

TOWN OF HINSDALE

ZONING BY-LAWS

Approved at 7 May 1979 Town Meeting

Includes Amendments through April 2011

TOWN OF HINSDALE ZONING BY-LAWS

Prepared by the Hinsdale Planning Board in 1979

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Amendments since 1998:

July 15, 1998 (Telecommunication Towers)

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CONTENTS

SECTION		PAGE
1	TITLE, AUTHORITY AND PURPOSE	2
2	DEFINITIONS	3
3	ESTABLISHMENT OF DISTRICTS, BOUNDARIES & MAP	8
4	USE REGULATIONS	11
5	INTENSITY REGULATIONS	14
6	GENERAL REGULATIONS	15
-A	NON-CONFORMING USES, STRUCTURES & LOTS	15
-B	PARKING REQUIREMENTS	16
-C	SIGN REQUIREMENTS	16
-D	ACCESS ACROSS A MORE RESTRICTED DISTRICT	17
-E	SPECIAL PERMIT	17
-F	ACCESS ACROSS LOT'S FRONTAGE	19
7	MOBILE HOMES AND TRAILERS, MOBILE HOME PARKS	20
8	SPECIAL PROVISIONS	22
9	ADMINISTRATION	22
-A	ENFORCEMENT	22
-B	PENALTY	22
-C	ZONING BOARD OF APPEALS	23
-D	AMENDMENT	24
-E	VALIDITY	25
-F	EFFECTIVE DATE	25
10	TELECOMMUNICATION TOWERS	25

SECTION 1

TITLE, AUTHORITY AND PURPOSE

1-A Title

This By-Law shall be known as the "Zoning By-Law of the Town of Hinsdale, Massachusetts," hereinafter referred to as "this By-Law."

1-B Authority

This By-Law is adopted in accordance with the provisions of Chapter 40A of the General Laws as amended to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of the present and future inhabitants of the town.

1-C Purpose

The purpose of this By-Law is to achieve greater implementation of the powers granted to the municipalities under Article 89 of the Amendments to the Constitution of the Commonwealth in the general interests of public health, safety and welfare, including, but not limited to the objectives set forth in Section 2A of the 1975 Massachusetts Acts, Chapter 808, and following objectives:

- a. To prevent overcrowding of land, to secure safety from fire, flood, panic and other dangers, to conserve health, and to lessen congestion in the streets.
- b. To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- c. To conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment.
- d. To preserve and increase amenities by the promulgation of regulations designed to:
 1. Protect the Town's significant environmental features such as: flood plains and flood prone areas, wetlands, Housatonic River, brooks, ponds, water resources, woodlands, areas of scenic beauty, and sites and structures of historic importance.

2. Preserve the natural, scenic and aesthetic qualities of the community.
3. Minimize the adverse effects of developments of the Town's environmental and historic features.
4. Employ cooperatively the various measures taken by the Town's agencies, under diverse legislative authority, including the State Sanitary Code, Wetlands Protections Act, Subdivision Control Legislation, and the State Building Code, for the protection and enhancement of the Town's existing small-town character, open spaces, low density of population, and in the interests of the Town's orderly growth at deliberate pace.

SECTION 2
DEFINITIONS

2-A For the purpose of this By-Law and unless the context of usage clearly indicates another meaning, the following rules of construction apply to the text of this By-Law:

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes singular.

The words "used" or "occupied" include the words "designed", "intended", or "arranged to be used or occupied".

The words "building", "structure", "of lot", "land" or "premises", shall be construed as though followed by the words "or any portion thereof".

The word "shall" is mandatory; the word "may" is permissive.

The word "including" or "such as" shall not limit a term to specified examples, but are intended to extend its meaning to all other instances or circumstances of like kind or character.

2-B For the purposes of this By-Law, the following words and terms as used herein shall have the meanings or limitations of meaning hereunder defined, explained or assigned:

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, and other matter which are distinguished or characterized by the their

emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

Adult Video Store: An establishment having as a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in M.G.L. Chapter 272, Section 31.

Establishments Which Display Live Nudity: Any establishment which provides live entertainment for its patrons, which includes the display of nudity, as that term is defined in M.G.L. Chapter 272, Section 31.

Accessory Structure: A structure on the same lot customarily incidental and subordinate to, the principal structure. An accessory building shall not be larger in floor area than the ground floor area of the principal building.

Accessory Use: A use customarily incidental and subordinate to a principal use on the same premises.

Agricultural Use: Any parcel of land which is used in the raising of agricultural products, livestock, poultry or dairy products, including necessary farm structures, vehicles and equipment. This term does not include riding stables, kennels, or facilities for the commercial raising of swine or fur-bearing animals.

Bed and Breakfast Inn or Lodging: Rental of four or more rooms and/or furnishing of room and breakfast to not more than twenty (20) people in a dwelling that shall be the legal residence of the owner. Only breakfast from the family kitchen is permitted.

Dwelling, One-Family: A detached residential building designed for and occupied by one (1) family only, but not including mobile homes whether placed on a foundation or not.

Dwelling, Two-Family: A detached residential building containing two (2) dwelling units, designed for occupancy by not more than two (2) families.

Dwelling, Multi-Family: A residential building designed for or occupied by three (3) and four (4) families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling Unit: One or more rooms constituting a separate, independent house-keeping establishment with cooking, living, sanitary and sleeping facilities for the use of one (1) family.

Fire Districts: The territories defined and limited by the Provisions of the Basic State Building Code for the restrictions of type of construction.

Full Service Inn: Rental of four or more rooms that may exceed 20 guests and/or include furnishing of meals.

Home Based Business, Indoor: A business or profession pursued within a dwelling or accessory structure by a resident thereof as a use accessory thereto, including the sale of articles made or services rendered on premises, involving no undue traffic or noise, employing at least two but no more than five persons outside of the household, and meeting the requirements of this By-Law.

Home Based Business, Indoor/Outdoor: A business or profession pursued inside and or outside a dwelling or accessory structure by a resident thereof as a use accessory thereto, including the sale of articles made or services rendered on premises, involving no undue traffic or noise, employing no more than five persons outside of the household, and meeting the requirements of this By-Law.

Junk-yard: Any area, lot, land, parcel, building, or structure, or part thereof, used for the storage, collection, processing, purchase, sale, salvage, or disposal of junk including scrap, waste, reclaimable material, debris, or multiple unused, unregistered vehicles.

Kennel: Structure and other facilities for the keeping of more than three dogs, more than six months old, or other household mammal pets, for sale or boarding purposes.

Light Industrial: Light industrial shall mean assembly, processing, electrical component manufacture, research laboratory, packaging, or other light industrial operations.

Lot: A single tract of land held in identical ownership throughout, defined by metes and bounds or lot lines in a deed or conveyance, or shown on a duly recorded plan, used or available for use, as the site of a building.

Lot, Frontage: The uninterrupted distance along the street line, (for corner lots to be measured along one street only), which provides direct access to the lot, provided, however, that the depth of any lot created after the effective date of this By-Law, shall not be less than forty (40) feet at any point along its frontage in order to qualify for frontage under this By-Law. A private street approved by the Planning Board under the Subdivision Control Law may provide frontage only for the lots which are contained within the approved subdivision.

Lot Width: The mean width of a lot measured at right angles to its depth.

Mobile Home: For the purpose of this By-Law, the following definitions and descriptions will be used.

- a. Travel Trailer: A vehicle or structure on wheels, built on a chassis, and having no motive power of its own, but which is drawn by a motor vehicle, or other means, and which is designed to be used as a temporary dwelling for travel, camping, recreation and vacation purposes, and which is eligible to be licensed or registered and insured for highway use.
- b. Pick-up Coach or Pick-up Camper: A structure designed primarily to be mounted on a pick-up or truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for camping, travel, recreation and vacation uses and eligible to be licensed or registered and insured for highway use.
- c. Motorized Camper: A portable dwelling designed and constructed as an integral part of a self-propelled vehicle to be used as a temporary dwelling for travel, camping, recreational and vacation uses and eligible to be licensed or registered and insured for highway use.
- d. Tent-Trailer: A canvas, folding structure, mounted on wheels, designed to be used as a temporary dwelling for travel, camping, recreational and vacation uses and

eligible to be licensed or registered and insured for highway use.

- e. Mobile Home: A movable, portable structure, built on a chassis and having no motive power of its own, and designed to be connected to utilities and to be used as a permanent, year-round dwelling, whether or not it rests on jacks, wheels, or other foundation and whether or not it is licensed or registered and insured for highway use.

Municipal Use: Any use of land in accordance with the general laws governing municipal powers and functions including participation in regional uses.

Qualified Conservation Restriction: A conservation restriction, preservation restriction, agricultural preservation restriction, or watershed preservation restriction as defined in M.G.L. c.184, s. 31 and recorded in the Registry of Deeds pursuant to M.G.L. c. 184, s. 32. or a recorded deed restriction running to the benefit of the Town of Hinsdale.

Piggery: The keeping of four or more pigs, exceeding 10 weeks of age shall constitute a piggery.

Private Club: Land and/or buildings used exclusively by members of an organized group, who are elected by a committee or by membership, and not open to public use.

Public Utility: Services provided by a public service corporation through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead. Facilities necessary for the provision of a public utility include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

Restaurant: An establishment in which food is prepared and served and customers' orders are taken and served at dining tables. A maximum of one inside takeout station may be considered accessory to a conventional restaurant.

Site Plan: A plan indicating, but not limited to, the following: lot size and frontage, the location of all existing buildings, the exact location of proposed buildings and their distance from all lot lines, the location of the septic system

and well, existing and proposed topography, all streams, ponds, lakes and wetland areas, the access roads, driveways, parking areas, and all proposed site improvements.

Service Shop: A place of business such as, small appliance repairs laundromat, etc.

Story: That a portion of a building contained between any floor and the floor or the ceiling next above it, but not including any portion so contained if more than one-half or such portion vertically is below the average finished grade of the ground adjoining such building.

Street: A public way, or a private way either shown on a plan approved in accordance with the Subdivision Control Law, or otherwise qualifying lots along it for frontage under the Subdivision Control Law.

Street Line: The right-of-way line of a street as established under public authority, or as shown on a plan approved by the Planning Board, or if neither of the above apply, a line parallel to the center line of the street measured back a distance equal to one-half of the normally required right-of-way.

Yard, Required: The open areas of the lot extending inward from a lot line for the distance specified in the zoning regulations, within which no structure may be located except as otherwise provided in this By-Law.

Yard, Front: A required yard extending along the full length of the front lot line between the side lot lines.

Yard, Rear: A required yard extending the full length of the rear lot line between the side lot lines.

Yard, Side: A required yard extending along a side lot line from the required front yard to the required rear yard.

SECTION 3 **ESTABLISHMENT OF DISTRICTS, BOUNDARIES AND MAP**

3-A. Types of districts and Boundaries:

For the purpose of this By-law, the Town of Hinsdale is hereby divided into the following types of use Districts and Boundaries.

1. All depth dimensions on the map are considered from the center of the street.
2. R-1 District, residential, shall include both sides of the road to a depth of 200 feet except where otherwise described and as shown on the map.
3. R-1B District, residential and agricultural, shall include all land as described in this section and as shown on the map.
4. R-2 District, residential, shall include both sides of the road to a depth of 200 feet except where otherwise described and as shown on the map.
5. R-3 District, recreational and residential, shall include all land within a line parallel to and 500 feet distant from the mean high water mark of Plunkett Lake and Ashmere Lake, as shown on the map.
6. R-4 District, business and residential, shall include all land as described in this section and as shown on the map.
7. R-5 District, agricultural and residential, shall include all other areas not included in Districts RI, R2, R3 and R4.

8. A - Adult Entertainment Overlay District (AEOD).

1. Authority to Regulate.

This section is enacted pursuant to M.G.L. Chapter 40A, Section 9A and pursuant to the Town's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling Town interest of regulating the location of and preventing the clustering and concentration of Adult Entertainment uses as defined and designated herein.

2. Purpose and Intent.

The purpose and intent of this Section is to address and mitigate the secondary effect of the Adult Entertainment uses and businesses referenced herein. The provisions of this section are not intended to impose a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. The provisions of this Section are not intended to restrict or deny access by adults to Adult Entertainment uses or to sexually oriented matter or material protected by the Constitution of the United States of America or by the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is it the purpose or intent of this Section to legalize the sale, rental, distribution or exhibition of obscene or other illegal matter or materials.

3. Regulation of Adult Entertainment.

1a. "Adult Entertainment," as defined in this Bylaw, shall be permitted only in the Adult Entertainment Overlay District (AEOD), upon the issuance of a special permit from the Planning Board in accordance with the provisions of Section 6E of this Bylaw.

In addition, the application for a special permit for an Adult Entertainment use shall include the following information: name and address of the legal owner of the proposed

establishment; name and address of all persons having a lawful ownership, equity or security interest in the proposed establishment; a sworn statement that neither the applicant, owner, nor any person having a lawful ownership, equity or security interest in the proposed establishment has been convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28; name and address of the manager of the proposed establishment; proposed provisions for security; number of employees; and proposed physical layout of the interior of the proposed establishment.

Any change in the lawful ownership, equity or security interest in the proposed or approved establishment shall be provided to the Planning Board in writing within sixty (60) days of such change and shall include a sworn statement that no one now listed as having a lawful ownership, equity or security interest in the proposed or approved establishment has been convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28.

b. Any Adult Entertainment use as defined herein may not be located within 750 feet of: (1) any boundary line of the any Town district whose use includes the defined purpose of residential; (2) any religious facility, private or public school; public library or day-care facility; (3) any public playground, park or recreational area or youth center; or (4) any other Adult Entertainment establishment as defined herein.

c. The Planning Board may impose reasonable conditions, safeguards and limitations as it deems appropriate for the protection of public health, safety and welfare.

d. No Adult Entertainment special permit shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, Section 63 or M.G.L. Chapter 272, Section 28.

4. Dimensional Requirements of Adult Entertainment.

a. The 750 foot distance requirement specified above shall be measured by a straight line from the nearest property line of the premise on which the proposed Adult Entertainment use is to be located to the nearest boundary of the Town District defined herein or to the nearest property line of any of the other designated uses set forth above.

b. Structures associated with an Adult Entertainment use shall conform to dimensional regulations of the Commercial District except as modified herein.

c. A five (5) foot high solid fence or a landscaped buffer of evergreen trees or shrubs five (5) foot high at the time of planting shall be provided and maintained along the front of the property line. The special permit granting authority if deemed necessary may require additional screening.

d. All Adult Entertainment Uses shall have a maximum gross floor area or 5,500 square feet.

e. Not more than one structure to be used for Adult Entertainment shall be located on any one lot.

5. Zoning Requirements of Adult Entertainment.

a. All building openings, entries and windows shall be screened in such a manner as to prevent visual access by the public to the interior of the Adult Entertainment establishment.

b. No Adult Entertainment use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent materials any sexually explicit figures or words as defined in M.G.L. Chapter 272, Section 31.

c. No Adult Entertainment use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.

d. No Adult Entertainment use shall be allowed within a building containing other retail, consumer or residential use(s) or be used as an Accessory Use or Accessory Structures as defined in Town Bylaws.

e. No Adult Entertainment use shall be allowed within a shopping center, shopping place or mall.

f. The proposed Adult Entertainment use shall comply with all on-site parking requirements set forth in the Hinsdale Zoning Bylaw with the exception that all such parking must be located in the front of the building structure, between the structure and the screening specified above.

g. No Adult Entertainment use shall have any flashing lights visible from outside the establishment.

h. All Adult Entertainment use signage shall conform to requirements specified in Section 2.24 and Article 11 (Section 5.2 and Section 10) with the additional requirements that no sign shall contain any sexually explicit figures or words as defined in M.G.L. Chapter 272, Section 13, that no Adult Entertainment use may have a freestanding accessory sign and no signage will be allowed on the building.

i. No Adult Entertainment use shall be established prior to submission and approval of a site plan by the Planning Board as per Section 6.7 (Section 9.4) and with the additional requirements that the site plan shall depict all existing and proposed building(s), parking spaces, driveways, service areas, landscaping and open uses. The site plan shall show the distances between the proposed Adult Entertainment use and the property line of each of the uses set forth in Section 13.3.2 (8.3.3.2).

6. Expiration.

A special permit to conduct an Adult Entertainment use shall expire after a period of two calendar years on the date of special permit issuance and shall be renewable for successive two-year periods thereafter, provided a request for such renewal is received in writing prior to said expiration date and that no objection to said renewal is made and sustained by the Planning Board as Special Permit Granting Authority.

7. Separability.

The invalidity of and Section or provision of this Bylaw shall not invalidate any other Section or provision herein.

9. The Floodplain District shall include all land as described in Section 13 of this Bylaw and as shown on the map.

Adopted at Hinsdale Special Town Meeting, April 30, 2007
Approved by Attorney General, Martha Coakley, August 27, 2007
Revised at Hinsdale Annual Town Meeting, May 18, 2016

R-1 DISTRICT, 200 FEET DEPTH:

Bingham Street
Church Street
Circular Road
Commonwealth Avenue
Curtis Street
From Commonwealth intersection .4 mile towards Dalton Town
line as the road runs.
Goodrich Street
Holmes Road
Jordon Avenue
Longview Avenue: To Persip's Road on the west side and to
Michael's Road on the east side.
Maple Street: From stop light on Route 8, east to New
Windsor Road on the north side and Creamery Road on
the south side.
Plunkett Avenue
Plunkett Avenue and Plunkett Avenue Extension on the
east side.
Taylor Street
Route 8: From Dalton Town line south to the last fire
hydrant on Route 8 in Hinsdale with the exception of
the west side of Route 8 from Plunkett Avenue to Maple
Street.

R-1B RESIDENTIAL AND AGRICULTURAL

- 200-foot depth on both sides of Washington Road (Route 8) from the southerly line of the right of way leading easterly to Division of Fisheries and Game property (on the east side of Route 8) and on the west side of Route 8, from the southerly side of said right of way as extended westerly across the road; running south to Washington Town line.

- 200-foot depth on both sides of Pittsfield Road from Route 8 to Washington Town line.

R-2 DISTRICT, 200 FEET DEPTH

Old Dalton Road
From Dalton Town line to the R1 District at Route 8
and northerly from Route 8, beginning at the R5

District, to the R1 District Route 143.
New Windsor Road
From Maple Street to intersection of Frank Schnopp Road.
George Schnopp Road
From New Windsor Road to Peru Town line, east side,
excepting such areas as one within the R3 District.
Route 143
From Maple Street to Creamery Road intersection to
Ashmere Lake.
Creamery Road
Buttermilk Road
Route 8
From southern most fire hydrant to intersection Route
8 and Michael's Road.
Stonehouse Road
Robinson Road
.4 mi. from Commonwealth Avenue to Dalton Town line.
Michael's Road
From Route 8 to Galeucia Road.

R-3 DISTRICT, 500 FEET DEPTH

Plunkett Lake and Ashmere Lake Areas
All land within a line parallel to and 500 feet
distant from the near high water mark of Plunkett Lake
and Ashmere Lake.

R-4 BUSINESS AND RESIDENTIAL

Depot Street
Bridge Street
Main Street
From Plunkett Avenue to Maple Street
Maple Street
From Main to Route 8, Plunkett Avenue Ext., west side.
Route 8
West side from Maple to Plunkett, east side of Penn
Central RR Tracks, 500 feet north and 200 feet south
of Bridge Street.

R-5 DISTRICT AGRICULTURAL AND RESIDENTIAL

All areas not included in Districts R1, R2, R3 and R4.

Lyman Rd. - 1,100 feet owned by James P. Scalise, Alphonso
Scalises and Joseph Scalise. The property affected
extends back from Lyman Rd. a distance of two hundred
(200) feet. (ARTICLE #39, AMENDED 5-5-79)

3-B All lots split by zoning, district boundaries shall meet

requirements of zone with the most land.

- 3-C Location of Districts: - Said Districts are located and bounded as shown on a map entitled "Zoning Map of Hinsdale, Massachusetts," and on file in the office of the Town Clerk. The Zoning Map with all explanatory matter thereon, including Fire District zones, is hereby made a part of this By-law.

SECTION 4
USE REGULATIONS

Except as provided in Section 6 hereof, no building or structure shall be constructed and no building, structure or land, or part thereof shall be used for any purpose or in any manner other than for the one or more of the uses hereinafter set forth as permitted in the District in which such building, structure or land is located, or set forth as permissible by special permit in said district and so authorized by Special Permit Granting Authority (also referenced as SPGA).

R-1 RESIDENTIAL

1. Permitted uses

- a. Single-family dwelling.
- b. Religious or educational use on land owned or leased by the Commonwealth or any of its agencies, subdivisions or bodies, politic, or by religious seat, or denomination, or by a non-profit educational corporation.
- c. The use of land or structures for the primary purpose of agriculture, horticulture or floriculture.
- d. Renting of rooms and furnishing of meals in a dwelling occupied as a private residence.
- e. Municipal use.
- f. Accessory uses customarily incidental to a permitted main use on the same premises including but not limited to the following:
 - (1) Use of a room or rooms in a dwelling for customary home occupation or practice of a profession conducted by a resident of the premises, provided there is no external evidence of any business other than permitted signs.

2. Uses which may be permitted with a special permit by the Zoning Board of Appeals.

- a. Conversion to a single-family dwelling into two, three or four-family dwelling.
- b. Erection of a building for use as hospital, sanatorium, convalescent home or nursing home.

- c. Non-profit recreational use.
- d. Any other use determined by the Zoning Board of Appeals to be similar to one or more of the uses specifically authorized and which is in harmony with the general purpose and intent of the by-law and is found to be not detrimental to the neighborhood.

R-1B RESIDENTIAL AND AGRICULTURAL

- 1. Permitted uses
 - a. Any use permitted in the R-1 Residential District.
- 2. Uses which may be permitted by the Board of Appeals.
 - a. Those permitted under R-1 Residential.
- 3. Any lawful agricultural use.

R-2 RESIDENTIAL

- 1. Permitted uses
 - a. Any use permitted in an R-1 Residential District.
- 2. Uses which may be permitted with a special permit by the Zoning Board of Appeals.
 - a. Any use determined by the Zoning Board of Appeals to be similar to one or more of the uses specifically authorized in R-1 District and which is in harmony with the general purpose and intent of the by-law and is found to be not detrimental to the neighborhood.
 - b. Erection of a multi-family dwelling not to exceed four-family units in size.

R-3 RECREATIONAL AND RESIDENTIAL

- 1. Permitted uses
 - a. Buildings, structures, and premises used only for single-family residential purposes.
- 2. Uses which may be permitted with special permit by the Zoning Board of Appeals.

- a. Any use determined by the Zoning Board of Appeals to be similar to one or more of the uses specifically authorized in R-1 District and which is in harmony with the general purpose and intent of the By-law and is found to be not detrimental to the neighborhood.
- b. Public boat houses for rent or water vehicles.
- c. Public Bath houses.
- d. Commercial recreational uses of buildings, structures and land.

R-4 BUSINESS AND RESIDENTIAL

1. Permitted uses

- a. Buildings, structures and premises may be used for any use permitted in R-1 District or for any lawful business office, service shop or utility.

2. Uses which may be permitted with a special permit by the Zoning Board of Appeals.

- a. Place of amusement or assembly.
- b. Club conducted for profit.
- c. Transportation equipment sales and service.
- d. Light industry or manufacturing.

1. Light industry or manufacturing shall be interpreted to include processing, fabricating, and assembly, provided that no such use shall be permitted which in the opinion of the Zoning Board of Appeals would be detrimental or offensive or tend to reduce property values in the same or adjoining districts by reason of dirt, odor, fumes, smoke, gas, sewage, refuse, noise, excessive vibration or danger of explosion or fire, excessive use of water or water pollution.

R-5 AGRICULTURAL AND RESIDENTIAL

1. Permitted uses

Any lawful residential use including Multi-family Dwellings with not more than four (4) dwelling units or agricultural, educational, religious, commercial or industrial use permitted and as regulated in any other district shall be permitted by right except the uses listed in the following section which shall require a special permit from the Zoning Board of Appeals.

2. Uses which may be permitted with a special permit from the Zoning Board of Appeals.

- a. Mobile Home Park as regulated in Section 7.
- b. Fur farms.
- c. Commercial piggeries.
- d. Heavy manufacturing.
- e. Commercial summer camps.
- f. Salvage yards (automobile dismantling or used parts yards).
- g. Gravel, loam, sand and stone removal.

Uses described in this By-Law may be subject to restrictions or requirements of the State Wetlands Protections Act and Regulations for defined Resources including lands within 200 feet of perennial rivers and streams, and state legislation relating to the Hinsdale Flats Area of Critical Environmental Concern (ACEC) for lands in Hinsdale shown on the official Department of Environmental Management boundary designation map dated January 31, 1992.

SECTION 5
INTENSITY REGULATIONS

Any structure or dwelling hereafter erected in any District shall be located on a lot having not less than the minimum requirements set forth in the table following and the lot width of any lot must be at least 80% of its required frontage as expressed below unless otherwise noted in the Special Provisions or Telecommunication Towers Sections. No more than one dwelling shall be built upon any such lot. All accessory structures such as garages, swimming pools, storage shed, barns, etc., shall meet front, side and rear set-back requirements. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth. All dwellings and structures hereafter erected shall be governed by State Building Codes.

5-A TABLE OF MINIMUMS

District	Minimum		Minimum Set Back Requirements		
	Area Sq.Ft. (A)	Frontage in Ft. (a)	Front (b)	Side	Rear
R-1	15,000	75	30	15	12
R-1B	130,000	250	60	30	30
R-2	40,000	150	40	20	20
R-3 (c)	40,000	150	40	20	20

R-4	15,000	75	30	15	12
R-5	130,000	250	60	30	30

Footnotes:

- a. A lot or parcel of land having an area or a frontage of lesser amounts than required by this table may be considered as coming within the area and frontage requirements of this section, provided such lot or parcel of land was shown on a plan or described in a deed duly recorded or registered at the time of the adoption of this By-law and did not at the time of such adoption adjoin other land of the same owner available for use in connection with such lot or parcel and provided further such lot meets the minimum lot area requirements of 5,000 square feet and 50 feet frontage as provided in Sec. 6, Ch. 40A (G.L.)
- b. To be measured from the right-of-way lines where a plan of the way is on file with the registry of deeds, or in absence of such a plan, from a line parallel to the center line of the street measured back a distance equal to one-half of the normally required right-of-way.
- c. In R-3 District no dwelling on a lot abutting the waterfront shall be erected closer than 75 feet from the high water mark.
- d. No accessory building or structure shall be located nearer than ten (10) feet to a principal or another accessory building.

5-B MAXIMUM HEIGHT OF BUILDING AND STRUCTURES

The maximum height of buildings in any zoning district shall be 2-1/2 stories or 35 feet, except that the limitation on height of buildings shall not apply to chimneys, ventilators, towers, spires or other ornamental features not used for living purposes, or accessory buildings on farms and commercial camps such as barns, bunk houses, silos and water towers.

SECTION 6
GENERAL REGULATIONS

6-A Non-Conforming Structures, Uses and Lots

1. Any lawful building or structure or lawful use of building or structure, or lawful use of land, on premises existing at the time this By-law, is adopted may be continued even if not in conformity with the By-law's provisions.

2. The Board of Appeals may authorize by a special permit any extension, alteration or reconstruction, of a nonconforming structure provided that no extension, alteration, reconstruction or change in use shall be permitted unless the Board of Appeals finds.
 - a. That such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.
 - b. That such extended, altered, reconstructed structure or changed use shall not be in greater nonconformity with open space, yard and off-street parking requirements of this By-law.
3. A nonconforming use shall be considered abandoned, if said use is discontinued for two years or more, and any future use must conform with this By-law.
4. Changes: Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use.
5. Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law are exempt from the provisions of this By-law to the extent and as provided in Section 6, Chapter 40A of the General Laws.

6-B Parking Requirements

1. Any building hereafter constructed or converted for business or industrial use, including multi-family dwellings, shall be so located upon its' parcel of land that there shall be provided and adequate off-street parking area.

6-C Sign Requirements

1. In all districts there shall not be on any premises more than two signs other than those forming part of the architectural design of a building or structure or related auxiliary installation, and there shall be no signs other than those pertaining to the business conducted on the premises. Each sign used at each place of business or industry shall not be in excess of 12 square feet and shall not extend or protrude over public property and that for the purpose of this section, two similar signs, back to back so as to face in opposite directions, shall be considered one sign.

2. No sign in any district shall violate any of the following limitations -

- a. There shall be no blinking illuminated signs
- b. No signs shall have moving parts.
- c. No sign shall be of a noise-making variety.
- d. No spotlight illuminating a sign shall be located so as to cast its beam of reflection into the eyes of on-coming motorists.

6-D Access Across a More Restricted District

1. Access across a more restricted district to or from a less restricted district is permitted.

6-E Special Permit

Any Board designated as Special Permit Granting Authority, also referenced as SPGA, in this By-law may hear and decide applications for special permits upon which such Board is specifically authorized to act under this By-law in accordance with the provisions of Section 9, Chapter 40A of General Laws.

1. Required Hearing and Notice

Special permits may only be issued following public hearings held within sixty-five (65) days after filing of an application with the Special Permit Granting Authority, Notice of Public hearing shall be given by publication in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing and by posting such notice in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of such hearing, and by mailing it to "Parties in Interest" as provided in Section 11, Ch. 40A (G.L.) which include the petitioner, abutters, owners of land directly opposite on any public or private street or way and owners of land within three hundred feet of the property line, all as they appear on the most recent applicable tax list, the Planning Board and the Planning Board of every abutting municipality.

2. Review of Other Board and Agencies

The Special Permit Granting Authority shall within ten (10) days after receipt of an application for Special Permit transmit a copy thereof for review to the Board of Health, the Planning Board or Zoning Board of Appeals when not serving as

the SPGA, the Board of Selectmen, the Conservation Commission and any other municipal board or agency at the discretion of the Special Permit Granting Authority. Any board or agency to which such applications are referred for review shall make such recommendations as they deem appropriate in writing, provided however, the failure to make recommendations within thirty-five (35) days of receipt by such board or agency of the application for review shall be deemed lack of opposition thereto.

3. Site Plan Required

As a standard procedure, any application for a special permit shall be accompanied by a Site Plan. Site Plan requirements should be related to the location and nature of the proposed use. Technical requirements for a Site Plan may be waived by the SPGA for Special Permits involving Accessory Uses when the nature of the permit would not warrant preparation of a Site Plan.

The SPGA may also require a construction drawing showing the size and height of proposed buildings, and other information that is reasonably necessary in order for an informed decision to be made by the approving Authority. Additional submittal requirements for larger scale development proposals should necessarily be substantial in order for the special permit criteria to be fairly judged.

4. Review By Consultants

Pursuant to Chapter 593 of the Acts of 1989, Massachusetts General Laws Chapter 44, Section 53 G, applicants are required to pay for any consultant hired for the purpose of reviewing plans for Telecommunication Towers and other Special Permits as applicable under rules and regulations adopted by the Special Permit Granting Authorities.

5. Findings Required

Before granting a special permit for any use requiring such permit under a provision of this By-law, the Special Permit Granting Authority shall find that the proposed use:

- a. Is in compliance with all other provisions and requirements of this By-law, and in harmony with its general intent and purpose.
- b. Will not be detrimental to adjacent uses or to the established or planned future character of the neighborhood.
- c. Will not create undue traffic congestion, or unduly impair pedestrian safety.

- d. Will not overload any public water, drainage or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the town will be unduly subjected to the hazards affecting public health, safety or general welfare.

6. Conditions, Safeguards and Limitations

Special permits may be issued subject to such conditions, safeguards or limitations as the Special Permit Granting Authority may impose for the protection of neighboring uses or otherwise serving the purpose of this By-law. Such conditions, safeguards or limitations may include, but are not limited to, the following:

- a) Screening buffers or planting strips, fences or walls as specified by the Authority;
- b) Limitations upon the size, number of occupants, method and time of operation, time duration of the permit, or extent of facilities;
- c) Regulation of number or location of driveways, or other traffic features; and off-street parking or loading, or other special features beyond the minimum required by this By-Law.
- d) Limitation or mitigation of noise required by this By-Law.

Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the special permit and of the building permit, if any.

7. Decisions by Special Permit Granting Authority

Special Permit Granting Authority shall act within ninety (90) days following the date of public hearing. Failure to take final action upon an application for special permit within said ninety (90) days shall be deemed to be a grant of the permit applied for.

8. Expiration of Special Permit

A special permit shall lapse in one (1) year unless a substantial use or construction has begun under the permit by such date and in cases involving construction the work is carried through to completion as continuously and expeditiously as is reasonable.

6-F Access Across Lot's Frontage

1. Access for the purpose of the principal use permitted on any lot shall be gained across that lot's frontage on a public way or an approved subdivision way.

SECTION 7
MOBILE HOMES AND TRAILERS, MOBILE HOME PARKS

7-A MOBILE HOMES AND TRAILERS, MOBILE HOME PARKS

1. Storage and Parking

a. A trailer or camper, as defined in Section 2 (under a, b, c, or d) of this By-law may be stored in a garage or other accessory building on private residential property. Such stored equipment shall not be used for living purposes.

b. A trailer or camper, as defined in Section 2 (under a, b, c or d) of this By-law to be stored or parked outdoors must be located at least ten (10) feet from the rear and side lot lines and no closer to the street line than the actual building set back.

1. Only storage of equipment owned by residents of the premises, such as travel trailers, pick up campers, motorized campers and tent trailers will be permitted, provided that at no time will such parked or stored equipment be occupied or used for living, sleeping or housekeeping purposes.

c. Notwithstanding any provision contained herein, a trailer or camper may be parked anywhere on the premises for loading or unloading purposes.

d. The Board of Selectmen, by issuance of a special permit, may allow the use of a trailer or camper for visitation purposes for a period not to exceed seven days.

2. Mobile homes: A mobile home, as defined in definitions Section 2 of this By-law shall not be used for any purpose within the limits of the Town except within a mobile home park, in R-5 districts, as regulated in Section 7-B herein, provided, however, that the owner and occupier of a dwelling which has been destroyed by fire or other natural holocaust may use a mobile home placed on the site of such residence as a temporary dwelling for a period not exceeding 12 months while house is under construction. Any such mobile home shall be subject to the provisions of the State Sanitary Code.

7-B MOBILE HOME PARKS

A Mobile Home Park may be permitted in R-5 District by a special permit from the Zoning Board of Appeals subject to the following special requirements:

1. Any license for Mobile Home Park granted under Chapter 140 of the General Laws, Sections 32A, 32B, 32C, 32D and 32E as amended, shall be valid and applicable only to specific areas of the applicant's land as shown on the final plan and approved by the Board of Health and limited to the number of units as indicated on such plan. Any and all remaining land or unapproved sections of the final plan shall not be used in conjunction with the licensed areas unless approval is granted by the Board of Health.
2. The site size in any Mobile Home Park is to be a minimum of 100' x 100' with a minimum of 100' frontage on a access road, and contain a minimum of 10,000 square feet.
3. No site shall be located nearer than 100' of public street or 100' from the abutters' lot line.
4. All mobile homes in the park are to be set back from the access street a minimum of 15'.
5. Each site shall accommodate only one unit at a time.
6. A parking site shall be provided for visitors to avoid over-crowding on the street.
7. All sanitary facilities shall be in accordance with the State Sanitary code.
8. Every park shall have available on the premises, a plan or sketch of the water, sewage and refuse disposal facilities.
9. The owner of any park shall establish rules and regulations to be approved by the Board of Health, for the upkeep of the park and these rules and regulations shall be on display on the premises. These rules are to be submitted at the time of the issuance of the license.
10. Each individual mobile home lot shall be provided with a paved off-street parking area not less than 20' in width and 20' in length.
11. All roads within the confines of the park shall be 40' wide with a 28' paved travel way and one 8' side area be graveled and topped with

peastone for on-street parking. Suitable drainage shall be provided. Roads and drainage shall conform to the Standard for Subdivision as set forth in the Subdivision Control Regulations in the Town of Hinsdale.

12. All plumbing shall be in accordance with the State Plumbing Code.
13. No units shall be in use unless properly connected to the needed facilities, water, sewage, electricity, etc.
14. All mobile homes shall be permanently affixed to an appropriate poured concrete or concrete block foundation.

SECTION 8 - SPECIAL PROVISIONS

SECTION 9 - ADMINISTRATION

9-A Enforcement

1. This By-law shall be enforced by the Building Inspector appointed by the Board of Selectmen under the State Building Code.
2. No permit shall be issued by the Building Inspector unless the application for a permit indicates compliance with this By-law, the State Sanitary Code and the Board of Health Regulations, the Planning Board's Subdivision Control Regulations, and the Wetlands' Protection Act, if applicable.
3. Construction or operation under a building or special permit shall conform to any subsequent amendment of this By-law unless the permit is issued before the first publication of the required notice of public hearing by the Planning Board on such amendment, and the use or construction is commenced within a period of not more than six (6) months after the issuance of the permit, and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

9-B Penalty

1. Whoever shall violate any provisions of this By-law or fails to comply with any of its requirements shall upon conviction thereof be fined not more than one

hundred dollars for each offense. Each day such violation continues shall constitute a separate offense.

2. Non criminal disposition - in addition to the procedures for enforcement as described above, the provisions of this zoning By-law may also be enforced by the building inspector, by non-criminal complaint pursuant to the provision of Massachusetts General Law Chapter 40, Section 21-D. Each day on which a violation exists shall be deemed a separate offense. The penalty for the violation of any provision of this By-law shall be \$100.00 for each offense.

9-C Zoning Board of Appeals

1. Membership and Authority

There shall be a Zoning Board of Appeals consisting of three (3) members and two (2) associated members to be appointed by the Board of Selectmen as provided in Section 12, Chapter 40A of the General Laws. The Board shall act within its statutory powers as provided in Section 14, Ch. 40A (G.L.) and on matters within its jurisdiction under this By-law in a manner prescribed in Section 15, Ch. 40A (G.L.). The Zoning Board of Appeals shall act also as the Board of Appeals under the Subdivision Control Law as provided in Chapter 41, Section 81-Z of the General Laws.

2. Statutory Powers of the Zoning Board of Appeals

a. Appeals

The Board is authorized to hear and decide an appeal, as provided in Sec. 8, Ch. 40A (G.L.), taken by any person aggrieved by reason of his (her) inability to obtain a permit or enforcement action from any administrative officer under the provision of Chapter 40A (G.L.) by the ~~Berkshire County~~ Regional Planning Commission, or by any person including an officer or board of the Town or of an abutting town, aggrieved by an order or decision of the Building Inspector, or other administrative official, in violation of any provision of Chapter 40A (G.L.) or of this By-law. Any such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a notice of appeal with the Town Clerk, as provided in Section 15, Ch. 40A (G.L.)

b. Variances

The Board may authorize upon appeal or upon petition with respect to a particular land or structure a variance from the terms of this By-Law where the Board specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures, and; especially affecting such land or structures but not affecting generally the zoning district in which it is located, literal enforcement of the provisions of this By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of this By-Law.

c. Use Variances

The Board may authorize a use or activity not otherwise permitted in the District in which the land or structure is located subject to the provisions of Chapter 40A of the General Laws.

d. Special Permits

The Zoning Board of Appeals may hear and decide applications for special permits upon which such Board is specifically authorized to act under this By-law in accordance with the provisions of Section 6, of this By-law.

e. Decisions by the Zoning Board of Appeals

The decision of the Board shall be made within seventy-five(75)days after the date of the filing of an appeal, application or petition with the Town Clerk except in regard to special permits, as provided in Section 6-E herein. Failure by the Board to act within said seventy-five (75) days shall be deemed to be the grant of the relief, application or petition sought.

9-D AMENDMENT

This By-law may be amended from time to time at an Annual or Special Town Meeting in accordance with the Provisions of Section 5 of Chapter 40A of the GENERAL LAWS.

9-E VALIDITY

The invalidity of an SECTION or PROVISION of this By-law shall not invalidate any other SECTION OR PROVISION thereof.

9-F EFFECTIVE DATE

This By-law shall take effect February 9, 1979.

SECTION 10
TELECOMMUNICATION TOWERS

1. PURPOSE

The purpose of this by-law is to outline the special permitting process to site a wireless communication facility anywhere in the town of Hinsdale while minimizing potential damage and adverse impacts of wireless communication facilities on adjacent properties, residential neighborhoods, and areas of historic or high scenic value; to allow the provision of necessary wireless communication services in an orderly way; and to promote shared use of existing facilities to reduce the need for new facilities.

2. DEFINITIONS

Distance shall be measured on a horizontal plane

FAA shall mean the Federal Aviation Administration

FCC shall mean the Federal Communications Commission

Height shall be the distance measured from ground level to the highest point on the structure

Non-Residential Structure shall mean such structure as, but not limited to, buildings, grain silos and water towers, but does not include houses or apartments.

Roof Structure shall mean a wireless communication structure mounted on a roof of a building or the top of a water tower.

Wireless Communication Building shall mean any building or shelter used to house equipment primarily for the installation and operation of equipment for generating and detecting electromagnetic radiation, and is an accessory to a wireless communication structure.

Wireless Communication Device shall mean any antenna, appurtenance, wiring or equipment used in connection with

the reception or transmission of electromagnetic radiation which is attached to a structure.

Wireless Communication Facility shall be used as a general term to include wireless communication building, wireless communication device and wireless communication structure.

Wireless Communication Structure shall mean any structure or tower intended to support equipment used for the transmission and reception of electromagnetic radiation, including the antennas, wiring or other devices attached to or mounted on a structure.

3. EXEMPTIONS FROM THIS BY-LAW:

- a. Wireless communication facilities used for Town or State emergency services
- b. Amateur radio towers used in compliance with the terms of any amateur radio service licensed by the Federal Communication Commission and used solely for that purpose.
- c. Wireless communication structures and devices used expressly for home television reception.

4. GENERAL GUIDELINES

- a. No wireless communication facility shall be erected, constructed or installed without a special permit.
- b. Wireless communication facilities will be allowed by special permit in Zoning District R-5 only.
- c. Wherever feasible, wireless communication devices shall be located on existing towers or other non-residential structures, minimizing proliferation of new towers.
- d. Wireless communication devices shall be built so that the structural integrity of the facility is able to accommodate devices operated by another carrier with little or no modification.
- e. Wireless communication buildings shall be no larger than 500 square feet and 12 feet high, and shall be designed to match other accessory buildings on the site, and shall be used only for the housing of equipment related to this particular site.

5. SITING AND HEIGHT REQUIREMENTS

- a. Setbacks

1. The minimum distance from the base of the wireless communication structure to any property line or road right-of-way shall be at least 1.25 times the height of the structure to ensure an adequate fall zone.
 2. The minimum distance from any guy wire, anchor or brace to any property line or road right of way shall be equal to the length of the guy wire.
 3. The setbacks for the wireless communication building shall comply with the setback requirements for the zoning district.
 4. The wireless communication structure shall be a minimum distance of three times the height from school buildings, playgrounds, athletic fields, and abutting residences to prevent the structure from appearing to "tower" over, adversely affecting property values.
- b. The height shall be the minimum height necessary to accommodate anticipated and future use.
- c. The wireless communication structure shall, when possible, be sited off ridge lines and where their visual impact is the least detrimental to valuable historic and scenic areas.
- d. No new wireless communication structure shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the SPGA that no existing wireless communication structure can accommodate the applicant's proposed wireless communication device. Evidence submitted to demonstrate that no existing structure can accommodate the applicant's proposed device may consist of any of the following:
1. No existing wireless communication structures or non-residential structures are located within the geographic area required to meet the applicant's engineering requirements.
 2. Existing wireless communication structures or non-residential structures are not of sufficient height to meet the applicant's requirements.
 3. Existing wireless communication structures or non-residential structures do not have sufficient structural strength or cannot be

brought up to appropriate strength to support the proposed wireless communication device.

4. The proposed wireless communication device would cause electromagnetic interference with the existing devices on the site, or the existing devices would cause interference with the proposed wireless communication device.

e. The fee, costs or contractual provisions required by the owner in order to share an existing structure for use are unreasonable as determined by the SPGA.

6. DESIGN REQUIREMENTS

1. Wireless communication structures shall be designed to accommodate the maximum number of users as technologically possible.
2. There shall be no signs or advertisements, except for no trespassing signs and a required sign giving a phone number where the responsible party can be reached on a 24 hour basis.
3. All wireless communication devices shall be colored, molded and/or installed to blend into the structure and/or the landscape.
4. The facility shall be fenced to control access.
5. Night lighting of the facility shall be prohibited unless required by the FAA. If required by the FAA, a copy of the FAA permit requiring the lighting should be submitted with the application.
6. There shall be a maximum of one parking space for each facility to be used in connection with maintenance of the site and not to be used for the storage of vehicles or other equipment.
7. Existing on-site vegetation shall be preserved to the maximum extent possible.
8. Vegetative screening shall be used to screen abutting residential properties and roadways. Plants that fit in with the surrounding natural vegetation shall be used.

7. APPLICATION PROCESS

- a. Application for a special permit for siting wireless communication facilities shall be filed in accordance with Town of Hinsdale By-Laws Section 6-E. Applicants are required to pay for any consultant as specified in Section 6-E.
- b. In the case of a proposal for siting a new wireless communication structure, or to site a wireless communication device on existing wireless communication structures or non-residential structures including co-location with another carrier, the SPGA shall hold a public hearing within sixty five (65) days of filing of an application and shall issue a decision within ninety (90) days following the date of the public hearing.
- c. The entire application including all items of submittal shall be submitted along with the regular application form to the following: 1 copy to the Building Inspector; 1 copy to the Fire Chief; 1 copy to the Director of Emergency Management; and 3 copies to the SPGA.

8. ITEMS FOR SUBMITTAL

- a. Site plans and engineering plans prepared by a professional engineer licensed to practice in Massachusetts, on 24" x 36" sheets at a scale of 1"=40' or 1"=200' where appropriate, on as many sheets as necessary to show the following:
 1. North arrow, date, scale, seal(s) of the licensed professional(s) who prepared plans and space for reviewing engineer's seal.
 2. Name and address of landowner and name and address of abutters. Property lines and location of permanent structures or buildings, within 500 foot radius of proposed wireless communication structure.
 3. Existing (from a topographical survey completed within 2 years of application submittal date by a professional surveyor licensed to practice in Massachusetts) and proposed contour lines at maximum of 2 foot intervals and spot elevations at base of all the proposed and existing structures.
 4. Vegetation to be removed or altered

5. Plans for drainage or surface water and plans to control erosion and sedimentation both during construction and as a permanent measure.
 6. Delineation of wetlands, if any.
 7. Location of wireless communication structure, including supports or guy wires, if any.
 8. Plans for anchoring and supporting the structure, including specifications of hardware and all other building material.
 9. Plans for accessory buildings.
 10. Layout and details of surfacing for access road and parking.
 11. Amenities such as lighting, fencing and landscaping.
 12. Four view lines in a one to three mile radius of the site beginning at North and continuing clockwise at ninety degree intervals plus additional view lines from any historic, scenic, or other prominent areas of town as determined by the SPGA.
 13. A draft of the contract between the structure or building owner (if applicable) and the applicant.
 14. Demonstrate that the wireless communication structure or non-residential structure (if applicable) to which the device will be mounted has the structural integrity to support such device.
 15. Describe actions to be taken if electromagnetic radiation from the facility should exceed levels designated by the FCC.
- b. A map showing the areas covered/served by the proposed wireless communication structure and device of different signal strengths, and the interface with adjacent service areas.
- c. A locus map at a scale of 1"=1000' (or whatever is necessary to show where in town the proposed tower is sited) which shall show streets and landscape features.
- d. A description of the soil and surficial geology at the proposed site.
- e. A narrative report written by the carrier and licensed professional which shall:
1. Describe the justification of proposed site.

2. Describe the structure and the technical, economic and other reasons for the facility design.
 3. Describe the capacity of the structure, including the number and type of additional facilities it can accommodate.
 4. Describe actions to be taken if electromagnetic radiation from the facility exceeds levels as designated by the Federal Communications Commission.
 5. Describe the projected future needs of the carrier, and how the proposed wireless communication facilities fit with the future projections to serve the Town and adjacent towns.
 6. Describe leasing agreements should another carrier desire to co-locate.
 7. Describe special design features to minimize the visual impact of the proposed wireless communication facility.
- f. Proof of approval of all other necessary permits needed for construction and operation.
- g. If the proposed facility is taller than the zone height restriction (and the SPGA deems it necessary), after the application is submitted, and not more than 14 days before the public hearing, the applicant shall arrange to fly two foot diameter balloon at the site of the proposed installation. The date and location of the flight shall be advertised at least 14 days, but not more than 21 days before the flights, and again in the public hearing advertisement in a newspaper with a general circulation in the town.

9. APPROVAL

- a. In granting a special permit for wireless communication facilities, in addition to the findings required by the Town's Zoning by-law for Special Permits the SPGA shall find:
1. That the applicant has demonstrated to the satisfaction of the SPGA that the requirements of the by-law have been met.
 2. That the size and height of the structure is the minimum necessary.

3. That the proposed wireless communication facilities will not adversely impact historic structures or scenic views.
 4. That there are no feasible alternatives to the location of the proposed wireless communication facilities, including co-location, that would minimize their impact, and the applicant has exercised good faith in permitting future co-location of facilities at the site.
- b. When considering an application for a wireless communication facility, the SPGA shall place great emphasis on the proximity of the facility to residential dwellings, its impact on these residences and will encourage the use of existing structures.
 - c. Any extension, or construction of new or replacement towers or transmitters shall be subject to an amendment to the special permit, following the same procedures as siting a new wireless communication device on an existing structure.

10. CONDITIONS OF USE

- a. The applicant shall post an initial bond to cover construction costs and an annual maintenance bond to cover maintenance for the access road, site and structure(s) and to cover the removal of facility in the event of non-operation in an amount approved by the SPGA. An access road may include existing town roads not designed for heavy traffic.
- b. Regulatory Compliance
 1. Annual certification demonstrating structural integrity and continuing with current standards of the FCC, FAA and the American National Standards Institute shall be files with the Building Inspector by the special permit holder.
 2. If the FCC or FAA regulations are changed, the owner or operator shall bring the facilities into compliance within six months or earlier if a more stringent compliance schedule is included in the regulation.
 3. Failure to comply with any regulations shall be grounds for removal of non-complying structures, buildings, and devices at the owner's expense.
 4. If the device is moved lower on the structure and the top of the structure is no longer needed, then the non-operational part of the structure shall be removed within 120 days.

c. Removal and Repair

1. An applicant must execute a covenant with the SPGA agreeing to remove within 180 days of notice from the town, the wireless communication facility not in operation for a period of 12 months, unless the reason for non-operation is the result of major damage.
2. If the facility is not removed within 180 days, the town will remove said facility at the owner's expense.
3. In the event of major damage, repair must begin within six months of damage. Major damage shall mean damage to the facility caused by no fault of the owner or operator.

11. FEE STRUCTURE

The fee for filing an application with the Hinsdale Zoning Board of Appeals is \$120.00. The applicant is responsible for the cost of mailing notification to all abutters and for the cost of the legal advertising. [Amended July 15, 1998]

Section 11 - Small Wind Energy Systems

11.0 SMALL WIND ENERGY SYSTEMS

11.A Purpose: The purpose of this subsection is to provide a permitting process for small wind energy systems (SWES) so that they may be utilized in a cost-effective, efficient and timely manner to increase the use of distributed generation, to integrate these systems into the community in a manner that minimizes their impact on the character of neighborhoods, on property values, and on the scenic, historic, and environmental resources of the Town; and to protect health and safety, while allowing wind energy technologies to be utilized.

11.B Applicability: One or two SWES on a lot, which meet all the criteria of this subsection, are permitted as of right with site plan approval on lots of less than two acres. Site plan approval requirements are specified in subsection 6.E.3. One or two SWES on a lot, which meet all the criteria of this subsection, are permitted as of right on lots of 2 acres or greater. More than two SWES on a lot or combination of lots of any size, which meet all the criteria of this subsection, may be allowed by special permit from the Planning Board. The Planning Board may grant a special permit only if it finds that the application complies with the provision of this subsection and is consistent with the applicable criteria for granting special permits as specified in subsection 6.E.

11.C Definitions:

The following definitions shall apply

1. Fall Zone: The area on the ground from the base of a tower that forms a circle with a radius equal to the tower height. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.
2. Small Wind Energy System: All equipment and structures utilized in connection with the conversion of wind to electricity that is intended primarily to, but not limited to, reduce on-site consumption of utility power. This includes, but is not limited to, a wind turbine, a tower and associated control or conversion electronics.
3. Tower Height: The height from the existing grade of the fixed portion of the tower to the blade tip of the turbine at the highest point of its rotation or the highest point of the SWES, including appurtenances.
4. Tower: Any engineered or monopole structure freestanding, guyed or on a building that supports a SWES.
5. Wind Turbine: any device designed for conversion of wind energy to electrical or other form(s) of energy.

11.D Design Requirements: The following design requirements shall apply to SWES.

1. Tower Height: The maximum permitted tower height on any given lot is subject to the design requirements specified in this subsection. But in no instance shall any tower height exceed 125 ft.
2. Setbacks:
 - a. The minimum horizontal distance from the base of any tower structure to any property line or road right-of-way shall be 125% of the tower height. The minimum horizontal distance to any existing residence not occupied by the SWES applicant shall be the greater of 300 feet or 300% of the tower height. Such requirements apply regardless of the supporting mechanism for the SWES.
 - b. No part of the SWES, including guy wire and anchors, may extend closer to the property boundaries than the setback for the zoning district in the dimensional table in Subsection 5.A, Table of Minimums.
 - c. The setback distances specified in 11.D.2a and 11.D.2b for any SWES may be reduced by special permit from the Planning Board consistent with the requirements of public health, safety and welfare and the purposes of this subsection. If the setback distances are reduced so the “fall zone” of the tower includes land on abutting and adjacent property, such reduction shall only be permitted if the affected property owner(s) executes a recorded easement allowing the fall zone onto such property(s).
 - d. Setbacks need not be cleared of trees or other vegetation. Setback areas must be free of any overhead electrical lines.

3. Access: All SWES shall be designed and maintained to prevent unauthorized access.

4. Color and Finish: A non-reflective exterior color designed to blend with the surrounding environment shall be used. No decorations shall be allowed.

5. Visual Impact: The applicant shall demonstrate through project site planning and proposed mitigation that the SWES minimizes impacts on the visual character of surrounding neighborhoods and the community to the extent practical. This demonstration shall address, but not be limited to:

a. site selection, turbine design or appearance, buffering, screening, and lighting.

b. To the extent practical electrical wiring shall be underground

c. No logos, designs or other signage shall exceed two square feet in total area.

6. Noise: Small Wind Energy Systems shall comply with the Massachusetts noise regulation (310 CMR 7.10) and the most current related DEP Policies or Guidelines. The permitting authority

may require a noise analysis performed by a qualified engineer to demonstrate compliance with applicable requirements.

7. Compliance with Federal Aviation Administration (FAA) requirements: All SWES shall comply with applicable FAA regulations.

8. Tower Location: Any SWES shall be subject to the Wetlands Protection Act G.L. c. 131 40.

11.E General Requirements: The Following general requirements shall apply to SWES.

1. Application: An application for a SWES must be prepared by a qualified person or firms, such as a licensed engineer. This provision may be waived by the appropriate permitting body if in the opinion of the permitting body the material submitted is deemed sufficient to make a decision.

2. Construction: The construction, operation, maintenance and removal of SWES shall be consistent with all applicable Town, State and Federal requirements, including all applicable health, safety, construction, environmental, electrical, communications and aviation requirements.

3. Operation and Maintenance: An application for a permit for a SWES shall include a plan for safe and effective operation and maintenance of the system, including guy wires, anchors, support structures and lubricants.

4. Approved Wind Turbines: Proposed small wind turbine makes and models must appear on the approved list of the California Energy Commission List of Eligible Small Wind Turbines or New York State Energy Research and Development Qualified Wind Generators, or a similar list approved by the Commonwealth of Massachusetts if one becomes available.

5. Compliance with the State Building Code: Building permit applications for small wind energy systems shall comply with the state building code and all applicable local, state and national electrical codes.

6. Utility Notification: All grid connected installations must comply with the Uniform Standards for Interconnecting Distributed Generation. Off-grid systems shall be exempt from this requirement.

7. Removal: An application for a permit for a SWES shall include a plan for its removal.

11.F Abandonment and Removal

1. Abandonment: A SWES shall be considered abandoned if it is not operated for a period of two years or if it is designated a safety hazard by the Building Inspector. If the Building

Inspector determines that a SWES is abandoned he shall provide written notice of his determination to the owner of the property upon which the SWES is located, and to the permit holder at the address given on the permit application if other than the owner.

The owner or permit holder shall have the right to respond to the written notice of abandonment within 30 days of such notice. If the owner or permit holder can provide information to demonstrate that the SWES has not been abandoned, or that the safety hazard has been corrected, the Building Inspector may withdraw the notice of abandonment.

If the owner/permit holder fails to timely respond to the notice of abandonment, or fails to timely demonstrate to the Building Inspector that the SWES has not been abandoned, the permit for such SWES shall be considered terminated and the owner/permit holder shall physically remove the SWES within 180 days of the date of the notice of abandonment.

If the owner/permit holder fails to remove the SWES in accordance with the requirements of this section after 180 days of such notice and the Building Inspector has not withdrawn said notice, the Town shall have the right, to the extent it is otherwise duly authorized by law, to enter the property and physically remove the facility at the expense of the owner, or permit holder if other than the owner. The term physically remove shall include, but not be limited to:

- a. Removal of SWES, any equipment shelters, and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance local and state solid waste disposal regulations.

11.G Fee Structure

1. The fee for filing a special permit application with the Hinsdale Planning Board shall be in accordance with the annual fee structure as established by the Board of Selectmen.

The applicant is responsible for the cost of mailing notification to all abutters and for the cost of any legal advertising required.

Voted at Special Town Meeting January 12, 2011

Approved by the Attorney General Martha Coakley/ April 28, 2011

**SECTION 12 – DRINKING WATER SUPPLY PROTECTION
Regulations to restrict certain activities in areas located near the Belmont Reservoir
and its associated water source bodies**

The following zoning regulations are adopted under the Provisions of Chapter 111, Section 31 of the Massachusetts General Laws, as amended.

PURPOSE

These regulations are intended to protect public and environmental health by restricting certain activities in areas located on or near the Belmont Reservoir and its associated water source bodies.

AUTHORITY

These regulations are adopted by the Hinsdale Planning Board, as authorized by Massachusetts General Laws, Chapter 111, Section 31. These regulations are derived from the Massachusetts Department of Environmental Protection (MassDEP) regulations 310 CMR 22.20B: Surface Water Supply Protection and 310 CMR 22.20C: Surface Water Supply Protection for New and Expanded Class A Surface Water Sources. The Hinsdale Planning Board and the Hinsdale Health Department will have supervisory and compliance authority relative to the conditions set forth in this section with the Health Department exercising primary responsibility for compliance.

APPLICABILITY

These regulations shall apply within the areas located within Zone A of the Belmont Reservoir Watershed, as defined below. These areas are generally located in the portion of Hinsdale that surrounds the reservoir and its Surface Water Sources (SWS).

DEFINITIONS

Leachable Materials: Waste materials including solid wastes, sludge and pesticide and fertilizer wastes capable of releasing water-borne contaminants to the environment.

Hazardous Material: Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water. Hazardous materials include, without limitation: synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and

thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under MGL c.21C and 21E and 310 CMR 30.00.

Hazardous Waste: Any waste defined in the Massachusetts Hazardous Waste Regulations, 310 CMR Section 30.010. This includes, but is not limited to, waste oil, waste solvents, waste oil-based paint and waste pesticides.

Impervious Surfaces: Materials or structures on or above the ground that do not allow precipitation to infiltrate the underlying soil.

Zone A: The land area between the surface water source and the upper boundary of the bank; AND the land area within a 400 foot lateral distance from the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05(3) (a); AND the land area within a 200 foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body/source. The Planning Board has determined that the reservoir is as shown on the Town of Hinsdale Geographic Information System (GIS) located at:

Latitude 42d 25' 54.7998"/Longitude -73d 08' 48.5622" or

Mass Plane Coordinate System: Northing 15417948.8200/ Easting 2140556.0925

REGULATIONS

Prohibited Uses

The following new or expanded activities and land uses are prohibited within the Zone A.

1. All underground storage tanks.
2. Above-ground storage of liquid hazardous material as defined in M.G.L. c. 21E, or liquid propane or liquid petroleum products, except as follows:
 - a. The storage is incidental to:
 - a. normal household use, outdoor maintenance, or the heating of a structure;
 - b. use of emergency generators;
 - c. a response action conducted or performed in accordance with M.G.L. c. 21E and 310 CMR 40.000 and which is exempt from a ground water discharge permit pursuant to 314 CMR 5.05(14); and
 - b. The storage is either in container(s) or above-ground tank(s) within a building, or outdoors in covered container(s) or above-ground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline provided the replacement is performed in accordance with applicable state and local requirements.

3. Treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:
 - a. the replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works;
 - b. treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in non-compliance with 310 CMR 15.000: *The State Environmental Code, Title 5: Standard Requirements for the Siting, Construction, Inspection, Upgrade and Expansion of On-site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, provided the facility owner demonstrates to MassDEP's satisfaction that there are no feasible siting locations outside of Zone A. Any such facility shall be permitted in accordance with 314 CMR 5.00 and shall be required to disinfect the effluent. MassDEP may also require the facility to provide a higher level of treatment prior to discharge;
 - c. treatment works approved by MassDEP designed for the treatment of contaminated ground or surface waters and operated in compliance with 314 CMR 5.05(3) or 5.05(13); and
 - d. discharge by public water system of waters incidental to water treatment processes.
4. Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste that are subject to M.G.L. c. 21C and 310 CMR 30.00, except for the following:
 - a. very small quantity generators, as defined by 310 CMR 30.000;
 - b. treatment works approved by MassDEP designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters;
5. Sand and gravel excavation operations.
6. Uncovered or uncontained storage of fertilizers. If used, fertilizers, pesticides, herbicides, lawn care chemicals or other leachable materials shall be used with manufacturer's label instructions and all other necessary precautions to minimize adverse impacts on surface and ground water.
7. Uncovered or uncontained storage of road or parking lot deicing and sanding materials.
8. Storage or disposal of snow or ice, removed from highways and streets outside the Zone A that contains deicing chemicals.
9. Uncovered or uncontained storage of manure. All new permanent animal manure storage areas shall be within a concrete manure storage pit or other suitable structure that is covered and contained to prevent nutrient loading due to the escape of runoff or leachate.

10. Junk and salvage operations.
11. Motor vehicle repair operations.
12. Cemeteries (human and animal) and mausoleums.
13. Solid waste combustion facilities or handling facilities as defined at 310 CMR 16.00.
14. The rendering impervious of the surface of more than 15% of any lot, or more than 20% with artificial recharge, or 2,500 square feet of any lot, whichever is greater.
15. Commercial outdoor washing of vehicles, commercial car washes.

PENALTIES

Any owner or operator who violates any provision of these regulations shall be subject to a fine or fines levied by the Planning Board or Health Department pursuant to Massachusetts General Laws, Chapter 111, Section 31 of not less than ten dollars (\$10.00) nor more than five hundred dollars (\$500.00).

A separate fine up to such limit as is established by Massachusetts General Laws, Chapter 111, Section 31, may be levied for each and every violation of these regulations. Each day a violation continues shall be construed as a new and separate violation of these regulations.

SEVERABILITY

If any provision of these regulations or the application thereof is held to be invalid by a court of competent jurisdiction, the invalidity shall be limited to said provision(s) and the remainder of these regulations shall remain valid and effective. Any part of these regulations subsequently invalidated by a new state law or modification of an existing state law shall automatically be brought into conformity with the new or amended law and shall be deemed to be effective immediately, without recourse to a public hearing and the customary procedures for amendment or repeal of such regulation.

EFFECTIVE DATE

These regulations were adopted by vote of the Hinsdale, Massachusetts Planning Board, at their regularly scheduled meeting held on April 5, 2016 and are to be in full force and effect on and after a vote at a Town Meeting held May 18, 2016. Before said date, these regulations shall be published and a copy thereof be placed on file in the Hinsdale Town Hall Offices and filed with MassDEP, Drinking Water Program in Springfield. These regulations or any portions thereof may be amended, supplemented or repealed from time to time by the Planning Board, with notice as provided by law, on its own motion or by petition.

SECTION 13 - FLOODPLAIN DISTRICT

13-A PURPOSE

The purposes of the Floodplain District are to:

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

13-B FLOODPLAIN DISTRICT BOUNDARIES AND BASE FLOOD ELEVATION AND FLOODWAY DATA

The Federal Emergency Management Agency creates maps that define a community's floodplain district boundaries. These maps include base flood elevations and floodway data. The maps form the basis of a community's floodplain management program.

1. Floodplain District Boundaries and Base Flood Elevation Data

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas designated on the Hinsdale Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP) dated July 2, 1981 as Zone A and the FEMA Flood Insurance Study (FIS) dated January 2, 1981, both of which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood Insurance Study. The FIRM, Flood Boundary & Floodway Map, and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Official, Conservation Commission and Emergency Mgt. Director.

2. Base Flood Elevation and Floodway Data

- a. Floodway Data. In Zones A along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

- b. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

13-C NOTIFICATION OF WATERCOURSE ALTERATION

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

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

12-D USE REGULATIONS

1. Reference To Existing Regulations

The floodplain district bylaw is part of a federal requirement for communities that choose to participate in the NFIP.

The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

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

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

2. Other Use Regulations

- a. In Zones A along watercourses that have a regulatory floodway designated on the __Hinsdale, MA FIRM or FIS encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b. All subdivision proposals must be designed to assure that:
 - i. such proposals minimize flood damage;
 - ii. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - iii. adequate drainage is provided to reduce exposure to flood hazards.
- c. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.
- d. There shall be established a "routing procedure" which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health, Building Inspector and Emergency Mgt Director for comments which will be considered by the appropriate permitting board prior to issuing applicable permits.

13-E PERMITTED USES

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

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

13-F DEFINITIONS

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may include Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DISTRICT means floodplain district.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500 year floods and the 100-year floodway. (Maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS) means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

LOWEST FLOOR means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, PROVIDED that such enclosure is not built so as to

render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

MANUFACTURED HOME means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MANUFACTURED HOME PARK OR SUBDIVISION means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. For the purpose of determining insurance rates, **NEW CONSTRUCTION** means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures.

ONE-HUNDRED-YEAR FLOOD - see **BASE FLOOD**.

REGULATORY FLOODWAY - see **FLOODWAY**

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A.

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

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has

been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

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

SECTION 14 - SOLAR PHOTOVOLTAIC INSTALLATIONS

14-A PURPOSE

The purpose of this section is to provide for the construction and operation of solar photovoltaic installations and to establish standards for the placement, design, construction, monitoring, modification and/or repair and removal of solar photovoltaic installations that address public safety, minimize impacts on scenic, natural and historic resources of the Town, and provide adequate financial assurance for decommissioning.

14-B APPLICABILITY

This section applies to solar photovoltaic installations proposed to be constructed after the effective date of this bylaw. This section also applies to material modifications, including but not limited to alterations to the type, number, configuration or size of the solar photovoltaic installation.

14-C DEFINITIONS

Large Scale Solar Photovoltaic Installation – A ground mounted solar photovoltaic installation that occupies one sixteenth (1/16th) of an acre or more of a lot or that occupies less than one sixteenth (1/16th) of an acre of a lot, but the electricity generated is used primarily for off-site consumption.

Impervious Area of a Solar Panel - The area of any surface of a solar panel that restricts natural rainwater penetration and/or natural groundwater recharge This includes pavement of any type, concrete, asphalt, bituminous concrete (any type), so called TRG, gravel, stone (any type or size), brick, or any other surface that restricts or is designed to restrict natural rainwater penetration. Impervious area of a solar panel shall be calculated as if the solar panel projects straight down to the ground on each side.

Small Scale Solar Photovoltaic Installation – Any size roof, building, or ground-mounted solar photovoltaic installation that occupies less than one sixteenth (1/16th) of an acre of a lot and the electricity generated is used primarily for on-site consumption.

Solar Photovoltaic Installation – A device, structure, or structural design feature, a substantial purpose of which is to provide for the collection, storage and distribution of solar energy for space heating or cooling, generation of electricity, or water heating. This includes appurtenant equipment for the collection, storage and distribution of electricity to buildings or to the electric grid.

14-D SMALL SCALE SOLAR PHOTOVOLTAIC INSTALLATIONS

1. A small scale solar photovoltaic installation may be allowed as a primary use or an accessory use in all zoning districts.
2. All small scale solar photovoltaic installation shall only be erected, constructed, installed or materially modified after site plan review by the Planning Board with positive recommendation to the special permit authority and the issuance of a building permit by the Building Inspector.
3. All roof or building-mounted small scale solar photovoltaic installations may protrude no higher than the highest point of the roofline, except as provided in below.
 - a. All roof or building mounted small scale solar photovoltaic installations may protrude up to five (5) feet above the highest point of the roofline, on recommendation from the Planning Board, upon site plan review, and by special permit, upon a finding by the Select Board that the waiver is in the public interest and consistent with the intent of the Zoning Bylaws.
 - b. A small scale solar photovoltaic installation proposed to be ground mounted may not exceed a height of twenty feet (20’).
 - c. All roof or building-mounted small scale solar photovoltaic installations shall comply with all the setback requirements set forth in Section 5 Intensity Regulations, *Table 5-A Minimums* of the Hinsdale Zoning Bylaws.
 - d. All impervious surfaces of a small scale solar photovoltaic installation, including solar photovoltaic panels shall be included in the maximum % lot coverage requirement in Hinsdale Zoning Bylaws, Section 5, *Table 5-A-*

Minimums, unless the small scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.

14-E LARGE SCALE SOLAR PHOTOVOLTAIC INSTALLATIONS

1. Use Regulations

Large scale solar photovoltaic installations shall only be erected, constructed, installed or materially modified after site plan approval by the Planning Board and the subsequent issuance of a special permit by the Select Board in accordance with this section in all zoning districts.

2. Compliance

The construction and operation of all large scale solar photovoltaic installations shall comply with all applicable local, state, and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

3. Site Control

The applicant shall submit documentation to the Planning Board of actual or prospective access and control of the proposed project site sufficient to allow for the construction and operation of the large scale solar photovoltaic installation.

4. Utility Provider Conditional Approval

No large scale solar photovoltaic installation shall be constructed until the applicant demonstrates to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been notified of the applicant's intent to install an interconnected customer-owned generator. Off-grid installations are exempt from this requirement.

5. Operation & Maintenance

The owner/operator of the large scale solar photovoltaic installation shall maintain the large scale solar photovoltaic installation and the site in good condition. This includes, but shall not be limited to the maintenance of access roads, storm water control measures, security measures and vegetation screening. Site access shall be

maintained to a level acceptable to the local Fire Chief, Emergency Management Director, and Emergency Medical Services. The owner/operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

6. Liability Insurance

Prior to commencing operation, the owner/operator of a large scale solar photovoltaic installation shall provide a certificate of liability insurance in an amount and form acceptable to the Planning Board showing that the Town is an additional named insured thereon. Such insurance shall be maintained until the large scale solar photovoltaic installation has been removed by the owners/operators, their successors, and/or assigns. Such certificate shall be supplied to the Building Inspector on an annual basis upon the renewal of said insurance policy.

7. Financial Surety

- a. Applicants seeking to construct or modify a large scale solar photovoltaic installation shall provide a form of surety to cover the cost of removal and restoration of the site in the event the town must remove the installation and remediate the landscape. The amount and form of surety which may be an escrow account, bond or otherwise, shall be determined by the Planning Board, but in no event shall the amount exceed one-hundred twenty-five (125%) percent of the prevailing wage cost of removal, site restoration, and compliance with the additional requirements set forth herein, and shall be provided prior to construction or modification. Such surety shall not be required for municipally or state owned facilities. Applicants shall submit a fully inclusive cost estimate, which shall account for inflation of the costs associated with the removal of the large scale solar photovoltaic installation prepared by a qualified engineer.
- b. No less than ninety (90) days prior to the expiration of any financial surety required by this bylaw, the current operator of the large scale solar photovoltaic installation shall provide the Building Inspector with renewed, extended or replacement financial surety in an amount and form determined by the Planning Board in accordance with this bylaw. Such surety shall include oblige notification clause. Lapse of surety shall be a violation of this Bylaw and the Town may take appropriate enforcement action.

- c. It shall be a condition of every special permit that the Planning Board may, at intervals of no less than five (5) years, request the owner or operator to provide an updated estimate of the cost of removal, and to increase the amount of security accordingly.

8. Design Requirements

- a. Height – Large scale solar photovoltaic installations shall not exceed twenty feet (20’) in height.
- b. Setbacks – Large scale solar photovoltaic installations shall comply with the setback requirements set forth in the Hinsdale Zoning Bylaws, Section 5, *and Table 5-A - Minimums*.
- c. Lighting – Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.
- d. Screening – The large scale solar photovoltaic installations shall be screened year round with dense native vegetation from all adjoining properties and public and private ways.
- e. Vegetation Clearing – The clearing of vegetation shall be limited to that which is necessary for the construction, operation, maintenance, modification and removal of the large scale solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws. Plans must be reviewed by the Hinsdale Conservation Commission.
- f. Habitat Fragmentation – All large scale solar photovoltaic installations shall to the fullest extent practicable be clustered and located in or adjacent to areas of the site where the land has already been cleared to avoid habitat fragmentation. Plans must be reviewed by the Hinsdale Conservation Commission.
- g. Security Measures – Large scale solar photovoltaic installations shall be secured with a six (6) foot high fence constructed to prevent unauthorized persons from accessing the large scale solar photovoltaic installation. Said

fencing shall be constructed with materials consistent with the vegetation colors/patterns of the area.

- h. Signs – The owner/operator shall comply with requirements of all applicable sign regulations and bylaws and shall install signs at the large scale solar photovoltaic installation as determined by the Planning Board in order to protect public safety.
- i. Emergency Access – Large scale solar photovoltaic installations and access roads shall be constructed and maintained to allow for safe access by emergency vehicles.
- j. Emergency Response Plan – Upon the request of the fire chief or police chief, the owner/operator of the large scale solar photovoltaic installation shall cooperate with all local public safety officials to develop and occasionally update an emergency response plan which may include ensuring that emergency personnel have twenty-four (24) hour access to the facility. All means of shutting down the large scale solar photovoltaic installation shall be clearly marked. The owner/operator shall identify a responsible person for public inquiries throughout the life of the large scale solar photovoltaic installation.
- k. Underground Utilities – Reasonable efforts, as determined by the Planning Board, shall be made to place all on-site utility connections from the large scale solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- l. Maximum % Coverage – All impervious surfaces of the large scale solar photovoltaic installation, including solar photovoltaic panels shall be included in the maximum % lot coverage requirement in the Hinsdale Zoning Bylaws, Section 5, Table 5-A – Minimums, unless the large scale solar photovoltaic installation or part thereof is installed over impervious surface that is already included in the calculation.

9. Site Plan Filing Requirements

Applicants seeking to construct or modify a large scale solar photovoltaic installation shall undergo site plan review by the Planning Board prior to

construction, installation or modification as provided in this section and shall submit the following information to the Planning Board. All plans and maps to be submitted shall be drawn at appropriate scales and shall be prepared, stamped and signed by a registered professional engineer or licensed surveyor. The Planning Board may require additional information, data or evidence as it deems necessary pursuant to the Site Plan Review process, or may, in its discretion, waive any of the filing requirements as it deems appropriate.

- a. Contact Information – Provide the applicant’s and property owner’s name, address, phone number, email address, and signature.
- b. Site Identification – Provide the address and the map, lot and block number of the proposed site.
- c. Site Plans – Provide site plans showing the following:
 - i. Property lines of the proposed site.
 - ii. Elevation contour lines at two-foot vertical intervals.
 - iii. Outlines of all existing and proposed buildings and structures on the proposed site, including distances from the proposed large scale solar photovoltaic installation.
 - iv. Existing and proposed access roads, driveways, public ways, private ways, and recreational trails on the proposed site.
 - v. Detailed layout of the proposed large scale solar photovoltaic installation, including but not limited to panel mounts, foundations, appurtenant equipment and fencing.
 - vi. Electrical diagrams with detailed layout of the electric infrastructure to connect the large scale solar photovoltaic installation to the electric grid or net metering equipment.
 - vii. Delineation of all wetland resources and associated buffer areas (copy to Hinsdale Conservation Commission).
 - viii. Locations of rare, threatened or endangered species existing on the site.
 - ix. Proposed changes to the site, including grading, cut and fill, landscaping, native vegetation for screening and vegetation to be removed or altered.
 - x. Engineering controls at the site and on the access road to control erosion and sedimentation both during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of

Environmental Protection's Storm water Policy and reviewed by the Hinsdale Conservation Commission.

- d. Technical Information – Provide the following information:
- i. Blueprints or drawings of the large scale solar photovoltaic installation signed by a professional engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the installation and any potential shading from nearby trees or structures.
 - ii. One or three line electrical diagram detailing the solar photovoltaic installation, appurtenant equipment and electrical interconnection methods with all National Electric Code compliant devices.
 - iii. Documentation of the major large scale solar photovoltaic installation components to be used, including but not limited to solar photovoltaic panels, panel mounts and inverter.

10. Technical Review

Upon receipt of an application for a large scale solar photovoltaic installation, the Planning Board may engage professional and technical consultants, at the applicant's expense, including, but not limited to, legal counsel to assist the Planning Board with its review of the application in accordance with the requirements of M.G.L. Chapter 44 § 53G. The Planning Board may direct the applicant to deposit funds with the Planning Board for such review at the time the application is accepted and to add additional funds as needed upon notice. Failure to comply with this section shall be grounds for denying the special permit application. Upon the approval or denial of the application, any excess amounts in the account attributable to the application process, including any interest accrued shall be refunded to the applicant.

11. Discontinuance & Removal

- a. Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, a large scale solar photovoltaic installation shall be deemed discontinued when the large scale solar photovoltaic installation has not been in operation for a period of twelve (12) months or more without written permission from the Planning Board or when it has reached the end of its useful life.

- b. After twelve (12) months of non-operation without written permission from the Planning Board, the Building Inspector shall provide written notification to the owner/operator that such large scale solar photovoltaic installation is presumed to be discontinued. Upon written request from the Building Inspector addressed to the contact address provided and maintained by the owner/operator, the owner/operator shall provide evidence to the Building Inspector, within thirty (30) days, demonstrating continued use of the large scale solar photovoltaic installation.
- c. If the owner/operator does not respond within the thirty (30) day appeal period or does not submit evidence that, in the discretion of the Building Inspector, demonstrates that the large scale solar photovoltaic installation has been in operation for the relevant twelve (12) month period, then the large scale solar photovoltaic installation shall be deemed discontinued. The Building Inspector shall provide written notification of discontinuance to the owner/operator.
- d. The owner/operator of the large scale solar photovoltaic installation shall remove the large scale solar photovoltaic installation and restore the site within one-hundred eighty (180) days of the date of the written notification of discontinuance. If the owner/operator fails to remove the large scale solar photovoltaic installation within one-hundred eighty (180) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the proposed site and physically remove the large scale solar photovoltaic installation and restore the site at the sole expense of the owner/operator. Such entry shall be preceded by the issuance of a court order.

12. Lapse of Approval

Any special permit shall automatically lapse if the large scale solar photovoltaic installation is not installed and functioning within two (2) years or the large scale solar photovoltaic installation is abandoned as defined by the criteria in this zoning section. The Planning Board may recommend an extension to the special permit authority if it deems there are unique circumstances that justify a delay in the installation and/or functioning of the solar photovoltaic installation.

14-F SEVERABILITY CLAUSE

If any provision of this Section is invalidated, such invalidation shall not invalidate any other provision.

- Approved at Special Town Meeting, November 28, 2018
- Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18

CREATE A NEW SECTION 15 WITHIN THE ZONING BYLAWS: MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA TREATMENT CENTERS

§15 Marijuana Establishments.

(a) **Purpose.** The purpose of this section is to provide for the placement of Marijuana Establishments (MEs) and Medical Marijuana Treatment Centers in suitable locations in the Town of Hinsdale (the “Town”) in recognition of and in accordance with “The Regulation of the Use and Distribution of Marijuana Not Medically Prescribed,” M.G.L. c. 94G and “Medical Use of Marijuana”, M.G.L. c. 94I. The specific purpose of this section is to safeguard the built environment by permitting compliance with state law in a manner consistent with community and neighborhood concerns, while also ensuring that those entities permitted to operate a ME or Medical Marijuana Treatment Center, as defined herein, comply with the relevant provisions of Chapter 334 of the Acts of 2016, Chapter 351 of the Acts of 2016, Chapter 55 of the Acts of 2017, and the regulations promulgated by the Cannabis Control Commission (CCC) found at 935 CMR 500.000 and 105 CMR 725.000 et seq.

(b) **Definitions.**

CRAFT MARIJUANA COOPERATIVE – a Marijuana Cultivator comprised of residents of the commonwealth organized as a limited liability company or limited liability partnership under the laws of the commonwealth, or an appropriate business structure as determined by the CCC, and that is licensed to cultivate, obtain, manufacture, process, package and brand marijuana and Marijuana Products to deliver marijuana to MEs but not to consumers.

INDEPENDENT TESTING LABORATORY - a laboratory that is licensed by the CCC and is: (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the commission; (ii) independent financially from any medical marijuana treatment center or any licensee or ME for which it conducts a test; and (iii) qualified to test marijuana in compliance with 935 CMR 500.160 and M.G.L. c.94C, § 34.

LICENSE – The certificate issued by the CCC that confirms that a ME has met all applicable requirements pursuant to St. 2012, c. 334, as amended by St. 2017, c. 55 and 935 CMR 500.000. A ME may be eligible for a provisional or final license.

MARIJUANA ESTABLISHMENT (ME) – a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

MARIJUANA CULTIVATOR – an entity licensed to cultivate, process, and package marijuana; to deliver marijuana to MEs; and to transfer marijuana to other MEs but not consumers.

MARIJUANA CULTIVATION FACILITIES – facilities that a Marijuana Cultivator may be licensed to operate.

MARIJUANA PRODUCT MANUFACTURER – an entity licensed to obtain, manufacture, process, and package marijuana and Marijuana Products; to deliver marijuana and Marijuana Products to other MEs, and to transfer marijuana and Marijuana Products to other MEs but not consumers.

- Approved at Special Town Meeting, November 28, 2018
- Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18

MARIJUANA PRODUCTS – products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

MARIJUANA RETAILER – an entity licensed to purchase and deliver marijuana and Marijuana Products from MEs and to deliver, sell, or otherwise transfer marijuana and Marijuana Products to other MEs and to consumers.

MARIJUANA TRANSPORTER – an entity, not otherwise licensed by the CCC, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to MEs, but not to consumers.

MEDICAL MARIJUANA TREATMENT CENTER – a not-for-profit entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

MICROBUSINESS – a collocated ME that can be either a Tier 1 Marijuana Cultivator or Product Manufacturer or both, in compliance with the operating procedures for each license. A Microbusiness that is a Marijuana Product Manufacturer may purchase no more than 2,000 pounds of marijuana per year from other MEs.

RESEARCH FACILITY – an entity licensed to engage in research projects by the CCC.

(c) Designated Locations for MEs and Medical Marijuana Treatment Centers.

- (1) Marijuana Cultivation Facilities may be sited within the Agricultural/Residential (R-5) zoning district on parcels at least 5 acres in size.
- (2) Marijuana Cultivation Facilities shall be set back at least two hundred feet (200') from front property lines, one hundred feet (100') from side property lines and one hundred fifty feet (150') from rear property lines.
- (3) Medical Marijuana Treatment Centers and all types of ME's, except for Cultivation Facilities, may be sited in the R-4 Business zone or the Adult Entertainment Overlay District.
- (4) All ME's or Medical Marijuana Treatment Centers must be set back at least one hundred fifty feet (150') from any public or private school or licensed daycare center. Distances shall be measured by a straight line between the nearest structures of said schools or daycares and the nearest building used for marijuana purposes.
- (5) Each ME or Medical Marijuana Treatment Center and any part of their operation, including but not limited to, cultivation, processing, packaging, and sales, shall be operated from a fixed location. No marijuana establishment shall be permitted to operate from a moveable, mobile, or transitory location, except for Marijuana Transporters, as defined in 935 CMR 500.002.

- Approved at Special Town Meeting, November 28, 2018
- Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18

(d) **Designated Number of Marijuana Establishments and Medical Marijuana Treatment Centers.**

- (1) The total number of MEs operated for retail sales shall not be greater than one (1), except that in no instance shall the number be fewer than twenty percent (20%), of the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises, as set forth in G.L. c. 94G Section 3(a)(ii). Fractions of establishments shall be rounded up to the nearest whole number.
- (2) The total number of non-retail MEs shall not exceed five (5).
- (3) The total number of Medical Marijuana Treatment Centers shall not exceed one (1).
- (4) In the event that the number of licenses issued within the Town for the retail sale of alcoholic beverages not to be consumed on the premises decreases, any ME, if then exceeding the limits as noted in d.1, may remain in operation.

(e) **Special Permit Required.** No ME or Medical Marijuana Treatment Center shall be operated or expanded without first obtaining a Special Permit from the Town of Hinsdale Special Permit Granting Authority.

- (1) The Special Permit Granting Authority for ME's and Medical Marijuana Treatment Centers shall be the Select Board.
- (2) The Select Board shall within ten (10) days after receipt of an application for Special Permit, transmit a copy thereof for review to the Planning Board, as per §6-E(2), who shall provide a recommendation to the Select Board.
- (3) A Special Permit shall only be valid for use by the Applicant and will become null and void upon the sale or transfer of the license of a ME or Medical Marijuana Treatment Center or change in the location of the business.
- (4) In the event that the Commonwealth's licensing authority suspends the license or registration of an ME, the Special Permit shall be so suspended by the Town until the matter is resolved to the satisfaction of said licensing authority.

(f) **Site Plan Review.** Site plans accompanying a Special Permit application to operate or expand a ME or Medical Marijuana Treatment Center shall be reviewed by the Planning Board. The Planning Board shall, within thirty-five (35) days of receipt, provide a recommendation to the Select Board to approve, approve with conditions or deny the Special Permit. The version of the site plan reviewed by the Select Board shall be joined to the final approval for the Special Permit, in the event of approval.

(g) **General Requirements for MEs and Medical Marijuana Treatment Centers.**

- (1) Outside storage. No outside storage of marijuana, marijuana products, related supplies, or educational materials is permitted, except at open-air, outdoor cultivation facilities.
- (2) Visibility of activities. All activities shall be conducted indoors, except for open-air, outdoor cultivation facilities or Marijuana Transporters.

- Approved at Special Town Meeting, November 28, 2018
 - Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18
- (3) Paraphernalia. Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including, but not limited to, rolling papers and related tools, water pipes, and vaporizers may be lawfully sold at a marijuana retailer. No retail marijuana, marijuana products, or paraphernalia shall be displayed or kept in a retail marijuana store so as to be visible from outside of the licensed premises.
 - (4) Hours of operation. A marijuana retailer may not open earlier than 8:00 AM and shall close no later than 8:00 PM the same day, Monday through Saturday, and no earlier than 12:00 PM and no later than 6:00 PM on Sunday. There shall be no hourly restrictions on any other type of ME or Medical Marijuana Treatment Center, unless imposed by the Special Permit Granting Authority as part of site plan approval.
 - (5) On-site consumption of marijuana. On-site consumption is prohibited on or within the premises of any ME, except for Research Facilities.
 - (6) Sale of alcohol. ME's or Medical Marijuana Treatment Centers are prohibited from selling alcoholic beverages.
- (h) **Filing Requirements for MEs or Medical Marijuana Treatment Centers.** Special Permit applications must be submitted to the Town Clerk and shall include the following:
- (1) A Site Plan. A site plan, that will allow the Planning Board and the Special Permit Authority to evaluate all dimensions, abutters, clearances and pertinent data directly related to the parcel to be utilized, including but not limited to, building design features, outside surface finishes, landscaping and any other data providing full disclosure of the project. In addition to the to the site plan components listed in §6-E(3) and §2-A, definition of "site plan", the following information shall also be included:
 - i. The names, mailing addresses, phone numbers, email addresses, and signatures for the applicant, owner and operator.
 - ii. Physical address (if one exists) and the map, lot and block number of the proposed site.
 - iii. Property lines of the proposed site and all those within six hundred feet (600') of the property.
 - iv. Elevation contour lines at two-foot vertical intervals.
 - v. Outlines of all existing and proposed buildings and structures on the proposed site and those within six hundred feet (600") of the proposed site.
 - vi. Delineation of all wetland resources and associated buffer areas, in accordance with the Massachusetts Environmental Policy Act (MEPA) guidelines and regulations.
 - vii. Proposed changes to the site, including grading, cut and fill, landscaping, native vegetation for screening and vegetation to be removed or altered.
 - viii. Engineering controls at the site and on the access road to control erosion and sedimentation both during construction and after construction as a permanent measure. Such engineering controls shall conform to the Massachusetts Department of Environmental Protection's Stormwater Policy.
 - (2) A Security Plan. A security plan shall be submitted to ensure the safety of employees, patrons, and the public to protect the premises from theft or other criminal activity. The security plan shall be reviewed and approved by the local Police Chief, or their designee. The Security Plan shall include the following:

- Approved at Special Town Meeting, November 28, 2018
 - Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18
 - i. An interior floorplan (including secured areas, windows, doors, etc.)
 - ii. Exterior lighting
 - iii. Fencing (if any)
 - iv. Gates (if any)
 - v. Alarms
 - vi. Any other security measures as requested by the Police Chief.
- (3) State License. A copy of the license or registration as a ME from the Massachusetts Cannabis Control Commission or documentation that demonstrates that said facility and its owner/operators qualify and are eligible to receive a Certification of Registration and meet all of the requirements of a ME in accordance with the regulations adopted by the Commission, as amended. Proof of license may also be accepted from the State Department of Health under certain circumstances for Medical Marijuana Treatment Centers.
- (i) **Discontinuance of Use.** Any marijuana use under this Section shall be required to remove all material, plants, equipment, and other paraphernalia in compliance with regulations established by the Cannabis Control Commission within thirty (30) days after the expiration or voiding of its license.
- (j) **No Town liability; indemnification.**
- (1) The Applicant and all licensees waive and release the Town, its elected officials, employees, and agents from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the ME or Medical Marijuana Treatment Center owners, operators, employees, clients, or customers for a violation of state or federal laws, rules, or regulations.
- (2) The Applicant, in receiving approvals issued pursuant to this chapter, and all licensees, jointly and severally, if more than one, agree to indemnify, defend and hold harmless the Town, its elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, arising out of or in any manner connected with the operation of any ME or Medical Marijuana Treatment Center that is subject of the approval/license.
- (k) **Other laws remain applicable.**
- (1) Business License Required. At all times while a permit is in effect the licensee shall possess a valid Town of Hinsdale business license.
- (2) To the extent that the state has adopted or adopts in the future any additional or stricter law or regulation governing the cultivation, manufacturing, testing, research or retail of marijuana or Marijuana Products, the additional or stricter regulation shall control the ME or Medical Marijuana Treatment Center in the Town. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

- Approved at Special Town Meeting, November 28, 2018
- Town of Hinsdale – Marijuana Zoning Bylaw, Section 15 – DRAFT 10.16.18

(3) Prior to the issuance of a Special Permit, the ME or Medical Marijuana Treatment Center must have entered into a Host Community Agreement (HCA) with the Town. If, upon review by the Special Permit Granting Authority, the ME or Medical Marijuana Treatment Center is found to not be fully in compliance with the HCA, the Special Permit and/or the local license may be suspended or rescinded.

AMEND TABLE OF CONTENTS

Add a new SECTION 15 – Marijuana Establishments

AMEND SECTION 4 - Use Regulations

R-1 Residential 1 (c): The use of land or structures for the primary purpose of agriculture, horticulture or Floriculture ***except for marijuana related agriculture operations.***

R-1B Residential and Agriculture 3: Any lawful agricultural use ***except marijuana related agriculture operations.***

R-4 Business and Residential 2 (e): ***Medical Marijuana Treatment Centers and all types of Marijuana Establishments (ME), except for Marijuana Cultivation Facilities, as per Section 15.***

R-5 Agricultural and Residential 2 (h): ***Marijuana Cultivation Facilities, as per Section 15.***