboard except as follows:

1. If a user fails to make reasonable accommodations as determined by the manager, so as to allow the installation of a meter or if a user fails to provide reasonable access to the manager for the purpose of reading, inspection, installation, repair or replacement of a meter, billing shall be based on one hundred twenty-five percent of the estimated usage per Table 10.16.510 multiplied by the rate per thousand gallons set by the Selectboard.
2. If in the opinion of the manager, sufficient metered usage history exists prior to a period of unmetered usage to accurately estimate current usage, such an estimate may be used in place of the estimated water usage per Table 10.16.510. (Ord. passed 5/5/97 Art. IX, § 4)

## **10.16.510 Equivalent user units.**

**Table 10.16.510  
Equivalent User Units**

<b>Establishment Classifications</b>	<b>Equivalent User Unit</b>
Single-family residence	1.0 each residence
Mobile home	1.0 each residence
Apartment, condominium dwelling unit	.7 each apartment or condominium dwelling unit
Dormitory	.5 each per bedroom
Laundries, self-service	2.0 each per machine
Schools—grade K - 12:	
Daycare without shower and cafeteria	.07 each per student
Daycare with shower and cafeteria	.10 each per student
Daycare facilities	.10 each child
College/university classroom buildings (non-lab)	1.0 each building
Nursing home/home for the aged	.30 each patient
Hotels/motels	.70 each rental unit
Restaurant	
Add for lounge	.16 per seat
	.10 per seat
Service station (without car washing)	1.5 each set of gas pumps
Office, store or other commercial	E.U. based on flow; no E.U. less than .5
Manufacturing, factory, occupied warehouse	E.U. based on flow; no E.U. less than .5
Church	1.0 each
Barber/beauty shop	.4 per chair
Other categories	E.U. based on flow; no E.U. less than .5

For establishment classifications with equivalent user units based on flow, such flow shall be determined from average metered usage where available or estimated usage as determined by the

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town. The town will review this average metered usage on an annual basis and adjust equivalent user units as necessary. Equivalent user units will not be adjusted to reflect seasonal fluctuations in use.

If any parcel connected to the sewer combines two or more of the classifications listed in this section, the number of equivalent user units in each classification shall be determined and the total shall constitute the number of equivalent user units assigned to the parcel. (Ord. passed 5/5/97 Art. IX (part))

### **10.16.520 Review of system of equivalent units.**

The system of equivalent units shall be reviewed as deemed necessary by the Selectboard and adjusted if necessary. (Ord. passed 5/5/97 Art. IX, § 6)

### **10.16.530 Surcharge for abnormal wastes.**

A. Users which discharge any toxic pollutants, high strength wastes or other detrimental wastes to the sewer system shall be required to pay a surcharge directly related to the costs incurred by the town, to manage the abnormal wastes including management of both the liquid effluent and wasted sludge portions. This section shall not be construed as to create a right to discharge.

B. The Selectboard shall adopt a surcharge system for handling toxic or other abnormal wastes at such time as the need develops. The surcharge system shall use the parameters of a medium strength waste as a comparative base. (Ord. passed 5/5/97 Art. IX, §§ 7, 8)

### **10.16.540 Disposition of excess revenues.**

The Selectboard shall apply excess operating revenues accrued from users in a given year and these shall be applied in the determination of the operating portion of the user rate for the following year. Excess capital revenues or other excess sewer income may be placed into a sinking fund, accessible for use on sewer-related expenses or new sewer construction improvements, or applied to reduce the capital construction fee rate or operating rate. (Ord. passed 5/5/97 Art. IX, § 9)

### **10.16.550 Payment of charges—Delinquent when—Billing.**

A. Sewer charges will be invoiced twice a year. Sewer charges shall be payable on or before the thirtieth day following the date of the invoice or a later date as shown on the invoice.

B. In the event that such charge is not paid when due, a penalty of eight percent shall be added thereto plus the judgement rate of interest per month shall be added after the first thirty days of delinquency. If any account shall remain delinquent, the legislative body may also take any action that is consistent with the provisions of Title 24, VERMONT STATUTES ANNOTATED Chapter 129, Uniform Water and Sewer Disconnect, as presently constituted and as amended from time to time, to obtain payment of delinquent charges or to discontinue sewer and/or water service. Such charges shall be a lien upon the real estate as provided in 24 VERMONT STATUTES ANNOTATED, 3612 and 5149.

C. New sewer connections made during a six-month billing period shall be billed on the following basis:

1. Capital construction fee for the entire six-month period regardless of date of hookup within the period; plus
2. Operating costs prorated for the period from the date of hookup to the end of the billing period.

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D. All sewer charges will be billed to the owner of record of the facility(s) served by the sewer, unless the owner of record provides written documentation to the town accepting responsibility for payment but identifying other person(s) for receipt of billings. (Ord. passed 5/5/97 Art. IX, §§ 10—11)

## Chapter 10.18

### SEWER ALLOCATION

#### Sections:

- 10.18.010 Purpose.**
- 10.18.020 Ownership and permit.**
- 10.18.030 Introduction to reserve capacity allocation.**
- 10.18.040 Definitions.**
- 10.18.050 Total reserve capacity and allocation categories.**
- 10.18.060 Authority of the town manager to approve sewer allocations.**
- 10.18.070 Sewer allocation approvals by the Selectboard.**
- 10.18.080 Sewer allocations outside the sewer core area.**
- 10.18.090 Allocation procedures—Applications.**
- 10.18.100 Allocation procedures—Preliminary approvals.**
- 10.18.110 Effect of preliminary approval.**
- 10.18.120 Allocation procedures—Final approvals.**
- 10.18.130 Authority to require connection.**
- 10.18.140 Prior allocations.**
- 10.18.150 Severability.**
- 10.18.160 Adoption of ordinance.**

#### **10.18.010 Purpose.**

The municipal plan provides for the protection of the general health, safety and welfare of Essex residents, the orderly development of the town within its capacity to provide public services and facilities and the mitigation of development impacts on the natural environment and unique resources. Uncontrolled growth threatens the natural environment, historical character and provision for public services and facilities. The town has limited waste water disposal capability and creating additional capacity will require substantial future investment. In recognition of the need to manage its available capacity, the town has completed a “Sanitary Sewer System Capacity Study” update, prepared by Donald L. Hamlin Consulting Engineer, dated February, 2003. Pursuant to the above, it is the purpose of this chapter to establish sewer allocation provisions for new development and connection of existing structures, and a sewer core area that provides for the orderly and cost effective development of the town. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

#### **10.18.020 Ownership and permit.**

The Town of Essex has acquired an initial treatment capacity of one million gallons per day and an additional capacity of one hundred thousand gallons per day totaling one million one hundred thousand

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gallons per day of sewage at the sewage treatment and disposal facility (“Plant”) in Essex Junction and a sewage collection and transmission system (“Sewers”) as defined in 24 VERMONT STATUTES ANNOTATED, Sections 3501(6) and 3601. The Plant has a permitted capacity serving the communities of Essex Junction, Essex and Williston, and is operated in accordance with a discharge permit issued by the Vermont Department of Environmental Conservation (“Department”) under authority granted in 10 VERMONT STATUTES ANNOTATED, Chapter 47. The board of sewage disposal commissioners (“Board”) is obligated by law to comply with conditions of that permit, and to operate and manage the Sewers as governmental functions under and pursuant to 24 VERMONT STATUTES ANNOTATED, Chapters 97 and 101. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.030 Introduction to reserve capacity allocation.**

A. The capacity of the Plant allocated to the Town of Essex and Sewers are the property of the town. The uncommitted reserve capacity of the Plant and Sewers shall be allocated over the remaining estimated fifteen-year life of the system by the Board in the manner described below. This ordinance is adopted pursuant to the provisions of 24 VERMONT STATUTES ANNOTATED, Section 3625; in the manner provided in 24 VERMONT STATUTES ANNOTATED, Chapter 59 (or in the manner provided for in 24 VERMONT STATUTES ANNOTATED, Chapter 117), and shall not be construed as an abandonment or relinquishment of the authority or responsibility of the Board to regulate, control and supervise all means and methods of sewage collection, treatment and disposal within the town, nor shall it be construed to impair or inhibit the ability of the town to contract with persons for the collection, transmission and treatment of sewerage.

B. As a prerequisite to receiving federal funds for the initial construction of the Plant and Sewers, the town was required to analyze the project’s effects on population density, on patterns of land use and on increased growth at a faster rate than that planned by the existing community, and to identify techniques for mitigating adverse effects through phasing of sewer use. After conducting the required analysis, the town incorporated its findings into a sewer allocation policy directed at allocating use of the new resource over a twenty-year period after 1984.

C. After the initial policy adoption, the town conducted several studies regarding actual and projected future usage of the sewer system. The latest report, the “Sanitary Sewer System Capacity Study Update” (“Study”), dated February 2003, addresses changes within the town involving land development, zoning changes, and additions to the collection system.

D. Recognizing that there is insufficient capacity to provide sewer service to the entire town, the Board has created a revised sewer core area (“CORE”) (Figure 1) as revised in 2003 to establish definitive boundaries for future extensions of the sanitary sewer system. The Study estimates total system flow for full build-out, and it finds that potential connections of existing development to the sanitary sewer system and anticipated new development within the Core will use up the entire available sewer system capacity of one million one hundred thousand gallons per day by year 2018. Year 2018 build-out is achieved by excluding Category “A” streets within the sewer core from service between 2003 and 2018.

E. The location and method of allocation for this sewer capacity is set forth in the following sections of this chapter. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.040 Definitions.**

The following words will have the meanings below when used in this chapter:

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“Board” means the Selectboard acting as a board of sewage disposal commissioners under 24 VERMONT STATUTES ANNOTATED, Section 3614.

“Completed construction” means:

1. For building development, the completion of construction of all foundations, framing, siding and roofs.
2. For subdivision development, the sale of the individual lots and the completion of all public infrastructure.

“Category ‘A’ development streets” means those streets within the sewer core that are not anticipated to be connected to the municipal sewer system until after 2018, as defined in the Sanitary Sewer System Capacity Study Update dated February 2003.

“Core” means the sewer core area located within the boundaries depicted in Figure 1.

“Department” means the Vermont Department of Environmental Conservation.

“Development” means the construction of improvements on a tract of land for any purpose including, but not limited to, residential, commercial or industrial activity.

“Development wastewater flow” means the flow resulting from full use of the development at its peak capacity, which flow shall be calculated using flow quantities, as set forth in the Town of Essex sewer use ordinance.

“Discharge permit” means a permit issued by the Department pursuant to authority granted in 10 VERMONT STATUTES ANNOTATED, Chapter 47.

“Initiate construction” means:

1. For building development, the completion of the foundation.
2. For subdivision development, the sale or lease of the first individual lot and the initiation of public infrastructure improvements.

“Manager” means the town manager, or his designee, authorized by the Selectboard to act on its behalf.

“Person” shall have the meaning prescribed in 1 VERMONT STATUTES ANNOTATED, Section 128.

“Plant” means the municipal sewage treatment plant owned by the Village of Essex Junction.

“Reserve capacity” means the permitted wastewater flow minus the actual plant wastewater flow during the preceding twelve months.

“Sanitary wastewater” means wastewater of the same character and range of strength as expected from homes.

“Sewers” means the sewage collection and transmission system owned by the Town of Essex.

“Study” means the Town of Essex “Sanitary Sewer System Capacity Study Update,” February 2003, prepared by Donald L. Hamlin Consulting Engineers, Inc.

“Uncommitted reserve capacity” means that portion of the reserve capacity remaining after subtracting the development wastewater flow of all projects approved but not yet discharging to the Sewer.

“Wastewater flow” means the wastewater passing through the treatment plant in gallons per day on an annual average basis (three hundred sixty-five day average) except where flows vary significantly from seasonal development. In the latter case, plant wastewater flow is determined as the average throughout the high seasonal use period, as determined by the Board. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

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### **10.18.050 Total reserve capacity and allocation categories.**

A. All existing connections and estimated future connections are expressed in “equivalent units” (EU’s) with one EU equal to two hundred gallons per day of wastewater flow.

B. At the time of the Study, approximately two thousand nine hundred fourteen EU’s were connected to the sewer system. Approximately two thousand five hundred and eighty-six EU’s are left for those projects already approved but not constructed, for connection of existing unserved structures within the Core and for future connections of the vacant land within the Core. Based on existing zoning regulations and in conformance with the Town Plan, the depicted parcels will accommodate a balance of industrial, commercial and residential users. In order to prevent growth from occurring more rapidly than other municipal services can accommodate, the two thousand five hundred and eighty-six EU’s for future growth are intended to be allocated over a minimum of fifteen years.

C. The projected full build-out for the areas provided with estimates of equivalent units for future connections results in an estimated total flow, based on areas the model was run for, of one million, ninety-nine thousand six hundred and ten gallons per day. This is an estimate of flow subject to change with each connected user. Town staff shall regularly monitor existing sewer connections, approvals for projects that have not yet connected, and remaining capacity, and shall report to the Manager and Board as to whether any modifications in allocation procedures are needed to avoid exceeding the town’s total available capacity. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.060 Authority of the town manager to approve sewer allocations.**

A. The Study estimates EU’s for all vacant land and other unconnected structures within the Core. The Board authorizes the town manager (Manager) to approve a sewer allocation for any project up to one hundred twenty-five percent of the maximum number of EU’s depicted in the Study for the parcel on which the project is located.

B. Prior to approval of any sewer allocation, the Manager shall obtain input from the public works and community development directors regarding a project’s impact on municipal services and conformity with the Town Plan.

C. If the Manager denies an application for a sewer allocation for a project within the Core, the applicant may appeal the Manager’s denial to the Board subject to the provisions of the following section. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.070 Sewer allocation approvals by the Selectboard.**

A. The Board shall consider applications for sewer allocations only if an applicant is appealing a denial by the Manager, the application is for more than one hundred twenty-five percent of the maximum number of EU’s depicted in the Study for the parcel on which the project or connection is located, or if the project or connection is located within the Core but was not allocated capacity in the Study or is in a development listed as a “Category A” development in the Study.

B. With respect to an application for more than the one hundred twenty-five percent maximum, the scope of initial review by the Board shall normally be limited to two criteria: (1) the adequacy of the sewer system infrastructure, and (2) the manner in which use of this infrastructure supports the goals of the Town Plan.

C. With respect to an application for sewer allocation for a property not granted capacity in the Study or included within a “Category A” development as listed in the study, the scope of initial review

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shall also normally include the following additional criteria: (3) the need for the connection to the system with respect to the potential for additional development or future connections to the sewer system in the surrounding area, natural resources that might be negatively impacted by an on-site sewage disposal system and the suitability of the site for an on-site sewage disposal system; (4) the adequacy of the unallocated capacity that would be left to the system; and (5) the degree to which any physical expansion of the sewer system proposed by the application represents a compact and logical physical expansion of the sewer system within the Core.

D. In any appeal of a denial by the Manager, the Board shall be limited to a technical determination as to whether the allocation procedures of this ordinance have been applied correctly. Prior to approval of any sewer allocation, the Board shall obtain input from the town administration regarding this scope of review. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.080 Sewer allocations outside the sewer core area.**

No sewer allocations may be approved by the Board or Manager for connections outside the Core as illustrated in Figure 1, revised 2003. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.090 Allocation procedures—Applications.**

A. All allocations to projects shall be based on the development wastewater flow. Any differential between actual flows and development wastewater flows that occurs is not available to the development owner for re-allotment to another project site. It is available for re-allotment within the project site or for project expansion within the project site.

B. All proposals for subdivision or residential land development must first obtain sketch plan approval from the Planning Commission. Thereafter, applications for sewer allocation (on forms provided by the Manager) shall be completed and returned to the Manager's office. Such applications shall:

1. Be accompanied by a calculation of the development wastewater flow to be generated by the project;
2. Include calculations for the volume, flow rate, strength and any other characteristics determined appropriate by the Manager or Board;
3. Unless waived by the Manager or Board all calculations required above for developments generating over one thousand gallons per day shall be certified by a Vermont licensed professional engineer, civil or environmental. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.100 Allocation procedures—Preliminary approvals.**

Upon receipt of the application and supporting documents, the Manager or Board may approve a preliminary sewer allocation upon making affirmative findings that:

- A. The proposed wastewater is of domestic, sanitary origin and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection; or
- B. The proposed wastewater is not of domestic sanitary origin and that sufficient evidence has been presented by the applicant to demonstrate that the flow and character of the wastewater is compatible with the proper operation of the Plant and Sewers and that the proposed wastewater will not alone or in combination with other wastes cause a violation of the discharge permit, pass through

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the Plant without treatment, interfere or otherwise disrupt the proper quality and disposal of Plant sludge or be injurious in any other manner to the Plant or Sewers and that there is sufficient uncommitted reserve capacity to accommodate the volume and strength of the proposed connection; and

C. The proposed use of wastewater capacity complies with the allocation principles and is not in conflict with any other enactment adopted by the Board or municipality. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.110 Effect of preliminary approval.**

A. The Manager or Board, after making the approval findings above, may issue a preliminary connection approval, which approval shall be a binding commitment of capacity to the project contingent on compliance with any conditions attached to the preliminary approval and the subsequent issuance of a final connection approval. Preliminary connection approvals shall be effective until sixty days after all applicable local, state and federal permits for the project have been secured; except that preliminary approvals shall not exceed two years without subsequent approval by the Manager or Board.

B. Preliminary allocations must be approved by the Manager or Board prior to an applicant requesting final subdivision approval (or site plan approval if subdivision approval is not required). Determination of annual phasing for residential projects shall be the responsibility of the Planning Commission. Approval of a preliminary sewer allocation by the Manager or Board shall not imply final subdivision approval or granting of a residential phasing allocation by the Planning Commission. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

### **10.18.120 Allocation procedures—Final approvals.**

The Manager on making affirmative findings that all conditions of the preliminary connection approval have been fulfilled shall issue the final connection approval permit which approval shall be conditioned as follows:

A. The permit shall specify the allowed volume, flow rate, strength, frequency and any other characteristics of the proposed discharge determined appropriate by the Manager.

B. The capacity allocation shall not be transferable to any other person or project.

C. Capacity allocated in conjunction with the final connection permit for building development shall revert to the town if the permit recipient has failed to initiate construction within one year of the issued date on the final connection permit.

D. The permit shall expire for all uncompleted construction three years from the date of issuance. Provided that a project has received a residential phasing allocation from the Planning Commission, the permit shall expire three years after the final phasing date. The permit also shall expire if no substantial construction activity occurs on a project for a consecutive three-year period. Within the three-year period a revised development plan and connection application may be approved by the Manager or Board in the same manner as the original, which may or may not extend the time period of the permit. If the Manager or Board approves an amended connection application, it will issue a revised final connection permit with reduced or increased capacity allocation determined in accordance with the allocation principles. Where a portion of the committed allocation is unused after expiration of the permit or where reduced capacity is granted in a revised connection permit, the excess capacity will

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revert to the town.

E. When the owner/developer of a subdivision sells individual lots within the time frame of the permit, the ownership of the final connection permit shall transfer with the ownership of the lot and the new owner shall be bound to comply with all requirements applicable to that lot including permits issued and plans and specifications for connecting to the municipal Sewers. The transferred permit will be considered a new permit issued on the date of property transfer and the constraints of Section 10.18.120 will apply to this permit. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

## **10.18.130 Authority to require connection.**

Nothing herein shall be construed as limiting or impairing the authority of the town or its Board to require connections to the Sewers under the general laws of the state or local ordinances. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

## **10.18.140 Prior allocations.**

Adoption of the ordinance codified in this chapter shall not modify any allocations of treatment capacity issued prior to the adoption of this chapter. However, the procedures established by this chapter shall govern. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

## **10.18.150 Severability.**

The invalidity of any section, clause or provision of this chapter shall not affect the validity of the chapter as a whole. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

## **10.18.160 Adoption of ordinance.**

The ordinance codified in this chapter shall become effective upon passage. To the extent that any provision herein shall be inconsistent with or contrary to any provision of the Essex Sewer Use Ordinance, adopted May 7, 1997, then the provisions of this chapter shall apply. The adoption of this allocation chapter shall not interfere with the authority and responsibility of the legislative body as sewer commissioners, in matters relating to the management and operation of the public sewer system as provided in Chapters 97 and 101 of 24 VERMONT STATUTES ANNOTATED. (Ord. passed 11/03/03 (part): Ord. passed 12/7/98 (part))

## **Chapter 10.20**

### **STORM WATER**

#### **Sections:**

- 10.20.010 General Provisions**
- 10.20.011 Basis for the Ordinance**
- 10.20.012 Purpose**
- 10.20.013 Applicability**
- 10.20.014 Documents Incorporated by Reference**

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- 10.20.015 Definitions
- 10.20.016 General Exemptions
- 10.20.050 Illicit Discharges
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- 10.20.055 Monitoring of Discharges
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- 10.20.062 Erosion and Sediment Control – Applicability
- 10.20.063 Disturbance of Less Than One Acre of Land
- 10.20.064 Applicability of State Erosion and Sediment Control Permits
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- 10.20.067 Construction Site and Driveway
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- 10.20.070 Development Stormwater Management
- 10.20.071 Development Stormwater Management – General
- 10.20.072 Development Stormwater Management – Applicability
- 10.20.073 Stormwater Design Manual
- 10.20.074 General Performance Criteria
- 10.20.075 Basic Stormwater Management Design Criteria
- 10.20.076 Requirements for Stormwater Management Plan Approval
- 10.20.077 Construction Inspection
- 10.20.078 As-Built Plans
- 10.20.079 Landscaping and Stabilization Requirements
- 10.20.080 Stormwater Control – Operation and Maintenance
- 10.20.081 Design
- 10.20.082 Routine Maintenance
- 10.20.083 Maintenance Easement
- 10.20.084 Maintenance Covenants
- 10.20.085 Maintenance Inspections
- 10.20.086 Records of Installation and Maintenance Activities
- 10.20.087 Failure to Maintain Practices
- 10.90.090 Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction (the “Town”) to NPDES MS4 General Permit 3-9014.
- 10.20.091 General Approach and Purpose

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<b>10.20.100</b>	<b>Waivers</b>
<b>10.20.105</b>	<b>Appeals</b>
<b>10.20.110</b>	<b>Enforcement</b>
<b>10.20.111</b>	<b>Stop-Work Order: Revocation of Permit</b>
<b>10.20.112</b>	<b>Violation and Penalty</b>
<b>10.20.113</b>	<b>Notice of Violation</b>
<b>10.20.114</b>	<b>Appeal of Notice of Violation</b>
<b>10.20.115</b>	<b>Enforcement Measures After Appeal</b>
<b>10.20.116</b>	<b>Cost of Abatement of the Violation</b>
<b>10.20.117</b>	<b>Injunctive Relief</b>
<b>10.20.118</b>	<b>Violations Deemed a Public Nuisance</b>
<b>10.20.119</b>	<b>Remedies Not Exclusive</b>
<b>10.20.120</b>	<b>Other Applicable Regulations</b>
<b>10.20.130</b>	<b>Adherence to Public Works Specifications</b>
<b>10.20.140</b>	<b>Fees, Fines and Applicable Charges</b>
<b>10.20.150</b>	<b>Severability</b>

## **APPENDIX A: Small Site Erosion Control Guide**

## **APPENDIX B: Town of Essex Erosion and Sediment Control Permits Application**

## **APPENDIX C: Stormwater Management Permit and Plan**

## **APPENDIX D: Stormwater Management Design Criteria**

\*Prior ordinance history: Ordinances passed 11/16/05, 7/18/14.

### **10.20.010 General Provisions**

This chapter is adopted pursuant to the Town's enabled right to adopt ordinances, bylaws, and regulations according to Section 103(a), et seq. of the Town of Essex Charter, and Sections 3508 and 3617 of Title 24, Vermont Statutes Annotated.

### **10.20.011 Basis for the Ordinance**

- A. Land development activities and associated increases in site impervious cover often alter the hydrologic response and water quality aspects of local watersheds and increase storm water runoff rates and volumes, flooding, stream channel erosion, sediment transport and deposition and the concentration of waterborne pollutants and pathogens.
- B. Clearing and grading during construction tend to increase soil erosion and reduce the native vegetation important for terrestrial habitat, for stream regulation through shading and for maintenance of natural food cycles important to food chains and aquatic habitat.
- C. Improper design and construction of storm water management practices can increase downstream flooding and increase the velocity of storm water runoff causing stream bank erosion and build-up of sedimentation.
- D. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream base flow.
- E. Storm water runoff, soil erosion and non-point source pollution can be controlled, minimized and in some cases eliminated through the regulation of storm water runoff from land development activities. Illicit discharges must be eliminated.

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F. The regulation of storm water discharges from new development and redevelopment of existing sites, the elimination of illicit discharges and the control of erosion and sediment discharge is in the public interest and will minimize threats to public health and safety

G. Economic loss and stream water quality degradation can result from these adverse impacts. Pet and wildlife wastes in storm water may raise bacteria levels, potentially resulting in loss of recreation use of the streams and Lake Champlain.

## **§10.20.012 Purpose**

The purpose of this chapter is to provide for increased regulation to address the items outlined in Section 10.20.011 and to thereby protect the public health, safety, and general welfare of the Town of Essex through the establishment of storm water best management practices in the following areas:

- A. Illicit Discharges (reference Section 10.20.050).
- B. Erosion and Sediment Control (reference Section 10.20.060).
- C. Development Storm Water Management (reference Section 10.20.070).
- D. Storm Water Control, Operation, and Maintenance (reference Section 10.20.080).
- E. Riparian Buffer Zones (reserved for the future)

In addition, this chapter ensures compliance with the storm water management provisions of the Small Municipal Separate Storm Sewer Systems (MS4), General Permit No. 3-9014, for those construction sites and post construction storm water management projects which disturb one acre or more of earth.

## **§10.20.013 Applicability.**

This chapter applies to all property within the Town of Essex, Vermont outside the Village of Essex Junction and shall apply specifically as indicated in other sections by topic matter in this Ordinance.

## **§10.20.014 Documents Incorporated by Reference.**

The latest versions of the following documents are incorporated herein by reference:

- A. *Town of Essex Outside the Village of Essex Junction Official Subdivision Regulations.*
- B. *Town of Essex Outside the Village of Essex Junction Official Zoning Bylaws.*
- C. *Town of Essex Standard Specification for Construction.*
- D. *Vermont Storm water Management Manual, Volumes I and II.*
- E. *Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites*
- F. *Town of Essex Storm Water Management Plan dated April 2003*

## **10.20.015 Definitions.**

As used in this chapter:

*“Accelerated erosion”* means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn by the action of water, wind, or chemical action.

*“Applicant”* means a property owner or duly designated agent who files an application for a land disturbance activity.

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*“Authorization to Discharge Permits”* means permits issued by the State of Vermont to discharge storm water into receiving water bodies, which may or may not be valid permits at time of adoption of Section 10.20.090 of this Ordinance.

*“Best management practices”* (BMP’s) means schedules of activities, prohibitions of practices, maintenance procedures, the use of pollution control devices and other management practices to prevent or reduce the amount of pollution introduced to receiving bodies of water from storm water runoff. BMP’s can include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

*“Building”* is as defined in Article XXVII of the Town of Essex Zoning Bylaws, as amended.

*“Channel”* means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

*“Clean Water Act”* means the federal Water Pollution Control Act (33 USC §1251, et seq.), and any subsequent amendments thereto.

*“Clearing”* means any activity that removes the vegetative surface cover.

*“Construction activity”* means activities such as clearing and grubbing, grading, excavating, and demolition. Coverage for construction site runoff under the State of Vermont General Permit may be required for projects resulting in land disturbance of one acre or more of land.

*“Conveyance”* means the process of water moving from one place to another.

*“Detention”* means the temporary storage of storm water runoff in a storm water system with the goal of controlling peak discharge rates and providing gravity settling of pollutants.

*“Detention facility”* means a detention basin or alternative structure designed to temporarily store stream flow or surface runoff and to gradually release stored water at controlled rates.

*“Development”* is as defined in Article XXVII of the Town of Essex Zoning Bylaws, as amended.

*“Drainage easement”* means a legal right granted by a landowner to a grantee allowing the use of land for storm water management purposes.

*“Drainage way”* means a channel that conveys surface runoff through the site.

*“Erosion”* means when land is diminished or worn due to wind or water. Often the eroded debris (silt or sediment) becomes a pollutant via storm water runoff. Erosion occurs naturally but can be intensified by land clearing activities such as farming, development, road building, and timber harvesting.

*“Erosion and sediment control plan”* means a plan that indicates the specific measures and their sequencing for use to control sediment and erosion on a development site during and after construction.

*“Existing development”* means a development that was built prior to the effective date of the adoption of this Ordinance.

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*“Expired storm water permits”* means storm water permits previously issued by the State of Vermont that are no longer current.

*“Flow Restoration Plan (s)”* means a stream flow plan required by the State of Vermont designed to implement storm water runoff controls producing runoff characteristics that return stream flows to compliant, stable flow conditions as required to meet the water-quality based TMDL requirements for a particular impaired waterway.

*“Grading”* means excavation or fill of material, including the resulting conditions thereof.

*“Hazardous materials”* means any material, including any substance, waste, or combination thereof, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*“Hotspot”* means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in storm water.

*“Hydrologic soil group”* (HSG) means a Natural Resource Conservation Service classification in which soils are categorized into 4 runoff potential groups. The groups range from “A” soils with high permeability and little runoff production to “D” soils that have low permeability rates and produce much more runoff.

*“Illicit discharge”* means any direct or indirect non-storm water discharge to the storm drain system, except as may be exempted under this chapter.

*“Illicit connections”* means either of the following definitions:

- A. Any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency.
- B. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps or equivalent records and approved by an authorized enforcement agency.

*“Impaired waterways”* means rivers, lakes, or streams that do not meet one or more water-quality standards, and therefore are considered too polluted for their intended uses.

*“Impervious cover”* means human-made surfaces including, but not limited to, paved and unpaved roads, parking areas, building roofs, driveways (paved and unpaved) walkways and compacted surfaces, from which precipitation runs off rather than infiltrates. A measure of imperviousness is a “C” value for runoff under of the Unified Soil Classification System of .70 or greater.

*“Industrial activity”* means activities subject to NPDES Industrial Permits as defined in 40 CFR §122.26(b)(14).

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*“Industrial storm water permit”* means a NPDES permit issued to a commercial industry or group of industries that regulates the pollutant levels associated with industrial storm water discharges or specifies on-site pollution control strategies.

*“Infiltration”* means the process of percolating storm water into the subsurface.

*“Infiltration facility”* means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above or below grade.

*“Jurisdictional wetland”* means an area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

*“Land disturbance activity”* means any activity that changes the volume or peak flow discharge rate of rainfall runoff from the land’s surface. This may include grading, digging, cutting, scraping, or excavating soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity that bares soil or rock or involves the diversion or piping of any natural or human-made watercourse.

*“Landowner”* means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

*“Maintenance agreement”* means a legally recorded document that acts as a property deed restriction and that provides for long-term maintenance of storm water management practices.

*“Maximum extent practicable”* (MEP) means the requirement in the federal Clean Water Act permitting discharges from municipal storm sewers to include controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the state of Vermont determines appropriate for the control of such pollutants.

*“Minimum control measures”* means any BMP or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

*“MS4”* means the municipal separate storm water system.

*“National Pollutant Discharge Elimination System”* (NPDES) means the name of the surface water quality program authorized by Congress as part of the 1987 Clean Water Act. This is EPA’s program to control the discharge of pollutants to waters of the United States and means a permit issued by EPA (or by a state under authority delegated pursuant to 33 USC §1342(b)) authorizing the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*“New development”* means the construction of new impervious surfaces on a tract or tracts of land occurring after the effective date of this Ordinance.

*“Non-impaired waterways”* means rivers, lakes, or streams that currently meet the designated water-quality standards for the water body.

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*“Non-point source (NPS) pollutants”* means pollutants from many diffuse sources. NPS pollution is caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into lakes, rivers, wetlands, coastal waters, and even into underground sources of drinking water.

*“Non-public contributing storm water permittee”* means a current storm water permit holder, including homeowner associations and any successors or assigns, of either a valid or expired storm water permit that is not a public entity.

*“Non-public storm water infrastructure”* means storm water infrastructure not owned, operated or maintained by the Town.

*“Non-storm water discharge”* means any discharge to the storm drain system that is not composed entirely of storm water.

*“Nonstructural best management practices”* means nonphysical methods or activities used to mitigate the adverse impacts of storm water runoff including, but not limited to ordinances, maintenance activities and education/outreach activities.

*“Offset fee”* means a monetary compensation paid to a local government for an inability to meet pollutant load reduction targets.

*“Offsite”* means the land within the development’s drainage area that is not owned or controlled by the permit applicant.

*“Outfall”* means the point where drainage discharges from a pipe, ditch, or other conveyance to a receiving body of water.

*“Perimeter control”* means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

*“Person”* means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner’s agent.

*“Phasing”* means clearing of a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

*“Point source pollutant”* means pollutants from a single, identifiable source such as a factory or refinery.

*“Pollutant”* means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes and solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes and yard wastes, refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution, floatables, pesticides, herbicides, and fertilizers, hazardous substances and wastes, sewage, fecal coliform and pathogens, dissolved and particulate metals, animal wastes, wastes and residues that result from constructing a building or structure, and noxious or offensive matter of any kind.

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*“Private (storm water) system owner”* means the non-public owner of a storm water system, including homeowner associations and any successors or assigns, consisting of, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems.

*“Public storm water infrastructure”* means storm water infrastructure such as, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems, all of which is under Town ownership or within Town easements, and which infrastructure has been accepted by the Town as a component of the Town storm water system or systems.

*“Recharge”* means the replenishment of underground water reserves.

*“Redevelopment”* means in the context of storm water, any construction, alteration, or improvement exceeding 10,000 SF on previously developed land.

*“Residual Designation Authority (RDA)”* means the authority granted to the United States Environmental Protection Agency and delegated to the State of Vermont to issue a permit directly to a party or parties discharging storm water to a water body where a TMDL supports such a determination and where discharges are contributing to water quality violations.

*“Riparian Buffer Zone”* means the width of land adjacent to streams or lakes between the top of the bank or top of slope or mean water level and the edge of other land uses. Riparian buffer zones are typically undisturbed areas that protect the waterbody and adjacent riparian corridor ecosystem from the impact of adjacent land uses.

*“Riparian corridor”* means the waterbody and width of adjacent land that supports a distinct ecosystem with abundant and diverse plant and animal communities and which provides for channel stability of the water body.

*“Runoff”* means drainage or flood discharge that leaves an area as surface flow or as pipeline flow that has reached a channel or pipeline by either surface or sub-surface routes.

*“Sediment”* means soil, sand, and minerals washed from land into water, usually after rain. Sediment can destroy fish-nesting areas, clog animal habitats, and cloud water so that sunlight does not reach aquatic plants.

*“Sediment control”* means measures that prevent eroded sediment from leaving the site.

*“Shared storm water system”* means a storm water system such as, but not limited to, culverts, pipes, catch basins, treatment ponds, treatment devices, and/or storm water infiltration systems which consist of both public and non-public storm water infrastructure.

*“Sheet flow”* means the portion of precipitation that moves initially as overland flow in very shallow depths before eventually reaching a stream channel.

*“Site”* means a parcel of land or contiguous combination thereof, where grading work is performed as a single unified operation.

*“Stabilization”* means the use of practices that prevent exposed soil from eroding.

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*“Start of construction”* means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling, installation of streets and walkways, excavation for basements, footings, piers, or foundations, erection of temporary forms, and installation of accessory buildings such as garages.

*“Stop work order”* means an order issued requiring that all construction activity on a site be stopped.

*“Storm drainage system”* means facilities by which storm water is collected and/or conveyed including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

*“Storm water”* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*“Storm water management”* means the use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

*“Storm water pollution prevention plan”* means a document describing the BMP’s and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters to the maximum extent practicable.

*“Storm water retrofit”* means a storm water management practice designed for an existing development site that previously had either no storm water management practice in place or a practice inadequate to meet the storm water management requirements of the site.

*“Storm water runoff”* means flow on the surface of the ground, resulting from precipitation.

*“Storm water treatment practices”* (STP’s) means measures, either structural or non-structural, that are determined to be the most effective, practical means of preventing or reducing point source or non-point source pollution inputs to storm water runoff and water bodies.

*“Structural best management practices”* means physical features used to improve storm water quality or reduce peak flows such as detention ponds, grassed swales, sand filters, and infiltration basins.

*“Substantially deteriorated”* means the condition of a storm water treatment practice that would necessitate repair or reconstruction beyond that which would be considered typical, periodic maintenance for a system of similar design.

*“Total maximum daily load”* (TMDL) means the maximum amount of pollutants that can be released into a water body without adversely affecting the water quality.

*“Unpermitted (storm water) discharges”* means a system discharging storm water to a stream or watercourse that has never been issued any type of authorization to discharge storm water by either the Town or the State of Vermont.

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*“Urban runoff”* means storm water from urban areas that tend to contain heavy concentrations of pollutants from urban activities.

*“Valid storm water system”* means a system which has been issued a storm water permit by the Town or the State of Vermont that is current with respect to the issuance and expiration dates of the permit.

*“Wastewater”* means any water or other liquid other than uncontaminated storm water discharged from a facility.

*“Water quality volume”* (Wqv) means the storage needed to capture and treat 90% of the average annual storm water runoff volume. Numerically Wqv will vary as a function of long-term rainfall statistical data.

*“Watercourse”* means a permanent or intermittent stream or other body of water, either natural or human-made, that gathers or carries surface water.

*“Watershed”* means that geographical area that drains to a specified point on a watercourse, usually a confluence of streams or rivers.

*“Wetland”* means those areas that are inundated by surface or ground water with a frequency sufficient to support plants and animals that depend on saturated soil conditions for growth and reproduction. Designated wetlands in Vermont are classified as Class I, II or III. (Ord. passed 11/16/05, Ord. passed 7/18/14 (part))

## **10.20.016 General Exemptions**

The Illicit Discharge requirements of this Ordinance are applicable in all cases.

The following activities are exempt from review or control under this Ordinance to the extent they do not involve Illicit Discharges:

A. Agricultural and silvicultural activity, except that log landing and log haul roads are subject to the provisions of this Ordinance. In addition, logging or silvicultural activity conducted as a part of a land development application is not exempt from the general provisions of this Ordinance.

B. Repairs to any storm water management system that is deemed necessary by the Town Engineer

C. Cemetery facilities

D. Installation of fence, sign, telephone and electric poles and other kinds of fences, posts or poles.

E. Emergency activity immediately necessary to protect life, property or natural resources.

F. Activities of an individual engaging in home gardening by growing flowers, vegetable and other plants primarily for the use by that person and his/her family.

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G. Land development activities that disturb less than one (1) acre.

H. Municipal activities not requiring Site Plan or Subdivision approval. Reconstruction/maintenance of municipal gravel roads shall adhere to the guidelines entitled "Vermont Better Back Roads Manual," latest version.

## **10.20.050 Illicit Discharges**

### **10.20.051 Illicit Discharges - General.**

This sub-chapter regulates non-storm water discharges to the storm drainage system as required by federal and state law. Methods are established for controlling the introduction of pollutants into the municipal separate storm water system (MS4) to meet the following objectives, consistent with the requirements of the State of Vermont General Permit process:

- A. To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- B. To prohibit illicit connections and discharges to the MS4.
- C. To establish legal authority to carry out all inspection, surveillance, and monitoring procedures necessary to ensure compliance with this Ordinance.

### **10.20.052 Discharge Prohibitions.**

Prohibition of illicit discharges. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials including, but not limited to, pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The commencement, conduct, or continuance of any illicit discharge to the storm drain system is prohibited except as described herein. The following discharges are exempt from discharge prohibitions established by this sub-chapter:

- A. Flushing of water line or other potable water sources (except when a particular substance in the water is subject to control by State or federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- B. Landscape irrigation or lawn watering (unless such watering results in a direct discharge and the discharge is identified as containing pollutants or chemicals that are required to be controlled by state or federal regulation).
- C. Diverted stream flows.
- D. Rising or pumped ground water, providing such groundwater is not contaminated or polluted.

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- E. Ground water infiltration to storm drains.
- F. Foundation or footing drains (not including active ground water dewatering systems) containing no contaminants or pollutants.
- G. Air conditioning condensation (except when control of a particular substance in the water is by federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- H. Uncontaminated springs.
- I. Non-commercial washing of vehicles (unless such watering results in a direct discharge and the discharge is identified as containing pollutants or chemicals that are required to be controlled by state or federal regulation).
- J. Natural riparian habitat or wetland flows.
- K. Swimming pools (if de-chlorinated– typically less than one PPM chlorine and except when control of a particular substance in the water is by State or federal regulation and then the discharge is still exempt if within the limits of acceptability for the controlled substance).
- L. Firefighting activities, not including the cleanup of spills or accidents involving contaminated material such as oil spills or hazardous wastes.
- M. Any other water source not containing pollutants.
- N. Discharges specified in writing by an authorized representative of the Town of Essex as being necessary to protect public health and safety.
- O. Dye testing is an allowable discharge, if approved by the Town Engineer.

The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued for the discharge and administered under the authority of the US EPA, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the Town for any discharge to the storm drain system.

Prohibition of illicit connections. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

A person is in violation of this sub-chapter if the person connects a line conveying sewage, laundry waste or other forms of gray water to the MS4 or allows such a connection to continue.

### **10.20.053 Suspension of MS4 Access.**

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Suspension due to illicit discharges in emergency situations. The Town may, without notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town Engineer may take such steps as deemed necessary to prevent or minimize damage to the MS4 or water of the United States, or to minimize danger to persons.

A person commits a violation of this Ordinance if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Town Engineer.

## **10.20.054 Industrial or Construction Activity Discharges.**

Any person subject to an industrial multi-sector permit or other separately-issued storm water permit by the Town, State or EPA shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

## **10.20.055 Monitoring of Discharges.**

Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

Access to facilities. Authorized representatives of the Town shall be permitted to enter and inspect facilities subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter. If a discharger has security measures in force that require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to authorized representatives of the Town.

Facility operators shall allow the authorized Town representative ready access to all parts of the premises for inspection, sampling, examination, and copying of records that must be kept under the conditions of an NPDES or State permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

The Town shall have the right to require the discharger to install on any permitted facility such devices necessary in the opinion of the Town Engineer to conduct monitoring and/or sampling of the facility's storm water discharge at the expense of the discharger.

The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the authorized Town representative and shall not be replaced. The costs of clearing such access shall be borne by the operator.

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Unreasonable delay in allowing the authorized Town representative access to a permitted facility is a violation of a storm water discharge permit and of this Ordinance. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits a violation of this Ordinance if the person denies the authorized Town representative reasonable access to the permitted facility for conducting any activity authorized or required by this chapter.

If the authorized Town representative has been refused access to any part of the premises from which storm water is discharged, such refusal shall be a violation of this Ordinance. The authorized Town representative may secure warrants from the applicable court having jurisdiction in cases where access is refused.

### **10.20.056 Requirement to Prevent, Control, and Reduce Storm Water Pollutants.**

The Town has adopted best management practices for any activity, operation, or facility that may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the United States through the State of Vermont Phase II Storm-water Permit. The owner or operator of a commercial or industrial establishment shall provide, at their expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of applicable structural and non-structural BMP's. Further, any person responsible for a property or premise, that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMP's to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid Multi-sector General permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provision of this section. These BMP's shall be part of a storm water pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

### **10.20.057 Watercourse Protection.**

Every person owning property through which an intermittent or continuously flowing watercourse passes, or such person's lessee, shall not deposit in the watercourse or on the land impacted by runoff to the watercourse trash, debris, cut brush, grass or wood, pet waste and other obstacles that would pollute, contaminate, or significantly alter the natural flow of water through the watercourse. Natural blockages of the stream by wildlife are considered not the responsibility of the landowner or lessee. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

Riparian buffers established as part of development approval and required by Town regulations shall be maintained by the developer and all other subsequent property owners or associations within the development.

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## **10.20.058 Notification of Spills.**

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

## **10.20.060 Erosion and Sediment Control**

### **10.20.061 Erosion and Sediment Control- General.**

During construction, soil is vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Clearing and grading during construction causes the loss of native vegetation necessary for terrestrial and aquatic habitat. For erosion and sediment control, this sub-chapter:

- A. Safeguards persons, protects property, and prevents damage to the environment.
- B. Promotes the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land.

### **10.20.062 Erosion and Sediment Control Applicability.**

This sub-chapter applies to any clearing, grading, construction or land disturbance activity within the jurisdictional area of the Ordinance.

All such activities are regulated under this subchapter unless exempted under section 10.20.016

### **10.20.063 Disturbance of Less Than One Acre of Land**

Erosion Control Permits will not be required for clearing, grubbing, grading or any land disturbance activities that involve one acre or less of contiguous disturbed land, unless a Storm Water Management Plan per Section 10.20.072 is required.

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The Town shall provide erosion and sediment control standard diagrams for mandatory compliance on sites that involve less than one acre of disturbance, and that do not require a Storm Water Management Plan. The small site plan diagrams and guidelines shall be provided with the issuance of each building permit issued within the Town and shall be available for all persons within the Town at the Town offices. The information is contained in Appendix A. Non-compliance with any of the provisions within Appendix A is a violation of this Ordinance, subject to the same legal remedies and fines as under the main body of the Ordinance.

Compliance with the erosion control guidelines is also required for individual building construction performed within a larger subdivision or project which is subject to additional conditions imposed under a broader Town or State issued General Permit for Construction Site Runoff.

## **10.20.064 Applicability of State Erosion and Sediment Control Permits**

The Town shall accept a State of Vermont General Permit for construction site runoff as evidence of meeting Town erosion and sediment control permit requirements for those projects which fall under the jurisdiction of the State requirements. If a state permit is accepted as evidence of compliance with the Town Ordinance, a separate Town application will not be required and Town storm-water permit fees shall be waived.

## **10.20.065 Permit Required**

No person shall be granted a permit for construction activities disturbing more than one acre of land without the Town Engineer's approval of an erosion and sediment control plan.

Appendix B to this Ordinance contains the requirements for inclusion in an Erosion and Sediment Control Permit issued by the Town. Each permit application shall be accompanied by a non-refundable permit application fee as established by the Selectboard, which shall be reviewed annually. Incomplete applications will not be accepted. The erosion and sediment control plan shall be submitted by a registered professional engineer in the State of Vermont or by a licensed and certified erosion control technician. Each application shall include a statement that any land clearing, construction, or development involving the disturbance of at least one acre of earth shall be in accordance with the erosion and sediment control plan and that an authorized representative of the applicant shall be onsite or readily accessible on all days when construction or grading takes place.

The applicant shall file with the Town, if required based upon the scope of the work, a faithful form of improvement security, such as a letter of credit or similar financial instrument, in an amount deemed sufficient by the Town to cover all costs of improvements, landscaping and maintenance of improvements for such period as specified by the Town, including any necessary amount to cover inflationary and contingency costs, and engineering and inspection costs to cover the cost of failure or repair of improvements installed on the site. If the project is included as part of an overall development involving a formal letter of Credit and Highway Agreement, the estimated costs for erosion control compliance may be included as a line item in the overall development letter of credit.

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Review and approval. The Town shall review each application for an erosion and sediment control permit to determine its conformance with the provisions of this regulation. Within 15 business days after receiving an application deemed complete by the Town, the Town shall, in writing: approve the permit application; approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or, disapprove the permit application, indicating the reason(s).

## **10.20.066 Erosion and Sediment Control Plans.**

A description and listing of the plan requirements is contained in Appendix B.

## **10.20.067 Construction Site Access and Driveway Requirements.**

All construction site accesses shall meet the minimum requirements for a construction access road as contained in Appendix A. In addition:

- A. The Town may require more stringent site access requirements if conditions warrant or if the construction site access is not maintained in an acceptable condition.
- B. All persons within the Town of Essex are required to take preventative action to prevent the tracking of sediment from construction sites and driveways onto Town or State roads. Immediate action shall be taken by the responsible persons to wet sweep the road and to clean any catch basins or remove such sediment from drainage ditches affected by the tracking of sediment onto paved roadways. Failure to comply shall be a violation of this Ordinance, subject to the remedies contained therein.

## **10.20.068 Inspection.**

The Town Engineer or his representative shall make inspections on an as needed basis.

For projects operating under a Town approved and issued erosion control plan, periodic scheduled inspections are required by the design engineer or licensed technician to certify the status of the implemented plan. The following inspection schedule is a requirement of the issued permit:

- A. Start of construction.
- B. Installation of sediment and erosion measures;
- C. Completion of final grading;
- D. Close of the construction season (if multi-season);
- E. Completion of final landscaping and following clean-up of all impacted Town infrastructure, such as catch basins, storm water piping and detention basins.

The permit holder shall notify the Town Engineer or his authorized representative at least 24 hours in advance of the scheduled inspections by the certifying engineer or licensed technician.

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All inspections shall be documented in writing and submitted to the Town Engineer as specified by the approved permit.

The authorized representative of the Town shall enter the property of the applicant as deemed necessary to conduct periodic inspections.

Failure to inspect or keep a written record of the inspection as required shall be considered a violation of this Ordinance.

## **10.20.070 Development Storm Water Management**

### **10.20.071 Development Storm Water Management - General.**

This subchapter establishes minimum storm water management requirements for new development/redevelopment to augment existing Town development regulations and to provide controls to protect and safeguard the general health, safety, and welfare of the public. This subchapter:

- A. Minimizes increases in storm water runoff from new development/redevelopment to reduce flooding, siltation, and streambank erosion.
- B. Minimizes increases in non-point source pollution caused by storm water runoff from development that would otherwise degrade water quality.
- C. Minimizes the total annual volume of surface water runoff that flows from any specific site during and following development to not exceed the predevelopment hydrologic regime to the maximum extent practicable.
- D. Reduces storm water runoff rates and volumes, soil erosion, and non-point source pollution, wherever possible, through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

### **10.20.072 Development Storm Water**

#### **Management Applicability.**

This subchapter applies to all subdivision and site plan applications for new development and redevelopment activities that create new or is an expansion of old impervious surfaces that are equal to or greater than one-half (1/2) acre.

In addition, this subchapter applies to land development activities smaller than the minimum applicability criteria if such activities are part of a larger common plan of development (Master Plan, Planned Residential Development, Planned Unit Development) meeting the applicable criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.

Exemptions. The following activities shall be exempt from the provisions of this chapter:

Additions/modifications to existing single-family residential structures.

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Permit required. No landowner or land operator shall receive any Town permit, including a Zoning Permit, required for new development or redevelopment projects that creates a new or expanded impervious area of one-half (1/2) acre or more without first meeting the requirements of this chapter.

Application requirements. Unless specifically excluded by this chapter, any person desiring a permit for a new development or redevelopment project creating or disturbing one acre or more of land and/or creates a new or expanded impervious land area of one-half acre (1/2) acre or greater shall submit to the Town Engineer a Development Storm-water Permit application on a form provided for that purpose.

State permits. Projects requiring a State Stormwater permit may submit a copy of the issued State permit with supporting documentation as evidence of compliance with the requirement for a Town Development Storm-water Management Permit. The permit requirements are found in Appendix C.

Unless otherwise exempted by this chapter, a Development Storm-water Management Permit application must be accompanied by the following for an application to be considered complete: a storm water management plan; a maintenance agreement; an erosion and sediment control permit per Section 10.20.065, if applicable and a non-refundable permit review fee. The storm water management plan shall be prepared to meet the requirements of this chapter, and the fees shall be those established by the Selectboard of the Town, which shall be reviewed annually.

Application review fees. The fee for review of a Development Storm-water Management permit shall be based on the amount of new or disturbed impervious land. The fee shall be used to support local plan review, inspection, and program administration or related municipal storm water projects or storm-water related taskings. The fee must be submitted with the application prior to the issuance of any Zoning Permit for construction.

Application procedure. Applications for Development Storm-water Management Permit Applications must be filed with the Town. An original and three copies of the permit application shall be submitted, including four copies of all supporting documents. Within 15 business days of the receipt of a complete application, including all documents as required by this chapter, the Town shall inform the applicant whether the application, plan, and maintenance agreement is approved, approved with conditions, or disapproved. If the permit application, final storm water management plan, and maintenance agreement are approved (with or without conditions), a Development Storm-water Management Permit shall be issued.

Permit duration. Permits issued under this section shall be valid from the date of issuance through the date three years after the Town notifies the permit holder that all storm water management practices have passed final inspection.

Other related permits. Issuance of a local Development Storm-water Management Permit does not negate the requirement of the applicant to obtain State or other storm-water permits as may be required.

## **10.20.073 Storm Water Design Manual.**

The storm water manual as referenced in this chapter refers to the technical analysis and design standards specified in the *Vermont Storm Water Management Manual* (volumes I and II), latest revision.

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## 10.20.074 General Performance Criteria.

The following performance criteria shall be addressed for storm water management at all sites:

- A. All site designs shall establish storm water management practices to control the peak flow rates of storm water discharge associated with specified design storms, as noted in the Vermont Storm Water Management Manual, Volumes I and II, aimed at reducing the generation of storm water. These practices should seek to use pervious areas for storm water treatment and to infiltrate storm water runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical to provide for both water quality treatment and control of quantity.
- B. All storm water runoff generated from new development shall not discharge storm water directly into a jurisdictional wetland or local water body without adequate treatment. Where such discharges are proposed, the impact of the proposal on wetland functional values shall be assessed using a method acceptable to the Town. In no case shall the allowable impact on functional values be any less than the impact allowed by the Army Corps of Engineers (ACE) or the state wetlands office (or its successor).
- C. Annual groundwater recharge rates shall be maintained by promoting infiltration through the use of structural and non-structural methods. At a minimum, annual recharge from the post development site shall be at the same rate as the annual recharge from pre-development site conditions.
- D. For new development, structural storm water treatment practices, where required, shall be designed at a minimum to remove 80% of the average annual post development total suspended solids load (TSS) and 40% of the total phosphorus load, unless a TMDL has been established requiring a more stringent criteria in the receiving water. It is presumed that a STP complies with this performance standard if it is: sized to capture the prescribed water quality volume; designed according to the specific performance criteria outlined in the current state storm water manual; constructed properly; and maintained regularly.
- E. To protect stream channels from degradation, a specific channel protection criteria shall be provided as prescribed in the current state storm water manual.
- F. Storm water discharges to critical areas with sensitive resources (e.g., swimming areas, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to use or restrict certain storm water management practices.
- G. Certain industrial sites are required to prepare and implement a storm water pollution prevention plan and shall file a notice of intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES) general permit. The storm water pollution prevention plan requirement applies to existing and new industrial sites.
- H. Storm water discharges from land uses or activities with higher potential pollutant loadings, know as "hotspots," may require the use of specific structural STP's and pollution prevention practices.
- I. Prior to design, applicants are required to consult with the Town to determine if they are subject to additional storm water design requirements.
- J. The calculations for determining peak flows as found in the current storm water design manuals shall be used for sizing all storm water management practices.
- K. An evaluation may be required of any downstream impacts.

## **10.20.075 Basic Storm Water Management Design Criteria.**

Minimum control requirements are contained in Appendix D to this Chapter, which is incorporated herein by reference.

**Maintenance agreements.** All storm water treatment practices shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the storm water treatment practices and to perform routine maintenance as necessary to ensure proper functioning of the storm water treatment practice. In addition, a legally binding covenant specifying the parties responsible for the proper maintenance of all storm water treatment practices shall be secured prior to issuance of any permits for land disturbance activities.

On projects involving storm-water systems that will ultimately become the responsibility of the Town because of location in the public right of way or on public land, the maintenance agreement shall identify the responsibilities of all parties from permit approval through transfer of responsibility to the Town.

## **10.20.076 Requirements for Development Storm Water Management Plan Approval.**

A storm water management plan is required for all developments, meeting the criteria of section 10.20.072. No application for development, meeting the criteria of section 10.20.072, will be approved unless it includes a storm water management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by a professional engineer and must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of practices. The complexity and details of the submitted plan may vary depending upon the extent of the submitted project.

The storm water management plan(s) shall be referred for comment to all other interested agencies, and any comments must be addressed in a final storm water management plan. This final plan must be signed by a licensed, professional engineer, who will verify that the design of all storm water management practices meet the submittal requirements. No building permit shall be issued until a satisfactory final storm water management plan, or a waiver thereof, shall have undergone a review and been approved by the Town after determining that the plan or waiver is consistent with the requirements of this chapter.

## **10.20.077 Construction Inspection.**

The applicant must notify the Town in advance before the commencement of construction. Regular inspections of the storm water management system construction shall be conducted by the professional design engineer and certified upon completion to the Town.

The Town shall also conduct periodic inspections as verification of the work progress and compliance with the approved plans. All inspections shall be documented and written reports prepared that contain the following information: date and location of the inspection; whether construction is in compliance with the approved storm water management plan; variations from the approved construction specifications; and, any violations that exist.

If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. All corrective actions shall be made within a reasonable time as determined by the Town. If corrective actions are not taken in accordance with the Town's schedule, it shall be considered a violation of this Ordinance subject to the penalties established herein. If the situation

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is determined to pose an immediate threat to the environment or the public health, safety and welfare, the Town may order work to cease on the project until the corrections are satisfactorily completed.

### **10.20.078 As-built Plans.**

All applicants shall submit actual “as-built” plans for any storm water management practices after final construction completion. The plan must show the final design specifications for all storm water management facilities and must be certified by a professional engineer. A satisfactory final inspection by the Town Engineer is required before the release of any performance securities may occur.

If the final construction is substantially different from the approved plans, a final plan amendment may be required as part of the development review process.

### **10.20.079 Landscaping and Stabilization Requirements.**

Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be re-vegetated within 10 business days from the substantial completion of such clearing and construction, or as otherwise approved by the Town. The criteria for vegetative cover are identified in Appendix D.

A landscaping plan must be a component element of the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a registered landscape planner or other qualified person, and must be approved prior to receiving a permit. A landscaping plan submitted in compliance with other Town requirements as noted in the Subdivision Regulations or Zoning Bylaws will satisfy the requirements in this Ordinance provided the landscaping plan addresses the requirements of this Ordinance.

### **10.20.080 Storm Water Control, Operation and Maintenance.**

#### **10.20.081 Design.**

All storm water Best Management Practices (BMP’s) shall be designed to minimize the need for maintenance and reduce the chance of failure in accordance with the design guidelines outlined in the most current state storm water management manual.

Storm water easements and covenants shall be provided by the property owner for access for facility inspections and maintenance. Easements and covenants shall be recorded in the Town Land Records for any storm water discharge permit.

#### **10.20.082 Routine Maintenance.**

All storm water BMP’s shall be maintained according to the measures outlined in the current state storm water management manual or as directed in approval documents issued by the Town specific to the permit.

#### **10.20.083 Maintenance Easement.**

Prior to the issuance of any permit that has a storm water management facility as one of the requirements of the permit, the property owner of the site must execute a maintenance access agreement that shall be binding on all subsequent owners of land served by the storm water management facility. The agreement

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shall provide for access to the facility at reasonable times for periodic inspection by the Town and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this chapter. The easement agreement shall be recorded in the Town Land Records.

### **10.20.084 Maintenance Covenants.**

Maintenance of all storm water management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the Town and recorded in the Town Land Records prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the storm water management facility. The covenant shall include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

The Town, in lieu of a maintenance covenant, may accept dedication of an existing or future storm water management facility for maintenance, provided such facility meets all the requirements of this chapter, includes adequate and perpetual access and sufficient areas, by easement or otherwise, for inspection and regular maintenance, and the components of the system are entirely within a Town right-of-way or Town easement. All storm water management facilities must undergo, at a minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this chapter and accomplishment of its purposes. These needs may include: removal of silt, litter, and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any identified maintenance needs must be addressed in a timely manner, as determined by the Town, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the storm water management facility.

### **10.20.085 Maintenance Inspections.**

Inspection programs. Inspection programs may be established on any reasonable basis including, but not limited to: routine inspections; random inspections; inspections based on complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type that are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES storm water permit; and, joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and, evaluating the condition of drainage control facilities and other storm water treatment practices.

Right-of-entry for inspection. When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the Town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this chapter is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this chapter.

### **10.20.086 Records of Installation and Maintenance Activities.**

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Parties responsible for the operation and maintenance of a storm water management system including but not limited to catch basins, pipes and treatment systems shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least 5 years. These records shall be made available to the Town during inspection of the facility and at other reasonable times upon request.

## **10.20.087 Failure to Maintain Practices.**

If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the Town after reasonable notice may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the storm water management facility becomes a danger to public safety or public health, the Town shall notify the party responsible for maintenance of the storm water management facility in writing. Upon receipt of that notice, the responsible person shall have 30 days to effect maintenance and repair of the facility in an approved manner. After proper notice, the Town may assess the owner of the facility for the cost of repair work and any penalties, and the cost of the work shall be a lien upon the real estate furnished with such service in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 of Title 32 and shall be an assessment enforceable under the procedures set forth in section 3504 of Title 24.

## **10.20.090 Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction (the "Town") to NPDES MS4 General Permit 3-9014.**

A. The Vermont Agency of Natural Resources Department of Environmental Conservation ("DEC") issues Authorization to Discharge Permits under General Permits for area or site-specific storm water discharges to applicants, including municipalities, private parties, and shared storm water systems involving both privately-owned and publicly-owned components.

B. Valid storm water system discharge permits have been issued by the DEC for projects in the non-impaired and impaired waterways within the Town, and the Town has either accepted full responsibility for such permits in these waterways or shared permit responsibility based upon the percentage of impervious area contributed by the publicly-owned component of the system in comparison to the impervious area contributed by the privately-owned component.

C. As of the adoption of this Ordinance, valid storm water system discharge permits have not been issued to expired storm water permit holders in the impaired waterways due to the inability to legally authorize, under State law, renewal of the previously issued Authorization to Discharge Permits.

D. Current responsibility for previously issued expired storm water permits and valid storm water system discharge permits in the impaired watersheds in the MS4 area varies widely. In some cases, there is a well-defined chain of responsibility from the "owner" of the original permit to the current permit holder. In other cases, permit responsibility is either poorly defined or non-existent notwithstanding that permit responsibility runs with the land. Some expired and valid (permit) discharges are defined in the original permit as directly to a stream or water body; in others, they are defined as being directed to or connected into a shared storm water system.

E. Pre-existing unpermitted storm water discharges occur within the impaired and non-impaired waterways. These discharges were either never issued permits or the discharges occurred before DEC

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began issuing discharge permits. Pre-existing unpermitted storm water discharges into impaired waterways may obtain legal coverage under the MS4 general permit in the manner outlined in this Ordinance.

F. The Village of Essex Junction (“Village”) regulates storm water discharges through its Land Development Code. The Village intends to amend its Ordinances to incorporate the terms of this Town Ordinance, which is intended to apply to storm water discharges in the Town, inclusive of the Village. To the extent the terms of this Ordinance conflict with the Village Ordinance, the Town Ordinance governs.

G. For purposes of this Ordinance, the “appropriate legislative body” for the Town outside the Village shall be the Selectboard, and for the Village, the Board of Trustees. Either appropriate legislative body may delegate its authority under this Ordinance to an appropriate municipal panel. (Ord. passed 7/18/14)

## **10.20.091 General Approach and Purpose**

A. The Town seeks to develop consistent policy and procedures for determination of storm water permit responsibility for both valid storm water system discharge permits and expired storm water permits, and to establish minimum requirements for transfer of expired and future new permit responsibility by and between the appropriate parties.

B. MS4 responsibility for operation, repair and maintenance of storm water infrastructure extends only to public storm water infrastructure and proportional shared responsibility on shared storm water systems, and is separate and distinct from permit responsibility. The Town may accept permit responsibility if determined by the appropriate legislative body to be in the Town’s best interests. Factors to be considered when determining whether acceptance of permit responsibility is in the Town’s “best interests” include, but are not limited to, whether improved water quality is not otherwise obtainable without additional Town participation, potential cost savings to the Town, or provision of land or easements for treatment or storage of storm water for shared systems. The non-public contributing storm water permittee shall be responsible for the operation, maintenance, repair, replacement and upgrade of the non-public infrastructure, unless the Town determines that accepting some or all of this responsibility to be in its best interests as defined above. (Ord. passed 7/18/14)

## **10.20.092 NPDES Phase 2 MS4 Requirement for Expired Authorization to Discharge Permits**

A. The Vermont Agency of Natural Resources (VANR) Authorization to Discharge Permit Number 7025-9014 issued to the Town and Authorization to Discharge Permit Number 7024-9014 issued to the Village under NPDES MS4 General Permit 3-9014 requires the Town and the Village, separately as MS4 permittees, to submit to the Secretary of VANR a plan for addressing expired storm water permits discharging to the MS4 permittee’s system, which was accomplished through the proposed adoption of this Ordinance.

B. A compliance date of October 2015 is set within the Authorization to Discharge Permits for verification of the condition of all public and non-public storm water infrastructures identified in and approved under each original expired permit.

C. On expired permits within the impaired waterways or with regard to discharges that have no permits in the impaired waterways, it is the intent of the VANR to either have these permits ultimately come under the umbrella of the Town MS4 Permit or issue Residual Designation Authority (RDA) permits

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directly to each permittee or party responsible for the storm water discharge not covered under the MS4 umbrella permit. (Ord. passed 7/18/14)

## **10.20.093 Classification of Storm Water Systems within the Town as Relates to Authorization to Discharge Permits.**

A. Due to the complexity and variety of existing permit “ownership” and types of permits, the Town has classified all valid storm water system discharge permits and all expired storm water permits into one of the following four types for purposes of determining permit responsibility:

1. Type 1 Storm Water System:

a. A Type 1 storm water system consists of a system of storm water infrastructure that is entirely on public land (public rights of way, municipally-owned property or on public storm water easements) and owned by the Town, including residential subdivisions or groups of houses with no non-public storm water infrastructure, such as privately-owned catch basins or privately-owned storm water pipelines connected into storm water systems on public land (excluding private underdrain systems). For purposes of this Ordinance, a “private underdrain system” is storm water infrastructure serving individual private lots or buildings from the private lot or building to the point of interconnection with public storm water infrastructure.

b. Examples of Type 1 storm water systems include:

1) Public buildings such as municipal offices, police stations, fire stations, municipal highway garage complexes, schools or other educational facilities with no on-site storm water infrastructure (other than underdrains connected with public storm water infrastructure) which do not discharge directly into a stream, and/or similar facilities.

2) Residential subdivisions with valid or expired permits in the Town. Those residential subdivisions presently identified by the Town as meeting the Type 1 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.

c. Type 1 storm water systems do not include any private lot, residential subdivision or groups of housing covered under an expired storm water permit that has non-public storm water infrastructure such as catch basins and pipelines (excluding private underdrain systems) connected into public storm water infrastructure.

2. Type 2 Storm Water System:

a. A Type 2 storm water system consists of a system of storm water infrastructure that is entirely contained on private property, discharges directly or indirectly to a stream or other recognized water body and is not directly connected by piping to a Type 1 or Type 3 storm water system.

b. Examples of Type 2 storm water systems include:

1) Private residential, commercial or industrial systems that retain all storm water flows onsite as originally designed and have valid or expired permits for such discharge, and private residential, commercial or industrial systems that discharge some or all of their storm water flows to a stream or other recognized water body.

2) Select storm water systems in the Town. Those private residential, commercial or industrial systems presently identified by the Town as meeting the Type 2 criterion are listed in Table 1 in the Appendix to this Ordinance. Table 1 maybe revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.

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3. Type 3 Storm Water System:
  - a. A Type 3 storm water system consists of a shared storm water system covered under either valid and/or expired storm water permits that combines storm water flow from both public and non-public storm water infrastructure before discharging storm water directly or indirectly into a stream, swale or other method of water conveyance to waters of the State.
  - b. Examples of Type 3 storm water systems include:
    1. Non-public storm water infrastructure systems that discharge directly to public storm water infrastructure; public storm water infrastructure systems that discharge to non-public storm water infrastructure; public and non-public infrastructure systems that discharge to a common storm water pond or open swale on public or private property or to an outfall pipe leading to a stream, swale or other conveyance to a recognized water body; other systems that combine storm water flow from both public and non-public storm water infrastructure; prior to valid storm water permits involving both public and non-public components covered under one issued permit with responsibility defined in the permit between public and non-public contributors to a storm water system.
    2. Those combined public-private systems in the Town presently identified by the Town as meeting the Type 3 criterion as listed in Table 1 in the Appendix to this Ordinance. Table 1 may be revised by the Town, acting through its Municipal Manager or their designee(s) as such additional systems are identified.
- B. Prior to adoption of this section, the Town has not accepted full or shared permit responsibility for Authorization to Discharge permits within the impaired watersheds. (Ord. passed 7/18/14)

## **10.20.094 Methodology for Establishment of Permit Responsibility for Each Type of Storm Water System**

### A. Type 1 Storm Water Systems

1. The Town accepts responsibility for all valid Type 1 storm water system permits in the non-impaired waterways, all expired Type 1 storm water system permits in the impaired waterways, and all future Type 1 storm water system permits. These permits will be consolidated under the Town's NPDES MS4 General Permit 3-9014.
  2. The Town accepts responsibility for the operation, maintenance, repair, replacement and upgrade of all public storm water infrastructure included in Type 1 storm water systems, with the exception of private underdrain systems and overland storm water flow systems from private lands such as driveways, open swales, and vegetated land. Such private underdrain systems and overland flow systems shall remain the responsibility of the property owner.
  3. Acceptance of storm water permit responsibility by the Town does not relieve individual property owner(s) or housing and/or homeowner association(s), of any successor(s) and assign(s), from compliance with other sections of the Town's storm water ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.
- ### B. Type 2 Storm Water Systems
1. The Town shall have no responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water

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permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate legislative body, in its sole discretion, to be in the Town's best interests, as defined in Section 10.20.091.B above, to accept some or all of this responsibility.

2. The Town may accept MS4 permit responsibility for valid or expired Type 2 storm water system permits if requested by the current private storm water system owner and provided the following conditions are satisfied:

a. The private storm water system owner under an original valid or expired permit enters into a written agreement with the Town prior to January 1, 2015, which includes, at a minimum, the requirements set forth in section 10.20.094.b, below. A form of the Type 2 Storm Water System Agreement is provided in Appendix B to this Ordinance. If the private storm water system owner has not entered into a written agreement with the Town by January 1, 2015, the Town will request the State to use its RDA to require permit compliance by the holder of the expired Type 2 storm water permit.

b. The written agreement specified in section 10.20.094.a shall, at a minimum, require the following:

i. All applicable permit fees, including initial fees and all future renewal fees, if any such fees are required, shall be paid by the Type 2 private storm water system owner;

ii. The Type 2 private storm water system owner shall allow the Town to hire a professional engineer, at no cost to the holder of the Type 2 storm water permit, to inspect and certify that the Type 2 non-public storm water infrastructure is in compliance with the infrastructure requirements as contained in the expired permit. The certification shall occur prior to August 1, 2015. Alternatively, the current holder of the expired non-public storm water permit may hire a professional engineer, acceptable to the Town, to perform the necessary inspection and certification. Future inspections that occur after the initial certification inspection of Type 2 non-public storm water infrastructure shall be conducted by the Town at no charge to the private storm water system owner;

iii. The Type 2 non-public contributing storm water permittee shall correct any deficiencies noted as a result of the engineer's inspection at their own expense prior to the August 1, 2015 date for system certification;

iv. The Type 2 non-public contributing storm water system permittee shall be responsible for permanent maintenance, repair, replacement and upgrade if necessary of all elements covered under the Type 2 storm water system permit, the Town shall conduct annual system compliance inspections to verify the condition and maintenance of the Type 2 storm water system and report findings to the State and the responsible party identified under the Type 2 storm water system permit;

v. The Type 2 non-public contributing storm water system permittee shall sweep clean all paved private roadways or parking lots at least twice a year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump, or enter into an agreement with the Town to perform the services for a fee;

vi. The failure of the Type 2 non-public contributing storm water system permittee to perform the required actions under b. iv. and v. shall be deemed a violation of this Ordinance and shall subject the non-public contributing storm water system permittee to penalties under section 10.20.112. The Town has the right but not the obligation to take the necessary actions to ensure that the required maintenance is performed and otherwise correct any violation of this

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Ordinance. The provisions of section 10.20.116 of this Ordinance shall apply in the event the costs for the maintenance or correcting the violation are not paid by the non-public contributing storm water system permittee; and

vii. The cost of required storm water upgrades to the Type 2 storm water system to meet the Town's adopted and State approved FRP shall be borne by the non-public contributing storm water system permittee unless it is determined by the Town to be in its best interests as defined in Section 10.20.091.B above to participate in some or all of the system upgrade project or project costs.

3. Any prior written agreements entered into by the Town and non-public contributing storm water system permittees shall remain in full force with respect to cost sharing and operation, maintenance, repair and replacement of existing storm water infrastructure.
  - a. Permit responsibility and upgrades to meet the FRP are separate elements of storm water responsibility not defined in previous agreements and therefore this Ordinance is the controlling document relative to permitting.
  - b. In the event of any conflict between pre-existing agreements and the Ordinance, the pre-existing agreements shall control.
4. Acceptance of partial storm water permit responsibility by the Town shall not relieve non-public contributing storm water system permittees from compliance with all other elements of the storm water ordinance or State environmental regulations, including but not limited dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.

### C. Type 3 Storm Water Systems

1. The Town will not accept responsibility for operation, maintenance, repair, replacement and upgrade to meet an approved FRP of non-public storm water infrastructure identified in a valid or expired storm water permit or non-public storm water infrastructure added subsequent to the original version of the valid or expired permit, unless it is determined by the appropriate legislative body, in its sole discretion, to be in the best interests of the Town, as defined in Section 10.20.091.B. above, to accept some or all of this responsibility.
2. The Town will accept MS4 permit responsibility on a proportional basis by relative impervious area contributed within the permitted area of the shared storm water system for the valid or expired Type 3 storm water system permit if requested by the non-public contributing storm water system permittee and provided the following conditions are satisfied:
  - a. The Type 3 non-public contributing storm water permittee shall enter into a written agreement with the Town prior to January 1, 2015, which includes, at a minimum, the requirements set forth in Section 10.20.094.b.i-vii above. A form of the Type 3 Storm Water System Agreement is provided in Appendix C to this Ordinance. If the non-public contributed storm water system permittee has not entered into a written agreement by January 1, 2015, the Town will request the State to use its RDA to require permit compliance by the Type 3 non-public contributing storm water permittee.
  - b. If the Type 3 non-public contributing storm water system permittee elects not to enter into a shared agreement with the Town on MS4 permit responsibility, the Town shall comply with the requirements pertaining to the public storm water infrastructure, and may request the State to

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use its RDA over that portion of the shared storm water system not included within an agreement with the Town.

c. All applicable permit fees, including initial fees and all future renewals, if such fees are required, shall be shared between the municipality and the non-public contributing storm water permittee on the basis of relative impervious area, unless the appropriate legislative body determines that it is in the Town's best interests, as defined in Section 10.20.091.B above, that such fees shall be paid either on a larger percentage than relative impervious area or in full by the Town. If the Town accepts permit responsibility, then the intent is to consolidate the permit under the municipal NPDES MS4 General Permit 3-9014.

3. Any prior written agreements entered into by the Town and the Type 3 non-public contributing storm water system permittee shall remain in full force with respect to cost sharing and operation, maintenance, repair and replacement of existing storm water infrastructure.

a. Permit responsibilities and upgrades to meet the FRP are separate elements of storm water responsibility not defined in previous agreements and therefore this Ordinance is the controlling document relative to these issues.

b. In the event of any conflict between executed pre-existing agreements and this Ordinance, the pre-existing agreements shall control.

4. Acceptance of MS4 Permit responsibility by the Town does not relieve non-public contributing storm water system permittees from compliance with other elements of the Town's storm water ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.

### D. Type 4 Storm Water Systems

1. Other storm water systems with valid or expired storm water permits that do not qualify as a Type 1, 2, or 3 storm water system.

2. These systems shall be managed on a case by case basis, using the general procedures and methods as applicable from the three system types.

3. Permits involving the Town and VTRANS shall fall under this category, VTRANS is a separate MS4 permittee. Under a future adopted FRP for each impaired waterway, the Town will negotiate an agreement with VTRANS on the level of shared responsibility and costs for meeting the TMDL requirement of each impaired waterway. In the event an agreement cannot be negotiated with VTRANS, the Town will request VANR to use its RDA with respect to those VTRANS direct or indirect discharges contributing storm water flow to the impaired watersheds under the VTRANS MS4 permit. (Ord. passed 7/18/14)

### **10.20.100 Waivers.**

Every applicant shall provide for storm water management as required by this chapter, unless a written request is submitted to the Town Selectboard to waive applicable portions of this Ordinance.

Input from the Town Engineer shall be obtained as to whether there is a technical basis for the granting of a waiver.

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Minimum requirements for storm water management may be waived in whole or in part provided at least one of the following conditions applies:

- A. It can be demonstrated that the proposed development will not impair attainment of the objectives of this chapter.
- B. Alternative minimum requirements for on-site management of storm water discharges have been established in a storm water management plan approved by the Town.
- C. Provisions are made to manage storm water by an off-site facility. The off-site facility is required to be in place, designed and adequately sized to provide a level of storm water control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for long-term operation and maintenance of the storm water practice.
- D. The Town finds meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.
- E. Non-structural practices will be used on the site that reduce: the generation of storm water from the site, the size and cost of storm water storage, and the pollutants generated at the site. These non-structural practices are explained in detail in the current state design manual and the amount of credit available for using such practices shall be determined by the Town.

In instances where one of the above conditions applies, the Town may grant a waiver from strict compliance with this chapter, as long as acceptable mitigation measures are provided. However, to be eligible for a waiver, the applicant must demonstrate to the satisfaction of the Town that the waiver will not result in any of the following impacts to downstream waterways: deterioration of existing culverts, bridges, dams, and other structures; degradation of biological functions or habitats; accelerated stream bank or streambed erosion or siltation; or increased threat of flood damage to public health, life, and property.

Furthermore, where compliance with minimum requirements for storm water management is waived, the applicant shall satisfy the minimum requirements by meeting one of the following mitigation measures approved by the Town.

Mitigation measures may include, but are not limited to, the following: the purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or re-forestation (these lands should be located adjacent to the stream corridor to provide permanent buffer areas to protect water quality and aquatic habitat); the creation of a storm water management facility or other drainage improvements on previously developed properties, public or private, that currently lack storm water management facilities designed and constructed pursuant to the purposes and standards of this chapter; monetary contributions (fee-in-lieu) to fund storm water management activities such as research and studies.

- A. Where the Town waives all or part of the minimum storm water management requirements, or where the waiver is based on the provision of adequate storm water facilities provided downstream of the proposed development, the applicant shall be required to pay a fee based on the impact of the impervious area created in an amount determined by the Town.
- B. In lieu of a monetary contribution, an applicant may obtain a waiver of the required storm water management practice by entering into an agreement with the Town for the granting of an easement or the dedication of land by the applicant, for the construction of an off-site storm water management facility. The agreement shall be entered into by the applicant and the Town

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prior to the recording of a plat(s) or, if no record of a plat(s) is required, prior to the issuance of any Zoning Permit for construction.

## **10.20.105 Appeals.**

Any applicant aggrieved by a decision of the Town not associated with a noticed violation of this Ordinance may appeal that decision in writing to the Selectboard within 15 calendar days of such decision. With public notice, the Selectboard shall hold a hearing within 30 calendar days of such an appeal and shall render a decision within 15 calendar days after the close of such hearing. Following the Selectboard's decision, any person aggrieved by the decision may appeal that decision to the appropriate court. The administrative process must be exhausted before appealing to court.

## **10.20.110 Enforcement.**

### **10.20.111 Stop-work Order; Revocation of permit.**

Should any person holding a development storm water permit or erosion and sediment control permit pursuant to this chapter, violate the terms of the permit or implement site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site, the Town may suspend or revoke the storm water permit.

### **10.20.112 Violation and Penalty.**

No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, fill, or cause the same to be done, contrary to or in violation of any terms of this Ordinance. Any person violating any of the provisions of this Ordinance or a permit issued hereunder shall be subject to a civil penalty of Five Hundred Dollars (\$500.00) for each violation of this Civil Ordinance.

Each day that any violation of any of the provisions of this Ordinance or a permit issued hereunder continues shall constitute a separate offense.

Any person, partnership, or corporation convicted of violating any of the provisions of this chapter shall bear the expense of any required restoration. The Town may recover all attorney's fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

### **10.20.113 Notice of Violation.**

Whenever the Town finds that a person violates a prohibition or fails to meet a requirement of this Ordinance or any permit issued hereunder, the Town may order compliance by written notice of violation to the responsible person. Such notice may require without limitation: the performance of monitoring, analyses, and reporting; the elimination of illicit connections or discharges; that violating discharges, practices, or operations shall cease and desist; the abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; payment of a fine to cover administrative and remediation costs; and, the implementation of source control or treatment BMP's.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to re-mediate or restore within the established deadline, the work will be done by the Town or its designated contractor and the expense thereof shall be charged to the violator.

### **10.20.114 Appeal of Notice of Violation.**

Any person receiving a notice of violation may appeal the determination of the authorized representative of the Town to the Selectboard. The notice of appeal must be received by the authorized representative of the Town or the Town Clerk within 5 business days from the date of the notice of violation. After public

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notice, the Selectboard shall conduct a hearing on the appeal. The hearing shall take place within 30 calendar days of the date of receipt of the notice of appeal. The decision of the Town Selectboard shall be final, subject to appeal procedures under Vermont Statutes.

### **10.20.115 Enforcement Measures after Appeal.**

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of any appeal, within 10 business days of the decision of the Town upholding the violation, then representatives of the Town shall be authorized to enter upon the subject property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Town to enter upon the premises for the purposes set forth above.

### **10.20.116 Cost of Abatement of the Violation.**

Within 30 calendar days after abatement of the violation, the property owner shall be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 10 calendar days. If the amount due is not paid within a timely manner as determined by the decision of the Town or by the expiration of the time in which to file an appeal, the charges shall become a lien upon the real estate furnished with such service in the same manner and to the same effect as taxes are a lien upon real estate under section 5061 and Title 32 and shall be an assessment enforceable under the procedures set forth in section 3504 of Title 24.

Any person violating any of the provisions of this section shall become liable to the Town for the cost of abating such violation. Interest at the legal percentage rate established by State Statute shall be assessed on the balance beginning on the 1<sup>st</sup> day of the 1<sup>st</sup> month following discovery of the violation.

### **10.20.117 Injunctive Relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance or any permit issued hereunder. If a person has violated or continues to violate the provisions of this chapter, the Town may petition for an injunction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

### **10.20.118 Violations Deemed a Public Nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Ordinance or any permit issued hereunder is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

### **10.20.119 Remedies not Exclusive.**

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law and it is within the discretion of the Town to seek cumulative remedies.

### **10.20.120 Other Applicable Regulations.**

In case of any other applicable regulation, bylaw, ordinance, or statute that differs from this chapter, the stricter shall apply.

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Any requirements under this chapter may be administered by the Town through other regulatory and permitting processes including but not limited to the reviews enabled in the Essex Zoning Bylaws and the Essex Subdivision Regulations.

**10.20.130 Adherence to Public Works Specifications.**

All development, redevelopment, construction, etc. shall adhere to the Town’s Public Works Specifications.

**10.20.140 Fees, Fines, and Applicable Charges.**

The Town Selectboard shall adopt a schedule of reasonable fees, fines, and other charges applicable to carrying out the purposes of this chapter, and shall review the schedule of fines and fees on an annual basis.

**10.20.150 Severability.**

If any portion of this chapter is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected.

Approval of any storm water management system design and installation by the granting of a municipal storm water permit and certificate of compliance shall not imply that the approved system will be free from malfunction. Proper maintenance of storm water systems is vital to their proper functioning. The provisions of this chapter shall not create liability on the part of the Town, of any Town official, or employee for the storm water management system.

**APPENDIX A**

**Table 1: Valid and Expired Storm Water Permits in the Village of Essex Junction and the Town of Essex Outside the Village as of the Date of Ordinance Adoption**

Permit #	Old Permit #	Village or Town	Project Name	Valid (V) or Expired (E)	Ordinance Type	Watershed
2-0855		Village	Village Knoll-Woods End & Acorn	V	Type 1	Indian Brook
2-1103		Village	Pleasant Street & East Street	V	Type 1	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Chestnut Lane	E	Type 2	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Spruce Lane	E	Type 2	Indian Brook
1-1074		Village	Countryside II Fairview Farms: Walnut Lane	E	Type 2	Indian Brook
2-0835		Village	Village Glen Condos	E	Type 2	Indian Brook
1.1527.0111		Village	Highland Village	E	Type 2	Sunderland Brook

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1-0236		Village	Brickyard	E	Type 2 & 3	Indian Brook
1-1074		Village	Countryside II Fairview Farms Locust Lane	E	Type 3	Indian Brook
2-0863		Village	167 Pearl Street (McEwing)	E	TBD	Sunderland Brook
2-0633		Town	Shillingford Crossing	E	Type 1	Sunderland Brook
3575- 9010.R	1-1186	Town	Woodlands I	V	Type 1	Alder Brook
1-0667		Town	Woodlands I	E	Type 1	Indian Brook
3577- 9010.R	1-0677	Town	Woodlands II/ Lang Farm Parcel H	V	Type 1	Alder Brook
1-0250		Town	Kimberly Drive	E	Type 1	Sunderland Brook
3578- 9010.R	1-0612 2-0752	Town	Pinewood Development	V	Type 1	Winooski River /Alder Brook
Permit #	Old Permit #	Village Or Town	Project Name	Valid (V) Or Expired (E)	Ordinance Type	Watershed
3581- 9010.R		Town	Heritage Phase II	V	Type 1	Alder Brook
3579- 9010.R		Town	Old Stage Village	V	Type 1	Alder Brook
3580- 9010.R		Town	Rivers Bend	V	Type 1	Winooski River
3201- 9010.R		Town	Pinewood Section G	V	Type 1	Winooski River
3267- 9010.R		Town	Saybrook	V	Type 1	Alder Brook
4367- 9010.R		Town	Autumn Knoll	V	Type 1	Browns River
3996- 9010		Town	Town Swimming Pool Complex	V	Type 1	Alder Brook
2-0631		Town	Essex Resort and Spa	E	Type 2	Indian Brook
1-1463		Town	VT Systems, Inc.	E	Type 2	Sunderland Brook
1-0965		Town	#7 Ewing Place	E	Type 2	Sunderland Brook
1-0518		Town	#3 Ewing Place	E	Type 2	Sunderland Brook
1-0619		Town	#26 Susie Wilson Road	E	Type 2	Sunderland Brook

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2-0634		Town	#26 Susie Wilson Road	E	Type 2	Sunderland Brook
1-1319		Town	Church of Latter Day Saints	E	Type 2	Indian Brook
1-1371		Town	Why Not LLC (Land Farm Golf Course)	E	Type 2	Indian Brook
3324-9010.R		Town	Meadows Edge	V	Type 3	Winooski River /Alder Brook
3574-9010.R	1-0730	Town	Forestdale	V	Type 3	Winooski River /Alder Brook
3081-9010.R		Town	Perkins Bend	V	Type 3	Winooski River
1-1381		Town	The Commons at Essex Way	E	Type 3	Indian Brook
1-1307		Town	Homestead Design	E	Type 3	Indian Brook
Permit #	Old Permit #	Village Or Town	Project Name	Valid (V) or Expired (E)	Ordinance Type	Watershed
1-0755		Town	The Outlets and Hannaford's	E	Type 3	Indian Brook
2-0613		Town	The Outlets and Hannaford's	E	Type 3	Indian Brook
1-1469		Town	Mainstay Suites	E	Type 3	Sunderland Brook
1-0552		Town	The Market Place	E	Type 3	Sunderland Brook
1-0896		Town	Yankee Enterprises, Oil #1 LLC, Bradley, Oil Annex, Patco Properties	E	Type 3	Sunderland Brook
1-0761		Town	Ewing	E	Type 3	Sunderland Brook
1-0694		Town	Ewing	E	Type 3	Sunderland Brook

(Ord. passed 7/18/14)

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## APPENDIX B

### TYPE 2 STORM WATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the [Village of Essex Junction] [Town of Essex], a Vermont municipal corporation with a principal place of business at [Village address] [81 Main Street], Essex, Vermont 05452 (the [“Town”] [“Village”]), and \_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (“Permittee”). The [Town] [Village] and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.”

#### WITNESSETH:

WHEREAS, the [Town has adopted an amendment to its Storm Water Ordinance] [Village has adopted an amendment to its Village Ordinance , incorporating Section 10.20.90 of the Town Storm Water Ordinance] entitled Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction; and

WHEREAS, the Storm Water Ordinance amendment identifies the requirements under section 10.20.094.B necessary for the [Town] [Village] to accept storm water permit responsibility for a valid or expired Type 2 storm water permit, as such type is defined in the Ordinance Amendment; and

WHEREAS, Permittee has identified that it is in their best interests to have the [Town] [Village] accept storm water permit responsibility by entering into this Agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont storm water permit compliance; and

WHEREAS, the Parties agree that the [Town] [Village] has no responsibility for the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, or non-public storm water infrastructure added to the original version of a valid or expired storm water permit; and

WHEREAS, the [Town] [Village] may in its sole discretion, if determined by the legislative body to be in its best interests, to accept some or all of the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, at some future date;

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

# TOWN OF ESSEX MUNICIPAL CODE

## SECTION ONE [TOWN] [VILLAGE] OBLIGATIONS

The [Town] [Village] agrees to accept full or shared permit responsibility for valid or expired storm water system permits as follows and also shall:

1. Hire a professional engineer, at no cost to Permittee, to inspect and certify that the Type 2 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the [Town] [Village] by Permittee. The certification shall occur prior to August 1, 2015.
2. Conduct future inspections that occur after the initial certification inspection of Type 2 storm water systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 2 storm water system and report findings to the State and the Permittee.
4. Inspect and prepare an annual structural condition survey and extent of debris capture in all catch basins contributing storm water flow within the permitted area.
5. At the request of Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on the Permittee's property and their business operations thereon in performing its obligations under this Agreement.

## SECTION TWO PERMITTEE OBLIGATIONS

Permittee shall:

1. Accept all responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, to meet an approved Flow Restoration Plan (FRP) unless it is determined by the appropriate legislative body, in its sole discretion, to be in the [Town's] [Village's] best interests, as defined in Section 10.20.091.B above, to accept some or all of this responsibility.
2. To pay all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required of the Type 2 storm water system.

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3. Hire a professional engineer, at no cost to the [Town] [Village], to inspect and certify that the Type 2 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the [Town] [Village]. The certification shall occur prior to August 1, 2015.
4. Correct any deficiencies identified in the engineer's storm water system inspection at their own expense prior to the August 1, 2015 date for system certification.
5. Maintain, repair, replace and upgrade as necessary all storm water infrastructure covered under the Type 2 storm water system permit.
6. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump, or enter into an agreement with the Town to perform the services for a fee.
7. Bear all costs of required storm water system upgrades (if needed) to the Type 2 storm water system to meet the [Town's] [Village's] adopted and State approved FRP unless it is determined by the [Town] [Village] to be in its best interests as defined in Section 10.20.091.B of the Town's Storm Water Ordinance [as adopted by Village's Land Development Code] to participate in some or all of the system upgrade project or project costs.
8. Comply with all other elements of the Storm Water Ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.
9. Perform any necessary structural repairs to any non-public storm water infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six months of discovery, reimburse the [Town] [Village] for all its costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair.
10. Indemnify, defend and hold harmless the [Town] [Village] and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the [Town's] [Village's] performance of the required annual operations and maintenance and required testing of the storm water infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the [Town] [Village] or its employees, agents or contractors, or (b) are covered by insurance carried by the [Town] [Village], its agents or contractors.

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## SECTION THREE MISCELLANEOUS

1. The [Town] [Village] will notify Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of Permittee to make on-site storm water improvements as required under the FRP.
2. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.
3. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land, and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on property of the Party failing to make payment, and shall be collectible in the same fashion as unpaid property taxes.
4. In the event a Party resorts to the judicial process to enforce another Party's obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees.
5. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.
6. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

**IN WITNESS WHEREOF**, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

\_\_\_\_\_, VERMONT

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Duly Authorized Agent

\_\_\_\_\_  
Witness

\_\_\_\_\_  
BY: \_\_\_\_\_  
Duly Authorized Agent

**TOWN OF ESSEX MUNICIPAL CODE**

STATE OF VERMONT       )  
                                  )  SS.  
COUNTY OF CHITTENDEN   )

At Essex in said County this \_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_, personally appeared \_\_\_\_\_ duly authorized officer of \_\_\_\_\_, and he acknowledged this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the [Town of Essex] [Village of Essex Junction].

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF VERMONT       )  
                                  )  SS.  
COUNTY OF CHITTENDEN   )

At Essex in said County this \_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_, personally appeared \_\_\_\_\_ duly authorized officer of \_\_\_\_\_, and he/she acknowledged this instrument, by him/her sealed and subscribed to be his/her free act and deed and the free act and deed of \_\_\_\_\_.

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(Ord. passed 7/18/14)

# TOWN OF ESSEX MUNICIPAL CODE

## Appendix C

### TYPE 3 STORM WATER SYSTEM AGREEMENT

This STORM WATER SYSTEM AGREEMENT (“Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between the [Village of Essex Junction] [Town of Essex], a Vermont municipal corporation with a principal place of business at [Village address] [81 Main Street], Essex Junction, Vermont 05452 (the [“Town”] [“Village”]), and \_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (“Permittee”). The [Town] [Village] and Permittee are sometimes each referred to in this Agreement as a “Party” or collectively as the “Parties.” **(Note: May be multiple parties to sign.)**

#### WITNESSETH:

WHEREAS, the [Town has adopted an amendment to its Storm Water Ordinance] [Village has adopted an amendment to its Village Ordinance, incorporating Section 10.20.90 of the Town Storm Water Ordinance] entitled Establishment and Transfer of Responsibility for State of Vermont issued Department of Environmental Conservation Authorization to Discharge Permits under General Storm Water Permits and for Unpermitted Discharges to Impaired Waterways within the Town of Essex, Inclusive of the Village of Essex Junction; and

WHEREAS, the Storm Water Ordinance amendment identifies the requirements in section 10.20.094.C necessary for the [Town] [Village] to accept shared or full storm water permit responsibility for a valid or expired Type 3 storm water permit, as such type is defined in the Ordinance Amendment; and

WHEREAS, Permittee (**NOTE: May be multiple parties**) has identified that it is in their best interests to have the [Town] [Village] accept storm water permit responsibility by entering into this agreement; and

WHEREAS, it is in the best interests of the Parties to work together to achieve State of Vermont storm water permit compliance; and

WHEREAS, the Parties agree that the [Town] [Village] has no responsibility for the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, or non-public storm water infrastructure added to the original version of a valid or expired storm water permit and shared responsibility on storm water systems consisting of both public and non-public infrastructure; and

WHEREAS, the [Town] [Village] may in its sole discretion, if determined by its legislative body to be in the [Town’s] [Village’s] best interests, to accept some or all of the operation, maintenance, repair, replacement or upgrade of all non-public storm water or storm water–related infrastructure, at some future date;

# TOWN OF ESSEX MUNICIPAL CODE

NOW, THEREFORE, in consideration of the matters described above, and of the mutual benefits and obligations set forth in this Agreement, and on the express condition that all conditions precedent described below are satisfied, the Parties agree as follows:

## SECTION ONE. [TOWN] [VILLAGE] OBLIGATIONS

The Town agrees to accept full or shared permit responsibility on a proportional basis by relative impervious area contributed by the public and non-public storm water infrastructure within the permitted area for valid or expired storm water system permits. The relative impervious area has been agreed as follows: [Town] [Village] \_\_%; Permittee \_\_%. The [Town] [Village] also shall:

1. Hire a professional engineer, at no cost to the Permittee, to inspect and certify that the Type 3 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless such work is undertaken at no cost to the [Town] [Village] on non-public storm water infrastructure by Permittee. The certification shall occur prior to August 1, 2015.
2. Conduct future inspections that occur after the initial certification inspection of Type 3 storm water systems at no charge to the Permittee.
3. Conduct annual system compliance inspections to verify the condition and maintenance of the Type 3 storm water system and report findings to the State and the Permittee.
4. Inspect and prepare a structural condition survey and extent of debris capture in all catch basins contributing storm water flow within the permitted area.
5. At the request of Permittee, arrange for cleaning of non-public catch basins, and to bill such cleaning costs to the Permittee.
6. Make best efforts to minimize the impact on any Permittee's property and their business operations thereon in performing its obligations under this Agreement.

## SECTION TWO PERMITTEE OBLIGATIONS

Permittee (**NOTE: *May be multiple parties***) shall:

1. Accept all responsibility for the operation, maintenance, repair, replacement or upgrade of non-public storm water infrastructure identified in a valid or expired storm water permit, or non-public storm water infrastructure added subsequent to the original version of a valid or expired permit, or their portion of a shared storm water system to meet an approved Flow Restoration Plan (FRP)

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unless it is determined by the appropriate legislative body, in its sole discretion, to be in the [Town's] [Village's] best interests, as defined in Section 10.20.091.B of the Storm Water Ordinance to accept some or all of this responsibility.

2. Pay their proportionate share of all applicable permit fees, including initial fees and all future renewal fees, if any such fees are required of the Type 3 storm water system, and
3. Hire a professional engineer, at no cost to the [Town] [Village], to inspect and certify that the non-public or shared portion of the Type 3 storm water system, including but not limited to catch basins, storm pipes, and treatment facilities, is in compliance with the infrastructure requirements as contained in the expired permit, unless Permittee requests such work be performed by the [Town] [Village]. The certification shall occur prior to August 1, 2015.
4. Correct any deficiencies on the non-public portion of the storm water system identified by the engineer's storm water system inspection at their own expense prior to the August 1, 2015 date for system certification.
5. Maintain, repair, replace and upgrade as necessary all non-public storm water infrastructure and to share responsibility for portions of shared storm water systems covered under the Type 3 storm water system permit according to the percentages identified above.
6. Sweep clean all paved private roadways or parking lots at least twice per year and clean out all private catch basins whenever the depth of deposited material exceeds 50% of the depth of the catch basin sump on non-public private storm water infrastructure or enter into an agreement with the [Town] [Village] to perform such services for a fee.
7. Bear the cost of required storm water system upgrades on non-public portions of the shared storm water systems and to share in the costs of all shared elements of the storm water system ( if needed) to the Type 3 storm water system to meet the [Town's] [Village's] adopted and State approved FRP according to the percentages identified above unless it is determined by the [Town] [Village] to be in its best interests as defined in Section 10.20.091.B of the Town's Storm water Ordinance to participate in some or all of the system upgrade project or project costs.
8. Comply with all other elements of the Storm Water Ordinance or State environmental regulations, including but not limited to sections dealing with illicit discharges, offsite discharge of sediment, site erosion, fertilizer application with respect to phosphorous and overall compliance with best storm water management practices as defined in adopted regulations or ordinances.
9. Perform any necessary structural repairs to any non-public storm water infrastructure beyond the annual routine maintenance within at least six (6) months of discovery of such needed structural repair or, if not repaired within six (months) of discovery, reimburse the [Town] [Village] for all its

# TOWN OF ESSEX MUNICIPAL CODE

costs for such catch basin repair plus a ten percent (10%) surcharge for associated administrative expenses relating to such repair; and share in such costs on shared elements of the storm water system according to the percentages identified above.

10. To indemnify, defend and hold harmless the [Town] [Village] and its officers, employees, agents, and representatives for and from any claims for liability and or damages arising out of the [Town's] [Village's] performance of the required annual operations and maintenance and required testing of the storm water infrastructure, including all catch basins and pipes, that may occur on Permittee's property, except to the extent such claims (a) arise from the gross negligence or intentional misconduct of the [Town] [Village] or its employees, agents or contractors, or (b) are covered by insurance carried by the [Town] [Village], its agents or contractors.

## SECTION THREE MISCELLANEOUS

1. The [Town] [Village] will notify Permittee at such time as the FRP for the watershed in which the property lies is adopted as to any obligations of Permittee to make on-site storm water improvements as required under the FRP.
2. All payments required under this Agreement shall be due upon receipt of an invoice. Any payments not made within thirty (30) days of their due date shall accrue interest at a rate of one percent (1%) per month on the past due amount until paid in full.
3. The Parties covenant and agree that the conditions and obligations under this Agreement shall run with the land, and shall accrue to the benefit of and be binding upon their respective successors and assigns as if they were parties to this Agreement. Any payments required under this Agreement not made when due shall constitute a lien on property of the Party failing to make payment, and shall be collectible in the same fashion as unpaid property taxes.
4. In the event a Party resorts to the judicial process to enforce another Party's obligations hereunder, the prevailing Party shall be entitled to recover its reasonable attorneys' fees.
5. This Agreement shall be interpreted consistent with and governed by the laws of the State of Vermont.
6. This Agreement consists of the entire understanding between the Parties relative to its subject matter, and may not be modified orally, but only by a written instrument signed by all Parties.

**IN WITNESS WHEREOF**, the Parties have caused their corporate seal to be affixed hereto and these premises to be signed in its name and on its behalf by its duly authorized agent as of the day and date first written above.

**[VILLAGE OF ESSEX JUNCTION] [TOWN OF ESSEX], VERMONT**

\_\_\_\_\_ BY: \_\_\_\_\_

**TOWN OF ESSEX MUNICIPAL CODE**

Witness

Duly Authorized Agent

**PERMITTEE**

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Duly Authorized Agent

**STATE OF VERMONT     )**  
                                  **)   SS.**  
**COUNTY OF CHITTENDEN   )**

At Essex in said County this \_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_, personally appeared \_\_\_\_\_ duly authorized officer of \_\_\_\_\_, and he acknowledged this instrument, by him sealed and subscribed to be his free act and deed and the free act and deed of the [Town of Essex] [Village of Essex Junction].

Before me,

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

(Ord. passed 7/18/14)

## Appendix D

### Storm Water Management Design Criteria

Storm water management design criteria apply to the following: (1) erosion and sediment control systems (2) conveyance systems such as culverts, catch basins and pipelines and (3) treatment systems. Existing Town and State Standards apply as noted in the Town Storm Water Ordinance, Section §10.20.014. The purpose of this Appendix is to provide supplemental guidance to those guidelines and standards that are listed in the Ordinance.

The goal for all new development and redevelopment is to reduce the impervious area to the minimum essential area to meet regulatory requirements and to restrict runoff to the maximum practical extent from the site.

### Erosion and Sediment Control Systems

Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized.

Soil stabilization shall be completed within 10 business days following clearing or construction inactivity.

Soil stockpiles must be protected or stabilized at the end of each workday; properly installed silt fence or hay bales shall be used to prevent erosion from unused soil stockpiles in existence for longer than 72 hours.

The entire disturbed site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.

The area of disturbance shall be limited to the minimum necessary to perform the construction task being undertaken; entire sites shall not be cleared or graded without prior permission from the Town.

Temporary and permanent erosion and sediment control, if required, may consist of rock check dams, specialized plantings for erosion control and topographic changes that create grassed depressed areas to allow for the infiltration of runoff water onsite.

A component of an effective erosion and sediment control plan is the rapid growth of replacement land cover and landscaping. The landscaping plan, when required, shall detail both the vegetation to be used in the practice and how/who will manage and maintain this vegetation. This plan must be prepared by a qualified person, experienced in landscape planning. The criteria for vegetative cover is:

- A. Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over 90% of the seeded area.
- B. Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
- C. Any area of re-vegetation must exhibit survival of a minimum of 90% of the cover crop throughout the year immediately following re-vegetation. Re-vegetation must be repeated in successive years until the minimum 90% survival for 1 year is achieved.

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D. All disturbed areas must be mulched before winter.

## **Conveyance Systems**

All storm water management practices shall be designed to convey storm water to allow for the maximum removal of pollutants and reduction in flow velocities.

Pre and post development drainage calculations must be submitted. The post development calculations shall include conveyance systems and treatment systems.

Conveyance systems that allow for the infiltration of storm water, in part or in whole are preferred, providing the designer can demonstrate that the underlying soil can accommodate the infiltration without a negative impact on adjacent roads, structures, etc.

All conveyance systems located within a current or planned Town Right of Way shall be designed with non-leak joints for both pipes and catch basins. Catch basin “boots” for both the inlet and outlet piping shall be provided on all catch basins. No new catch basins will be allowed that have a portion of the frame or concrete basin under the curb.

In special situations, the Town may require the use of catch basin inserts to capture added solids, organics or oil based products

Flow paths shall be maximized from inflow points to outflow points.

All catch basins and associated piping shall be protected from sediment during construction and shall be cleaned prior to Town acceptance..

The outlet from all piped drainage systems shall be designed so there is no vertical head loss to the adjacent stream and the outlet stream channel shall be stone lined to eliminate erosive flow velocities.

The as built plans on all completed projects shall contain a certification that no cross-connections have been made between storm and sanitary service lines and main lines.

The Town Subdivision requirements state that all post-development drainage calculations must be based on a 25-year storm event; structural components of a storm drainage system may be designed on the basis of a lesser storm event providing the calculations demonstrate that the 25 year event can be accommodated through a combination of design features, such as infiltration and storage. The minimum pipe sizes in the Public Works Specifications shall apply.

## **Treatment Systems:**

All storm water management systems shall be designed to capture and treat storm water runoff according to the specifications outlined in the current State Storm Water Design Manual.

On large projects, involving up to 5% of the specific watershed in the Town, the Town may require that studies be undertaken to determine the cumulative impact on other downstream storm-water facilities in the specific watershed of the Town.

Site design feasibility. Storm water management practices for a site shall be chosen based on the physical conditions of the site. Factors that should be considered include: topography, maximum drainage area, depth to water table, soils, slopes, terrain, head, location in relation to environmentally sensitive features or ultra-urban areas.

Applicants shall consult the current state storm water design manual for guidance on the factors that determine site design feasibility when selecting a storm water management practice.

Pretreatment requirements. Every storm water treatment practice shall have an acceptable form of water quality pretreatment, in accordance with the pretreatment requirements found in the current

## TOWN OF ESSEX MUNICIPAL CODE

state storm water design manual. Certain storm water treatment practices, as specified in said manual are prohibited even with pretreatment in the following circumstances: storm water generated from highly contaminated source areas know as “hotspots,” storm water carried in a conveyance system that also carries contaminated non-storm water discharges, storm water managed in a designated groundwater recharge area, or certain geologic conditions that prohibit the proper pretreatment of storm water.

(Ord. passed 11/16/05)