

TOWN OF UPTON

TEXT OF VARIOUS WARRANT ARTICLES

ANNUAL TOWN MEETING ARTICLES:
25, 30, 31, 32, 34, 36

MAY 5, 2011



RECEIVED

By Kelly A. McElreath at 10:50 am, Apr 20, 2011

ARTICLE 25 – Flood Plain By-Law

Revisions and Comments by Town Counsel, March 30, 2011

Amend Zoning Bylaw Section 2.0, Districts, by adding to Section 2.1, Establishment, “9) Flood Plain District (see Section 8.0)”

Current:

SECTION 8.0 – SPECIAL DISTRICT REGULATIONS

8.1 FLOOD PLAIN DISTRICT

8.1.1 Overlay District. The Flood District is established as an overlay district to the existing zoning districts. The uses permitted in the existing zoning districts are also allowed in the overlay Flood Plain District provided that they meet the additional following requirements as well as those of the Massachusetts State Building Code dealing with construction in flood plains. The Flood Plain District includes all special flood hazard areas designated as Zone A, A1-30 on the Upton Flood Insurance Rate Maps, dated August 2, 1982 and a map entitled "Zoning of Upton Massachusetts", dated 1978 showing the flood plain district on file with the Town Clerk, Planning Board and Building Inspector. These maps as well as the accompanying Upton Flood Insurance Study are incorporated herein by reference. The Flood Plain District is hereby repealed and deleted and all land formerly in that zoning district is now included in the Flood Plain Overlay District.

8.1.2 Development Regulations. The following requirements apply in the Flood Plain District:

- 1) Within Zone A, where the base flood elevation is not provided on the FIRM, the applicant shall obtain any existing base flood elevation data and it shall be reviewed by the Building Inspector for its reasonable utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building Code.
- 2) In the floodway, designated on the Flood Boundary and Floodway Map, the following provisions shall apply:
 - a. All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100 year flood.
 - b. Any encroachment meeting the above standard must comply with the flood plain requirement of the State Building Code.

Proposed:

MA Bylaw Updates

8.1.1 Overlay District

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the Town of Upton designated as Zone A and AE, on the Worcester County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Worcester County FIRM that are wholly or partially within the Town of Upton are panel numbers 25027C0832E, 25027C0834E, 25027C0842E, 25027C0844E, 25027C0851E, 25027C0855E, 25027C0858E, 25027C0861E, 25027C0862E, 25027C0863E, 25027C0864E, 25027C0866E, 25027C1026E and 25027C1030E dated July 4, 2011. 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 Worcester County Flood Insurance Study (FIS) report dated July 4, 2011. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board and Building Inspector.

8.1.2. In the floodway designated within the Town of Upton on the Worcester County Flood Insurance Rate Maps, the following provisions shall apply:

- 1) All encroachments, including fill, new construction, substantial improvements to existing structures, and other developments are prohibited unless certification by a registered professional engineer or architect is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

8.1.3 BASE FLOOD ELEVATION AND FLOODWAY DATA

- 1) **Floodway Data.** In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 2) **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.

8.1.4 NOTIFICATION OF WATERCOURSE ALTERATION

In a riverine situation, the Planning Board Clerk shall notify the following of any alteration or relocation of a watercourse:

- 1) Adjacent Municipalities
- 2) NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700

Boston, MA 02114-2104

- 3) NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

8.1.5 REFERENCE TO EXISTING REGULATIONS

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:

- 1) Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas (currently 780 CMR 120.G, "Flood Resistant Construction and Construction in Coastal Dunes");
- 2) Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- 3) Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- 4) 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.

8.1.6 OTHER USE REGULATIONS

In Zone AE, along watercourses that have a regulatory floodway designated within the Town of Upton on the Worcester County FIRMs 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.

- 1) All subdivision proposals must be designed to assure that:
 - a. such proposals minimize flood damage;
 - b. all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - c. adequate drainage is provided to reduce exposure to flood hazards.

ARTICLE 30- Section VI-B of the Personnel By-law – Meritorious Bonus Program

The Town's Meritorious Bonus Program allows a Department Head or Hiring Authority to recommend a one-time additional bonus payment to a non-union employee whose performance is significantly above expectations. Submissions are made to the Personnel Board in January with the employee's performance evaluation. The Personnel Board will review all requests in February and make recommendations to the Board of Selectmen for payment in March.

Award amounts will take into consideration both the number of hours worked per week and the number of years of service provided to the town. Award amounts may be either a flat amount or a percentage of wages. The application and interpretation of this section of the by-law is not subject to the grievance procedure described in section VII-B below.

Some of the criteria that will be considered during evaluation of the request are:

- * Commendations received
- * Self education
- * Operational improvements
- * Assistance within and across departments
- * Consistency of exemplary performance

ARTICLE 31- Section VII-B of the Personnel By-law – Grievance Procedure

B. Grievances

All employees have a right to have grievances and concerns regarding employment heard in a fair, equitable, and timely manner. A grievance is defined as a question regarding the interpretation or application of a specific portion of the Personnel By-law. The decision to air a grievance will not result in any penalty to the employee, regardless of the final decision. All steps in the grievance procedure must be thoroughly documented in the employee's personnel file.

1. The employee should raise any questions, concerns, or grievances with the immediate supervisor. The employee and supervisor are encouraged to work together to resolve the problem at this level. If the employee is still not satisfied, the employee may, within ten (10) working days of the immediate supervisor's decision or failure to act, submit a written grievance to the Department Head.
2. The Department Head will meet with the employee to discuss the case within ten (10) working days and will provide the employee with a response within ten (10) working days of their meeting. If the employee is still not satisfied, the employee may submit a written grievance to the Hiring Authority.
3. The Hiring Authority will meet with the employee to discuss the case within ten (10) working days and will provide the employee with a response within ten (10) working days of their meeting. If the employee is still not satisfied, the employee may submit a written grievance to the Personnel Board.

4. The Personnel Board will meet with the employee to discuss the case within ten (10) working days. Based on the written grievance and any other information presented, the Personnel Board will make a final determination concerning the case within ten (10) working days of their meeting. If the employee is still not satisfied, the employee may submit a written grievance to the Board of Selectmen. However, if any member of the Board of Selectmen is a direct party to the grievance, the process will end at Step 4 and the employee shall have no further right of appeal.

5. The Board of Selectmen will meet with the employee to discuss the case within ten (10) working days. Based on the written grievance and any other information presented, the Board of Selectmen will make a final determination concerning the case within ten (10) working days of their meeting. The employee shall have no further right of appeal.

Based on the small departments within the Town of Upton, it is acknowledged that while there are 5 steps in this process, steps 2 and 3 or steps 3 and 4 will often involve the same parties and thus may be redundant for a high number of town employees.

Employees may bring fellow employee(s) during the grievance review to act as witnesses and should supply evidence supporting their case. Time limits may be extended with the agreement of both parties. The decision of the Board of Selectmen is final and binding.

ARTICLE 32- Section VII-E of the Personnel By-law – Emergency Closing Policy

Emergency Closing Policy. This policy shall cover all employees of the Town of Upton, even those not under the direct responsibility of the Board of Selectmen.

1. The Town of Upton has always taken the position that we must remain open, even during inclement weather conditions. However, as important as it is to remain open to support the residents of the town and their needs, it is as important that our employees travel to and from work safely. During inclement weather, employees should consider their local weather conditions, but we do expect all employees to make a concerted effort to get to work, even if they arrive beyond the normal starting hour.

1. All public safety employees and those who work in Public Works should plan to report for duty. Police, Fire, and Public Works personnel play a critical role in public safety during a snow event in clearing the roads and responding to emergencies.

2. Employees who work in other departments should follow the news to understand whether the Governor has determined that those employees in non-essential positions (i.e. not public works, police, fire) should either not report to work, or should report at a later time than their normal start time. Employees can also check the local television stations, or you can also check two of the State's website (www.mass.gov) for updates.

3. The Board of Selectmen's Office will develop a system to notify employees.
4. Any employee who cannot get to work or needs to leave early due to inclement weather is expected to contact his/her immediate supervisor regarding his/her local situation.. The employee should make every reasonable effort to speak with the supervisor or manager directly or with the next level of management, rather than leaving a message.
5. If it happens that the government will not adjust working hours, then employees should plan to report to work at their scheduled time.
6. An employee that is either not able to report to work due to the snow or makes a personal decision not to drive in such conditions may elect to use their own accumulated vacation time to stay home from work. Those employees who had already scheduled to be off on a day when such an event happens must still plan to take the time off that they planned.

ARTICLE 34- Section IX-A of the Personnel By-law – Vacation

As of July 1, 2011, regular full time, and regular part time employees who work 20 or more hours per week, are eligible for paid vacation time as described below:

Vacation time is earned on an accrual basis. The accrual rate is shown in the table below. Vacation Hours are calculated using the following formula:

(Regular Hours Worked) times (Accrual Rate Factor) equals Vacation Hours

<u>Years of Service</u>	<u>Accrual Rate Factor</u>	<u>FT Hours</u>	<u>Vacation</u>
Less than one	.0192	2080	40 Hours
One but less than five	.0385	2080	80 Hours
Five but less than ten	.0577	2080	120 Hours
Ten but less than 15	.077	2080	160 Hours
Fifteen or more	.0962	2080	200 Hours

Example: [employee of 1-5 years]: 1040 hours worked / year [20 hours per week] x 0.0385 = 40 hours = 2 weeks.

Probationary employees will accrue vacation days but will not be allowed to use this benefit until it is earned, at the end of their probationary period.

Employees are allowed to carry over up to a maximum of ten (10) days vacation into the following fiscal year with the recommendation of the Department Head and approval of the Hiring Authority. The Department Head should manage this situation to ensure the time is used within a reasonable time frame.

While vacation hours are accrued and carried over based on the Town's fiscal year, the employee's anniversary date is used to calculate the number of years worked for purposes of the accrual rate. Thus, an employee's vacation accrual rate will increase within a week of their anniversary date when crossing the one, five, ten, or fifteen year mark for service to the Town of Upton.

The schedule of vacation time must be approved by the Department Head. Department Heads must have their vacation time approved by the Hiring Authority.

A lump sum payment will be made to employees who terminate employment with a positive balance of unused accrued vacation time. The last day of actual work is the termination date for the employee. Employees may not add unused vacation days to their last day actually worked in order to postpone their termination date, whether to accumulate more vacation time, prolong insurance benefits, or for any other purpose.

ARTICLE 36- Section IX-H of the Personnel By-law – Family & Medical Leave Act

Eligible employees may take up to a maximum of 12 weeks job protected leave each year for one or more of the following reasons: for the birth or placement of a child for adoption or foster care; to care for an immediate family member (spouse, child, parent) with a serious health condition; or to take medical leave when the employee is unable to work because of a serious health condition; for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation; or to care for a covered service member.

An eligible employee who is a family member of a seriously injured or ill military service member, is entitled to up to twenty-six weeks (26) of leave to care for said service member while he/she undergoes medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.

An employee's right to take up to twelve (12) weeks of leave in a 12-month period shall be calculated as the 12-month period measured forward from the date of an employee's first FMLA leave usage. This leave is first drawn and paid for by an employee's accrued sick leave. If an employee does not have enough accrued sick leave to cover the leave period, the employee then may utilize any accrued vacation leave, the rest of the 12-week maximum period taken will be unpaid under these provisions. Once on unpaid family/medical leave, the Town of Upton will continue coverage for medical benefits, however, the employee will be required to pay their normal portion of the premium. Accruals of vacation and sick time will continue for the first thirty (30) days of a family medical leave. This leave policy complies with state regulations and the Family Medical Leave Act.