

Chapter 16

Select Board

State law reference - G.L. c. 41, Secs. 20-23.

Cross reference—Select Board generally, Secs. 2 - 38 to 2 - 44. See also Select Board-Administrator Act, Secs. 2, 5,8, 14, and 16.

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Article I. In General.

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Article II. Site Plan Approval.*Division 1. Generally.***Sec. 16 - 6. Definitions.**

The definitions of the zoning bylaw shall apply to all terms and words relative to zoning used in these rules and regulations, with the addition of the following terms and words.

Applicant. The person or persons who shall be an owner or owners of equitable interest of all land included in the site plan. If the applicant is represented by an agent, written evidence shall be submitted with the application for site plan approval that the agent has authority to submit said application for each owner involved.

Artificial pond. A body of water created by the process of excavation or by means of a dam, which is lined to most or all of its extent by natural materials.

Board. The Select Board acting upon site plan approval.

Building. For the purposes of defining the spacing between buildings, a building is taken to mean a structure which has been erected to enclose or shelter, partially or otherwise, an intended use therein, but excluding steps which provide a means of access therein.

Driveway opening. A vehicular access to or from a site located at the boundary between the site and the street side-line leading onto the traveled portion of a public, laid out or accepted way as defined in G.L. Chapter 41, Sec. 81L, by "subdivision."

Fire lane. A path or way or area, clearly marked for such use by signs, or other readable designations, flat and free of obstacles, which borders on or near a building or structure, sufficient to yield access to such structure for the removal of persons therein by fire apparatus, and which will provide rapid unimpeded access to said building or structure under all conditions of weather.

Hazard. A condition on a site which is dangerous to the health or the life and limb of occupants therein by reason of, but not limited to sudden changes of topography, wet, icy or otherwise slippery surfaces, insufficient ground support to bear customary loads appropriate for use, leakage of sewage, conditions which would result in a loss of vehicular control, infestations of insects or vermin, or other such conditions which the board holds to be a similar general condition during the development of the site, and after its completion.

Owner. As applied to real estate, the owner of record in the Middlesex South Registry of Deeds. or Middlesex South Land Registry District.

Parking area. A paved area comprised of parking spaces within a site, clearly marked for such use, or delineated with painted lines, for the unattended temporary storage of motor vehicles, with sufficient maneuvering area such as to allow collision-free access into and out of such spaces as are part of said parking area.

Parking space. A marked, paved or otherwise delineated area reserved to the use of individual motor vehicles, conforming in area to the requirements of the zoning bylaw, but such that a rectangle of dimensions eight feet by nineteen feet is not exterior to the bounds so marked, posted, delineated or otherwise reserved to such use.

Pedestrian way. A pathway within a site intended for pedestrian traffic which shall be capable of providing all-weather passage without ice hazard from draining water from other areas, or wet-slippage from the same, or without accumulation of mud or dust.

Person. An individual, two or more individuals, a group or association of persons having common or individual interest in a site, a partnership or a corporation.

Screening. An obstacle to vision or light sufficient to reduce glare resulting from an allowed use within the site to an acceptable level on adjoining property, or to keep hidden from vision an outside storage area, such as not to detract from the amenities of the neighborhood.

Site. For the purposes of these rules and regulations, an area of land, with definite boundaries, used or available for use as the locus of one or more buildings, wherein use as such is allowed by the zoning bylaw, or by variance, exception or special permit, as to which there is an accord to such use, proposed or extant by persons with an interest in same.

Storage area. A location wherein outdoor material storage shall be confined in accordance with the use regulations of the zoning bylaw.

Street side line. The boundary between the lot or lots comprising the site, or the area of the site, and the public or laid out, or accepted way, as defined in Chapter 41, Section 81L of the General Laws.

Town agency. Any town board or department within whose purview recommendations as to the approval of a site plan may lie.

Ways within the site. For the purposes of these rules and regulations, areas used or intended to be used for vehicular traffic within the site which are paved and graded to accept loads appropriate to the uses allowed therein, not necessarily delineated with markers, curbs, or other signs, and which are clear of obstacles or obstructions to such vehicular travel in some continuous path from driveway opening to a parking area or pedestrian way leading to buildings or structures on a site.

Zoning bylaw. The zoning bylaw of the town.

Sec. 16 - 7. Authority of Select Board.

(a) *Generally.* The Select Board is empowered by Division 3 of Article VII of Chapter 15 to approve site plans for certain residential and commercial uses prior to the issuance of a permit by the building inspector for the construction, enlargement or alteration of buildings for such uses.

The zoning bylaw specifies certain districts where a mixture of residence and commercial uses are permitted. In addition, the bylaw specifies that commercial uses are permitted, under certain general conditions, but without specifying restrictions as to heights, yards, setbacks and lot size, in general. When regulations are of such unspecified and general character, the delegation of broad powers of approval to the Select Board, as provided by Division 3 of Article VII of Chapter 15, is a proper delegation of the powers of zoning by the town to the Select Board, and such power is validly exercised under provisions of Chapter 40A, Sections 4 and 2 of the General Laws.

(b) *Discretion.* Where discretion of the Select Board in the approval of a site plan is exercised, in matters having to do with the effect of the plan on the continuous use or advantageous development of adjoining properties, the board acts under the authority granted by Chapter 40A, Section 4 of the General Laws and other relevant provisions of the Zoning Enabling Act.

(c) *Limits on disapproval.* The board in exercising discretion or otherwise may request reasonable modifications of a submitted plan to conform with the provisions of the zoning bylaw. A plan may be disapproved only on failure of an applicant to so modify a plan, or for compelling and overwhelming reasons having to do with the promotion of public safety, health, welfare, convenience and morals.

Sec. 16 - 8. Application contents.

Application for site plan approval shall include the following to be considered valid:

(a) *Land.* A description of the land sufficient to identify by book and page in the Registry of Deeds, or identify the same, by location metes and bounds or other description.

(b) *Owners, agents, etc.* A testament as to the name, and addresses of mortgagees, owner or owners of the land within the site or authorized agents of such owners, with a signed request by the same for approval of the site plan, attesting to ownership, or mortgage and agreeing to abide by the rules and regulations of the Select Board in regard to site plan approval and further agreeing that obtaining such an approval of a site plan by fraud or misrepresentation shall be grounds for revocation of any permit so issued.

(c) *Other owners.* If different than the applicant, the name and address of all owners of structures within the site shall be included in the application, and a signed statement by the same shall be included with the application, consenting to the application

for approval of the site plan. Further, if said other owners desire that conditions be laid upon their consent, let them so be taken at such time, in company with the application.

(d) *Abutters.* A list of the names and addresses of the most recent abutters and the owners of land next adjoining the land of the abutters, as required for public hearing and notice under the provisions of Chapter 40A, Section 17 of the General Laws.

(e) *Plans.* A site plan and six copies which conform to the site design requirements of these rules, and to the requirements for plans detailed by the zoning bylaw as follows:

- (1) *Residential.* A scaled topographical site plan showing:
 - a. Location of vehicular ways.
 - b. Location of pedestrian ways.
 - c. Parking or garaging of motor vehicles complying with the zoning bylaw.
 - d. Spacing of structures.
 - e. Dimensions having to do with proper compliance with setbacks, heights and frontage required by the zoning bylaw.
- (2) *Business or commercial.* A scaled topographical site plan showing:
 - a. Existing buildings.
 - b. Proposed buildings.
 - c. Existing structures.
 - d. Proposed structures.
 - e. Parking or garaging of motor vehicles.
 - f. Driveway openings.
 - g. Driveways.
 - h. Service areas.
 - i. Facilities for sewerage, refuse.
 - j. Other open uses.
 - k. Facilities for surface water drainage.
 - l. Fences.
 - m. Walls.
 - n. Planting areas.
 - o. Pedestrian walks.

Sec. 16 - 9. Submission.

(a) *Determination of requirement.* To determine whether or not site plan approval is required, the following procedure applies:

- (1) An application for a building permit shall be filed with the building inspector, together with two copies of the site plan.
- (2) If the building inspector finds that the application is for a structure on a site as described in the zoning bylaw, he shall forward to the Select Board, in writing or otherwise, a request for a collateral finding by the board as to whether or not the board concurs in such finding, and if, in the opinion of the board, site plan approval is required.
- (3) Said finding by the board shall be final and determining of such requirement.
- (4) If the board finds that site plan approval is not required, it shall so certify to the building inspector, in writing, said finding within fourteen days of the request for a finding by the building inspector.

(b) *Submission procedure.* Any person who submits a site plan to the Select Board for approval shall file with the board the following:

- (1) A valid application as detailed in Section 16 - 8.
- (2) A filing fee of ten dollars.

(c) *Date of filing.* The site plan shall not be deemed to have been submitted to the board until the valid application including plan and prints, and filing fee have been delivered to the board and recorded as valid at a regular or special meeting thereof and are all fully completed in accordance with these rules and regulations.

Sec. 16 - 10. Notice to town clerk of submission.

The applicant shall give written notice to the town clerk, by delivery or registered mail, postage prepaid, that he has submitted the site plan to the Select Board for approval. Such notice shall be accompanied by a copy of a valid application.

Sec. 16 - 11. Contents of plan.

- (a) The site plan shall also show:
- (1) Site, name or identification by boundaries, north point, date, scale, and the title "Site Plan."
 - (2) Name and address of owner, designer and engineer or surveyor.

- (3) Names and owners of abutting land as they appear in the most recent tax list.
- (b) On request from the board, where the use of the site will have a major impact on adjoining property, the plan shall show:
- (1) Names, widths and exterior lines of existing streets.
 - (2) Size and locations of existing storm drains, sewers and water mains and their appurtenances and the location of existing buildings adjacent to the site.
 - (3) Fire boxes, hydrants and existing above-ground utilities within or adjacent to the site.
 - (4) Zoning districts within and adjacent to the site.

Sec. 16 - 12. Approval, modification or disapproval.

(a) *Governing law.* The Select Board, standing in place of the Board of Appeals by Chapter 40A, Section 4 of the General Laws, is governed in regard to site plan approval by provisions of Chapter 40A, Sections 17, 18, 19, 20, and 21 of the General Laws.

(b) *Procedures.* At a properly advertised hearing the Select Board shall review the site plan, taking into account recommendations submitted to it by the required town agencies. Within sixty days after submission, the board shall approve, disapprove or approve with modification the site plan, noting thereon its action and any changes which should be made. In case of disapproval, the board shall state in detail its reasons therefor.

All other procedures under site plan approval shall be in accordance with the provisions of special permit Chapter 40A, Section 18 of the General Laws or other relevant sections therein in regard to notice of action, recording of action, and recording of vote.

(c) *Recommendations.* Recommendations in regard to the site plan from town agencies shall be made to the board no later than forty-five days from the time of submission of the site plan. Failure to recommend by any town agency will constitute recommendation by that agency of approval within the purview of said agency.

Sec. 16 - 13. Extension of time.

(a) Upon the written request of the applicant or by mutual consent of the board and the applicant, an extension of time may be agreed upon for the board to take final action.

(b) Notice of such extension of time agreed upon, as described in Subsection (a) of this section, shall be filed forthwith by the board with the town clerk.

Sec. 16 - 14. Public hearings and appeals.

(a) *Hearings generally.* A public hearing on the application will be held no later than forty-five days from the date of submission of a valid application.

(b) *Procedure.* Provisions of Chapter 40A, Sections 17, 18, 19, 20 and 21 of the General Laws where applicable to special permits shall apply to a site plan approval in regard to but not limited to the following matters: Notice of hearing; required vote; repetitive petition; appeal to district court; appeal to superior court; bills filed by others; parties respondent; written notice of bill in equity; affidavit to court; intervention by interested persons; notice by clerk; finding and appeal; legal counsel for municipal officer or board; costs against board; costs against appellant; precedence of action.

Division 2. Site Design and Bonding.**Sec. 16 - 15. Paving of ways.**

All ways within the site shall be paved such as to provide nonhazardous rapid access to all buildings on the site in all weather for vehicles and fire equipment, and such as not to comprise a nuisance to adjoining property by reason of noise, odor, vibration, dust, light and glare.

Sec. 16 - 16. Adoption of design guidelines.

Design guidelines shall be adopted by the following agencies:

(a) *Public Works Department.* The Public Works Department for materials, specifications and methods of construction and placement of drainage, vehicular and pedestrian ways, parking areas, municipal services, and conduits for underground utilities and fire alarm systems and driveway openings.

(b) *Building inspector.* The building inspector for screening against light, nuisance and fencing to protect the public against hazard.

(c) *Fire Department.* The Fire Department for fire lanes and the placement of hydrants and fire alarm boxes.

(d) *Health Department.* The Health Department for procedure and method of construction such as to minimize hazards to public health.

(e) *Other departments or boards.* All other departments or boards for matters within their purview.

Sec. 16 - 17. Bonding.

(a) Provision shall be made for satisfactory completion of vehicular and pedestrian ways, parking areas, drainage, municipal services, hydrants, conduits for fire-alarm systems and screening according to specification by the appropriate town agencies by bonding construction and installation of the same in sufficient amount prior to issuance of a permit resulting from approval.

(b) A bond shall be provided by the applicant, if required, sufficient to provide for the elimination of health hazards which may result from preparation of the site for construction, or construction on the site.

(c) Provision for inspection, control and notice of satisfactory performance sufficient to guarantee the release of the bond required by the board shall be made by the board and the relevant town agency.

Division 3. Summary of Procedure and Simplified Procedures for Approval.**Sec. 16 - 18. Summary of procedure.**

(a) Application for building permit with two plot plans filed with building inspector.

(b) Building inspector forwards plot plan to Select Board for determination as to whether site plan approval is required.

(c) If Select Board determine that a site plan hearing is not required, they notify the building inspector within fourteen days in writing and a permit is issued forthwith.

(d) If Select Board believe that approval is required, they notify the building inspector to that effect within fourteen days.

(e) Applicant files application with the information and plans required in Section 16-9 with a ten-dollar filing fee.

(f) Copy of application is filed with town clerk.

(g) Date of submission is taken as date of regular meeting of Select Board when valid application is filed.

(h) Copies of plans are forwarded to all boards for recommendations.

(i) Hearing date is set within forty-five days of date of submission.

(j) Notice is published once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing.

(k) Abutters and abutters to abutters are notified of the hearing by certified mail.

- (l) Recommendations of town agencies are received prior to forty-five days from date of submission.
- (m) Failure to make recommendations by a town agency shall be interpreted as approval.
- (n) A hearing board may recommend modification of plan. If plan is acceptable as submitted or modified, approval must be voted by no less than four out of five Select Board within sixty days of submission.
- (o) Record of each selectman's vote with reasons for approval, modification or disapproval, is recorded in minutes of hearing.
- (p) Within sixty days of submission, notice of decision is sent to applicant by certified mail.
- (q) Notice of decision is filed with town clerk within sixty days from date of submission.
- (r) Notice of decision is sent to abutters, abutters to abutters and any person requesting notification at hearing by certified mail within sixty days of date of submission.
- (s) Any person aggrieved by decision may request review by district court within twenty-one days of date decision was recorded in the office of the town clerk.
- (t) Within twenty days of date decision is filed in the office of town clerk or with the clerk of the district court hearing such matter, a bill in equity may be filed in superior court.
- (u) If no notice of appeal was received during the twenty-one days by either district or superior court, final approval may be certified to applicant by town clerk.
- (v) If a bond is required, it must be provided before a permit is issued.
- (w) If limits or conditions are placed upon approval of site plan, such limits or conditions must be recorded at the Registry of Deeds or registered in land court prior to issuance of permit.
- (x) Applicant and board may agree on extension of time for approval.
- (y) Agreement on extension of time for approval filed with town clerk.

Sec. 16 - 19. Simplified procedure for applicant.

- (a) Applicant for either apartment or commercial permit submits two plot plans to building inspector.
- (b) Within fourteen days applicant is notified whether site plan approval is required.

- (c) Application for site plan approval is received at regular meeting of Select Board.
- (d) Duplicate application is filed with town clerk.
- (e) Hearing is advertised and abutters notified.
- (f) Hearing held not later than forty-five days from date of application.
- (g) Decision of approval made within sixty days.
- (h) Decision filed with town clerk.
- (i) Time for decision may be extended by mutual consent, and notification filed with town clerk.
- (j) Appeal or request for judicial review may be taken in accordance with Chapter 40A, Section 21 of the General Laws.
- (k) If no appeal, permit will issue after twenty-one day appeal period with no notification of appeal.

Article III. Vehicles For Hire.

State law reference - Regulation of vehicles, G.L. c. 40 sec. 22. Registry of Motor Vehicle regulations, 540 CMR 2.00, et seq. See also common carriers of passengers, G. L. c. 159A.

Division 1. Generally.

Sec. 16-20. Applicability of Article.

Vehicles for hire including taxicabs and liveries (hereinafter referred to as "vehicles") operating or caused to be operated by non-governmental entities for the transportation of persons from place to place within the town, other than over regular routes or between fixed termini, shall be subject to the regulations of this article to the extent provided below.

Sec. 16-21. Taxicab - Definition, Requirements and Limitations.

A private vehicle licensed as such, used for transporting persons from place to place within the town other than over regular routes or between fixed termini. A taxicab may be hired by means of a taxi stand, solicitation to or from persons on the street, telephone or radio call or other pre-arrangement.

Sec. 16-22. Livery - Definition, Requirements and Limitations.

A private vehicle licensed as such, which shall in all respects be the same as a taxicab except that it may not be hired by means of a taxi stand or solicitation to or from persons on the street.

Sec. 16-23. Limousine - Definitions, Requirements and Limitations.

A private vehicle license as such, used for prearranged trips. Trips must be prearranged no less than twelve (12) hours prior to pick-up.

*Division 2. License.***Sec. 16-24. Required.**

No vehicle shall be driven, operated or caused to be operated as a vehicle for hire without a license first having been obtained for that vehicle from the Select Board after review of the license application by the Chief of Police and successful inspection of the vehicle.

Sec. 16-25. Application.

Applications for a license shall be made in writing, on Town approved forms, to the Police Department and shall provide the following information:

- (a) The name and address of the applicant, if an individual; or if a corporation, the name, date of incorporation, address of its principal place of business and the name and address of its officers; or if a partnership, association or unincorporated company, the names and addresses of the partners or associates and the address of its principal place of business.
- (b) The intended place of business within the Town of Stoneham.
- (c) The intended place of nighttime vehicle storage.
- (d) The name of the manager or principal representative.
- (e) Proposed hours of operation.
- (f) A telephone number where the licensee may be contacted in the evening.
- (g) Description of proposed vehicle including the make, model and age of the vehicle.

Sec. 16-26. Review by Chief of Police.

The Chief of Police shall review the license application and forward his comments and/or recommendation, if any, to the Select Board no later than forty-five (45) days after submission of the application. No license shall be granted by the Select Board until the application has been reviewed by the Chief of Police.

Sec. 16-27. Grant or denial.

The Select Board may upon receipt of an application, issue a license under such terms and conditions as they deem appropriate and in the public interest. The Board, in determining whether or not to issue a license, may consider the public demand for the proposed service, the effect of the proposed service upon relevant traffic and safety conditions, the character and financial responsibility of the applicant, the condition of the proposed vehicle, and any and all other relevant facts or circumstances.

Sec. 16-28. Notification as to vehicle.

If issued a license, the licensee shall, prior to the operation of the vehicle as a vehicle for hire, provide the following information, in writing, to the Police Department:

- a. The make, model, vehicle identification number and age of the vehicle.
- b. A copy of the certificate of insurance coverage page for the vehicle.
- c. Vehicle registration.

Sec. 16-29. Vehicle inspection.

Subsequent to the grant of an initial license, but prior to the operation of the licensed vehicle, the vehicle shall be inspected at the direction of the Police Department to ensure full compliance with these regulations. Nothing herein shall relieve a licensee of its sole responsibility to ensure the safety of the vehicle and compliance with all applicable laws and regulations.

Sec. 16-30. Term and fee.

Any license issued hereunder shall expire on the first day of May next ensuing, unless sooner revoked or surrendered. Any licensee who permanently ceases to operate the vehicle for which a license was issued shall forthwith surrender the license to the Select Board.

The annual fee for each license shall be fifty dollars (\$50.00) per license for a full license year whether the initial year or renewal.

Sec. 16-31. Renewal application/Replacement vehicles/Inspection.

Renewal applications shall be submitted to the Police Department no later than April 1 each year. The renewal fee shall be One Hundred Dollars (\$100). If a vehicle is changed during a license year, the license fee for the replacement vehicle shall be Fifty Dollars (\$50).

Prior to the grant of a renewal license by the Board or the replacement of a vehicle, the vehicle shall be inspected at the direction of the Police Department to ensure full compliance with these regulations. A vehicle which has not passed inspection shall not be granted a renewal license.

Sec. 16-32. Insurance.

A vehicle issued a license hereunder shall be insured. Coverage for "Bodily Injury to Others" shall be no less than \$100,000 per person/\$300,000 per accident. The Town shall be listed as a Certificate Holder with the Certificate provided to the Select Board and the notice of cancellation or amendment of the policy shall be no less than thirty (30) days.

Sec. 16-33. Liability.

The licensee is at all times responsible for his vehicle and shall be liable for all penalties and/or damage resulting from his operation of the vehicle by an employee, agent, or any other person authorized by the licensee to use the vehicle.

Sec. 16-34. Suspension or revocation.

The Select Board may suspend or revoke a license issued under the provisions of this article for good cause. Before suspension or revocation of a license, the licensee shall be entitled to a hearing thereon before the Select Board. Written notice of the hearing shall be forwarded to the licensee at least seven (7) calendar days prior to the date of the hearing. Such notification shall state the grounds of complaint and the date, time and place of the hearing.

The Select Board or the Chief of Police may temporarily suspend a license without a hearing for a period of no greater than ten (10) days or until a hearing is held, whichever is sooner, if there is sufficient evidence to indicate that the public safety would be endangered by continued operation of the vehicle.

Sec. 16-35. Assignment or transfer prohibited.

No license shall be assigned or transferred.

Sec. 16-36. Return of license to police department/loss or destruction of license.

A license shall be promptly returned to the Police Department by the Licensee upon suspension or revocation of the license or the cessation of use of the vehicle as a vehicle for hire.

If a license is lost or destroyed, the licensee shall immediately report such loss to the Police Department which shall replace the license. The cost for a replacement license shall be Five Dollars (\$5.00).

Division 3. Permit.**Sec. 16-37. Required.**

No person shall operate a vehicle with a passenger, and no licensee shall employ or allow a person to operate a vehicle with a passenger, unless the operator first obtains a permit from the Select Board.

Sec. 16-38. Age/Experience.

No permit shall be issued to a person under eighteen (18) years of age, nor to any person who has not had a valid operator's license for the prior two (2) years.

Sec. 16-39. Application.

Applications for a permit shall be made in writing to the police Department and shall provide the following information:

- a. Full name and address.
- b. Copy of a valid Massachusetts operator license issued by the Registrar of Motor Vehicles.
- c. Previous experience operating a vehicle for hire within the last three (3) years.
- d. Convictions or pleas of guilt to a criminal offense(s), except as outlined below shall be provided to the Town if requested, stating the offense(s), court(s) in which convicted or guilty plea occurred and when the conviction(s) or plea(s) occurred. (Nothing herein restricts the Town's right to obtain criminal history record information pursuant to state law.)

The following criminal information is not and shall not be requested, examined or considered by the Select Board:

1. Arrests, detentions or dispositions in which no conviction or guilty plea resulted.

2. Convictions which have been reversed or vacated, but not pardoned.
3. Misdemeanor convictions or guilty pleas when the date of conviction or plea was greater than ten (10) years prior to the date of application for the permit.
 - e. Traffic violations for which there was a finding of responsibility for a period of three (3) years prior to the date of application for the permit or for such period of time as the Select Board or Police Department shall request.

Failure to give accurate and complete information as required above may be grounds for denial, suspension or revocation of a permit.

Sec. 16-40. Review by Chief of Police.

The Chief of Police shall review the permit application and forward his comments and/or recommendation, if any, to the Select Board no later than forty-five (45) days after submission of the application. No permit shall be issued by the Select Board until the application has been reviewed by the Chief of Police.

Sec. 16-41. Issuance or denial.

An applicant shall be granted a permit only if the Select Board determines that granting a permit to the applicant is in the best interest of the public.

Criminal convictions or pleas of guilt shall not result in an automatic denial of an application, but shall be given significant consideration and weight by the Select Board, taking into account all factors including the nature and gravity of the offense, the time that has passed since the conviction or plea and the sensitive nature of serving the public as a driver of a vehicle for hire.

Sec. 16-42. Term and fee.

Any permit granted hereunder shall expire on the first day of May next ensuing unless sooner revoked or surrendered. A permit holder who ceases to operate vehicles shall forthwith surrender his permit to the Select Board.

The fee for an initial permit shall be Fifty Dollars (\$50.00) and the fee for a permit renewal shall be Ten Dollars (\$10).

Sec. 16-43. Picture identification card.

A picture identification card shall be issued by the Select Board, or its designee, to each permit holder.

Sec. 16-44. Liability.

A permit holder is at all times responsible for the vehicle he is operating and shall be liable for all penalties and/or damage resulting from his operation of the vehicle or a violation of these regulations. Nothing herein shall eliminate or reduce the responsibility or liability of the licensee pursuant to the applicable provisions of these regulations or law.

Sec. 16-45. Suspension or revocation.

The Select Board may suspend or revoke a permit granted under the provisions of this article for good cause. Before suspension or revocation of a permit, the permit holder shall be entitled to a hearing thereon before the Select Board. Notice of the hearing shall be in writing and forwarded to the permit holder at least seven (7) calendar days prior to the date of the hearing. Such notification shall state the grounds of complaint and the date, time and place of the hearing.

The Select Board or the Chief of Police may temporarily suspend a permit until a hearing can be held in accordance with the procedures set out above if there is sufficient evidence to indicate that the public safety would be endangered by continued operation by the permit holder. In no event shall a temporary suspension be for a period greater than ten (10) calendar days.

Sec. 16-46. Return of permit and picture identification card to Police Department by vehicle licensee/Loss or destruction of permit.

A driver's permit and picture identification card shall be promptly returned to the Police Department by the licensee of the vehicle upon suspension or revocation of a driver's permit or any termination of the employment or services of the driver.

If a permit is lost or destroyed, the permit holder shall immediately report such loss to the Police Department which shall replace the permit. The cost for a replacement permit shall be Five Dollars (\$5.00).

Sec. 16-47. Return of license to Police Department/Loss or destruction of license.

A license shall be promptly returned to the Police Department by the licensee upon suspension or revocation of the license or the cessation of use of the vehicle as a vehicle for hire.

If a license is lost or destroyed, the license holder shall immediately report such loss to the Police Department which shall replace the license. The cost for a replacement license shall be Five Dollars (\$5.00).

*Division 4. Operation.***Sec. 16-48. Duty to transport.**

A permit holder shall not unreasonably refuse to transport a passenger.

Sec. 16-49. Sharing a ride.

No permit holder shall accept a passenger when the vehicle is occupied or engaged without the consent of the passenger(s) already in the vehicle. No person shall be obliged to pay any extra fare or fee for refusing such consent. Separate fares shall not be charged to members of the same party.

Sec. 16-50. Waybill.

Each permit holder operating a taxi or livery or the licensee or its agent shall maintain a waybill form issued or approved by the Police Department documenting every trip from the point of origin to the point of destination. The record shall include the time and place of pick-up and destination; the number of passengers, the fare collected; and the articles, if any, found in the vehicle after departure of the passenger(s). The information entered on the waybill shall be recorded at the completion of the trip.

Waybill records shall be kept for a period of not less than one year and shall be made available to the Police Department or Select Board upon request.

Sec. 16-51. Taxi stands - Parking - Standing.

The Select Board may assign a taxi stand to each taxicab. The Select Board may also designate specific areas, streets or ways where vehicles may not park or stand.

Standing and/or parking on public ways or public property of vehicles not licensed in the Town of Stoneham is prohibited except while waiting to return a party whose original point of hire was from outside of Stoneham, when operating in accordance with a Massachusetts Department of Public Utilities license, or when being used for personal (non-vehicle for hire) purposes.

Sec. 16-52. Maintenance of vehicles/seatbelts.

Every vehicle shall be kept in good condition, suitable for occupancy and mechanically fit for the safety of passengers. The interior and exterior of the vehicle shall be

safe, clean, and sanitary at all times. All seatbelts required by law must be in open view and operational.

Sec. 16-53. Inspection/Inquiries.

The Select Board, Stoneham Police Department or their designee shall have the right to inspect any vehicle for purposes of these regulations or as public safety requires at any reasonable time. The licensee and/or permit holder shall provide full cooperation with respect to inspections.

Police officers shall have a right to make inquiries to licensees and permit holders regarding any aspect of a vehicle or its operation and the licensee and/or permit holder shall respond to any such inquiry in a reasonable and civil fashion.

Sec. 16-54. Smoking.

Smoking in a vehicle is permitted only with the consent of the driver and all passengers.

Sec. 16-55. Appearance/behavior of operator.

Every driver having charge of a licensed taxicab shall be suitably dressed (sleeved shirt), neat and clean in appearance. Each driver shall be respectful and courteous to passengers.

Sec. 16-56. Display of license, picture identification card, and rates of fare.

Every taxicab and livery when in operation shall display the following cards in a suitable frame so that they are secure and immobile and plainly visible to passengers riding in the rear of the vehicle:

- a. License.
- b. Permit holder's picture identification card.
- c. Fares.
- d. Such other information as the Select Board reasonably deems appropriate.

Every limousine, when in operation, shall have available for review by any passenger who requests the above-referenced license and picture identification card.

Sec. 16-57. Lettering on taxicabs and liveries.

Every taxicab and livery operating under the authority of this article shall have the name or trade name of the licensee and the name "Town of Stoneham" or "Stoneham" painted on both sides of the taxicab in letters not less than four inches high and one-half inch wide.

If a licensee operates more than one taxicab or livery, each taxicab or livery shall have a number, not less than four inches high and one-half inch wide, painted in two conspicuous places on the vehicle.

Sec. 16-58. Copy of regulations.

Every vehicle shall, when in operation, contain a copy of these regulations, which shall be exhibited to any passenger or police officer on request. The licensee and permit holder shall be responsible for the implementation of this requirement.

*Division 5. Fares.***Sec. 16-59. Taxicabs and liveries.**

The Select Board shall establish the rates of fare for the conveyance of passengers and baggage by a taxicab and livery within the Town of Stoneham, and may revise such when they so determine. The rate of fare shall be on file with the Select Board and the Police Department.

Sec. 16-60. Separate fares.

Separate fares shall not be charged to members of the same party.

Sec. 16-61. Senior citizen discount.

Fares for all persons sixty (60) years of age and older may be discounted up to twenty-five (25) percent. When discounted rates are offered, they must be offered to all senior citizens traveling within the Town of Stoneham, regardless of the point of origin or destination of ride. Any company which offers such a discount shall display a sign visible to a passenger within each taxi or livery informing the passengers of the discount.

Sec. 16-62. No fares in excess of established rates.

No permit holder operating a taxicab or livery shall demand or receive as a fare more than the fare established by the Select Board under the authority granted by these regulations.

Sec. 16-63. Rates for trips outside the Town of Stoneham.

Charges by taxicabs, liveries and limousines originating or ending outside the Town of Stoneham shall be subject to mutual agreement between the licensee and the passenger(s). The Select Board reserves the right to regulate the fares for such trips if it deems such to be in the public interest.

Division 6. Information Update and Penalties.**Sec. 16-64. Information update.**

When any information provided in an application for a license or permit changes or is updated, the respective licensee or permit holder shall give notice thereof, in writing, to the Select Board.

A driver shall immediately report the suspension or revocation of his license to the Police Department and Select Board and shall thereupon immediately surrender his permit to the Police Department. The driver shall be subject to suspension or revocation of his permit pursuant to Section 16-40 of these regulations.

Sec. 16-65. Enforcement/Penalties.

The penalty for a violation of any of the regulations of this article shall be a fine not exceeding Three Hundred Dollars (\$300) for each day such violation occurs.

Violation of a regulation of this article shall, in accordance with Section 1-4A of the Town of Stoneham Bylaws, also be subject to a non-criminal disposition penalty of Fifty Dollars (\$50) for the first offense in a six month period, One Hundred Dollars (\$100) for the second offense in a six month period and Two Hundred Dollars (\$200) for the third offense in a six month period. Each day a violation continues is a separate offense.

Violation of any of the regulations herein shall be just cause for suspension or revocation of a license and/or permit.

Sec. 16-66. Reserved.

Sec. 16-67. Reserved.

Sec. 16-68. Reserved.

Sec. 16-69. Reserved.

Article IV. Alcohol Beverage Rules and Regulations

State law references - Alcoholic beverages, G.L. c. 138; Common victualers, G.L. c. 140, sec. 2-21; Entertainment license, food and/or drink on premises, G.L. c. 140, sec. 183A-D and 184; and with respect to operation prior to one o'clock p.m. Sunday, G.L. c. Sec. 4(b).

By virtue of the authority contained in Chapter 138 of the General Laws, as amended, and other power or provisions of law thereto enabling, the Select Board of the Town of Stoneham, serving as the Town of Stoneham's Liquor Licensing Authority, adopt the following rules and regulations applicable to alcoholic beverage licenses issued under the authority of Chapter 138.

APPLICABLE TO ALL LICENSEES

Sec. 16-70. Applicability of State Statutes and Regulations - Regulating alcoholic beverages.

All licensees are subject to the applicable provisions of the General Laws of the Commonwealth of Massachusetts regulating alcoholic beverages, including, but not limited to, Chapter 138 of the General Law, the provisions of the below referenced Special Acts of the General Court, and the regulations promulgated pursuant thereto by the Alcoholic Beverages Control Commission.

Sec. 16-71. Applicability of State and local laws and regulations, and permit requirements.

All alcoholic beverage licenses shall also be issued contingent upon continued compliance with all appropriate state and local laws and regulations and all permits and licenses which may pertain to the operation of the premises, including, but not limited to, the State Building Code, State or Board of Health Regulations, common victualer license requirements, entertainment and/or amusement licenses and the Town of Stoneham Bylaws.

Sec. 16-72. Availability of rules and regulations.

All licensees shall ensure that a copy of these Rules and Regulations and the applicable regulations promulgated by the Alcoholic Beverages Control Commission are kept on the premises at all times and is immediately available for inspection upon request by a member of the public or an agent of the Select Board.

Licensees shall also ensure that copies of the above referenced regulations are given to each employee who is responsible for the sale or service of alcoholic beverages.

Sec. 16-73. Responsibility for knowing rules and regulations.

Licensees must be familiar with all applicable Rules and Regulations contained herein, as well as applicable state statutes and regulations promulgated by the Alcoholic Beverages Control Commission. A plea of ignorance will not be considered a justification or defense for a violation.

Sec. 16-74. Reserved**Sec. 16-75. Application process - General requirements.**

(a) Every applicant for a license, either individually or as a member of a partnership, association, or business shall furnish proof of his citizenship by production of a certificate of birth, naturalization or as a registered voter.

(b) Every application for a license made by an individual shall be signed by the applicant therefore, who shall give his or her full name and home address.

(c) Every application for a license made by a partnership shall state the full names and home addresses of all the members of the partnership and shall be signed by a majority thereof.

(d) Every application for a license made by an association shall be signed by a majority of the members of the governing body thereof, who shall state their full names and home addresses.

(e) Every applicant for a license required by the provisions of Section 5, Chapter 110, General Laws, to file a certificate stating the real name of a person conducting a business, shall file with his application a certified copy thereof.

(f) Every applicant for a license made by a corporation shall state the full names and home addresses of the president, treasurer, clerk and secretary, and directors. It shall be signed by an officer duly authorized by a vote of its board of directors or other similar board. A copy of such vote certified by the clerk or secretary of the corporation, together with a copy of the certificate of its organization, shall accompany the application.

(g) Every applicant for a license made by a partnership, association, business or corporation, pursuant to sub-paragraphs c, d, e and f above, shall include the name, home address and telephone number, and all previous relevant experience, if any, of a duly qualified manager or other principal representative who is a citizen of the United States and who is of character satisfactory to the Select Board. A copy of the vote appointing its manager or other principal representative, and vesting in him by a properly authorized and executed written delegation as full authority and control of the proposed licensed premises and of the conduct of all business therein relative to alcoholic beverages as the licensee itself could in any way have and exercise if it were a natural person resident in the commonwealth, shall also accompany the application.

(h) Applicants for a license must list all other alcoholic beverage licenses held in any capacity, individually or as part of corporate or other entity, either currently or in the past. Applicants must also list any previous denial(s) of an application for a license.

(i) The Select Board may require an applicant for a license to supply complete financial records and statements.

(j) Applicants, shall list past criminal convictions and guilty pleas for all persons having a beneficial interest in the application, in accordance with the provisions set out in state statute and regulations. Criminal information shall not be requested, examined or considered by the Select Board, except in accordance with said state statute and regulations.

(k) The Select Board may request for review and consideration, the proposed menus, description of food to be served and the manner in which such food shall be served, when considering applications for a license.

(l) All applications for licenses shall be made upon blanks furnished by the Select Board, shall be fully answered in detail and shall be typewritten or legibly written in ink. Applications written in pencil, in whole or in part, will not be accepted.

(m) All applications shall be made under the penalties of perjury and any false statement contained in any application, including, but not limited to the true names of those with a beneficial interest in the application for a license, shall be a cause or ground for refusing to grant the license or permit or for suspending, canceling or revoking a license or permit already granted.

(n) Every application which in any way has to do with a license for the sale of alcoholic beverages, other than an application for the straight renewal of such license, shall be filed with the Select Board in duplicate.

Sec. 16-76 Application process - Building and site plans.

(a) All applicants for an alcoholic beverage license for consumption occurring on the premises must submit to the Select Board, with the appropriate application, a plan of the building and site which contains the following information:

- i. The floor area of the proposed premises and the dimensions of each room requested to be used for the sale of alcoholic beverages, including any bar, cocktail lounge, dining room, function room, or other room(s) in which approval of the Select Board is requested.
- ii. The location and dimensions of any proposed "service bar," which is distinct from what is commonly referred to as a "bar." See paragraph below.
- iii. See Massachusetts State Building Code for capacity, aisle requirements and related building code issues.
- iv. The seating capacity at the bar is to be no more than fifteen (15) chairs and/or stools. NOTE - A license shall not be granted for an establishment having a seating capacity of less than fifty (50) persons approved by the voters of the Town of Stoneham, on November 7, 1978. See Chapter 84 of the Acts and Resolves of 2000 (4-3-01).

- v. All rooms not being requested to be licensed for the sale of alcoholic beverages, if said rooms are to be on the same floor as those rooms to be licensed, must be labeled as to their function, such as kitchens, coat rooms, lobby, rest rooms, etc.
- vi. Entrances and exits.
- vii. OFF-STREET PARKING - See Zoning bylaws for off-street parking requirements.
- viii. Exterior lights and signs.

(b) All applicants for an alcoholic beverage license for consumption occurring off the premises must submit to the Select Board, with the application, a building and site plan which contains the following information:

- i. The floor area of the proposed premises and the dimension of each room requested to be used for the sale of alcoholic beverages.
- ii. All rooms not being requested to be licensed for the sale of alcoholic beverages, must be labeled as to their function, such as storage rooms, etc.
- iii. Entrances and exits.
- iv. OFF-STREET PARKING. See Zoning bylaws for off-street parking requirements.
- v. Exterior lights and signs.

Sec. 16-77. License conditions and restrictions.

The Select Board may attach such reasonable conditions and restrictions to a license as it deems to be in the public interest, consistent with state statute and regulations.

Sec. 16-78. Amendments to license approval.

Any subsequent changes in the information provided on the application for a license, including, but not limited to a change in the licensed premises, a change of a manager or principal representative, or a change to a requirement for the issuance of a license, shall be submitted as expeditiously as possible to the Select Board. Licenses are not, and shall not be, amended without an authorized vote of the Select Board.

Sec. 16-79. Notification of legal actions.

Licenses shall immediately notify the Select Board of any legal proceeding, including a bankruptcy proceeding, brought by or against the licensee which may affect the status of the license or licensed premises.

Sec. 16-80. License renewal.

Applications for license renewals must be submitted to the Select Board during the month of NOVEMBER and shall be acted upon by the Select Board no later than thirty days following submission in accordance with the provisions of Sections 16A and 16B of Chapter 138.

Sec. 16-81. Display of license.

Licenses issued by the Select Board shall be displayed on the premises in a conspicuous place where they can be easily read.

Sec. 16-82. Prohibition of licensed activity outside area designated by license.

No licensee may permit the licensed activity outside the area designated by or in accordance with the license issued by the Select Board. No change may be made in the area in which the licensed activity is permitted without prior approval by the Select Board after the submission of an amended plan.

Sec. 16-83. Compliance with restrictions on hours of sales and/or service.

The sale and/or service of alcoholic beverages must cease immediately at any time not permitted by these Rules and Regulations, or by state statute or regulations.

Sec. 16-84. Responsibility for order.

Licenses shall make all reasonable and diligent efforts to ensure that disorder, disturbance or illegality of any kind does not occur at the licensed premises. The licensee may be held responsible for such activity, whether present or not.

Sec. 16-85. Telephone access to manager.

The licensee shall submit the home telephone number of the authorized manager(s) to the Select Board, who may be contacted by the Town in cases of emergency.

Sec. 16-86. Calling for police and/or medical assistance.

Licensees shall call for police and/or medical assistance as necessary to protect against injury to persons and protect against unlawful conduct. Nothing in these Rules and Regulations shall limit any lawful authority of the Stoneham Police Department to issue orders to or at a licensed establishment for the protection of public safety.

Sec. 16-87. Hiring security personnel.

The Select Board reserves the right to require professional security coverage to be paid for by the licensee when security coverage is necessary to protect the safety and well being of patrons and residents of Stoneham. The Chief of Police may also require such security coverage for a period of time not to extend beyond the date upon which the next Select Board's meeting is held.

Sec. 16-88. Gambling prohibited.

Gambling of any sort shall not be permitted on any licensed premises.

Sec. 16-89. Sale or service to intoxicated persons.

Sale or service of an alcoholic beverage to an intoxicated person is prohibited.

Sec. 16-90. Upkeep of area outside licensed premise.

Licensees shall at all times maintain the immediate and surrounding area outside the licensed premises in a state of cleanliness and upkeep.

Sec. 16-91. List of employees.

Licensees shall maintain an up-to-date list of all employees which shall be available to the Select Board upon request.

Sec. 16-92. Right of inspection.

Licensees shall, at any reasonable time, permit the Select Board or its duly authorized agents, including, but not limited to the Stoneham Police Department, Fire Department, Building Inspector, and/or Board of Health Agent to inspect the licensed premises for purposes of regulating the licensed activity.

Sec. 16-93. Modification, suspension, revocation and cancellation.

Licenses are issued on the condition that there shall be strict compliance with the provisions of these Rules and Regulation, state statute and regulations, Town by-laws and regulations, and the conditions of the subject permit. Any failure to comply therewith shall be cause or grounds for refusing to grant or renew a license or for modifying, suspending, revoking or canceling a license already granted, after due notice of the alleged non-compliance and an opportunity to be heard in accordance with relevant statutory provisions and due process requirements.

Sec. 16-94. Transfer of a license.

A license may not be transferred without the approval of the Select Board and the Alcoholic Beverages Control Commission.

**APPLICABLE TO ALL LICENSEES (OTHER THAN THEATERS) AUTHORIZED
TO SELL FOR CONSUMPTION ON THE PREMISES****Sec. 16-95. Minimum seating requirement.**

A license shall not be granted for an establishment having a seating capacity of less than thirty-five (35) persons. (5-3-99, Art. 22) See Chapter 84 of the Acts and Resolves of 2000 (4-3-01) see Chapter 413 of the Acts of 2018 (04-02-2019).

Sec. 16-96. Off-street parking requirements.

All licensees must be in compliance with the applicable off-street parking requirements of the Town of Stoneham Zoning Bylaws.

Sec. 16-97. Hours of operation and sale.

(a) Subject to further limitations fixed, or from time to time modified by the Select Board with respect to a particular license and those set forth in these rules and regulations and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any licensee shall be from 11:00 A. M. to 1:00 A.M on Monday through Saturday; 12:00 Noon to 1:00 A.M. on Sunday.

(b) The hours during which sales of alcoholic beverages may be made in a dining room are further limited to the times when the dining room is open and food service is available. No alcoholic beverages may be sold or served in a dining room before the dining

room is open and food service is available nor after the dining room has been closed or food service has been suspended, and unless the person so ordering has ordered or is to order prepared food from the menu.

(c) All tables shall be cleared of alcoholic beverages within one half hour after the legal time for sale.

Sec. 16-98. Service of food.

No alcoholic beverage is to be served to the public by the licensee, in any area, including, but not limited to the area designated and approved as a "bar," "cocktail lounge" or "dining area," unless the person so ordering has ordered or is to order prepared food from the menu. Not more than two alcoholic beverages may be served to a patron prior to the ordering of food. The word "food" shall not include the customary and usual "snacks" served with alcoholic beverages. This Section shall not apply to the playing course area of a golf course licensed for the sale and service of alcoholic beverages by a cart(s).

Sec. 16-99. Seating requirements.

There shall be no ordering of alcohol by anyone or service of alcohol to anyone unless they are seated at the bar or at a table or standing at an authorized bar area. Alcoholic beverages may not be carried by a patron from the bar or bar area to a seat in the dining area, but brought over by a server. The seating capacity at the bar shall be no more than twenty-five (25) chairs and/or stools for an establishment with a total seating capacity between 50 and 74 seats, as long as seating at the bar is less than 50% of total capacity. The seating capacity at the bar shall be no more than twenty-five (25) chairs and/or stools for an establishment with a total seating capacity between 75 and 99 seats. The seating capacity at the bar shall be no more than twenty (25) chairs and/or stools for an establishment with a total seating capacity over 100 seats. The seating capacity at a bar shall be at the sole discretion of the licensing authority. This requirement does not apply to the licensed area of a function hall or a golf course, including the club house. (Amended 12-15-15.) (See also Sec. 16 – 76.)

Sec. 16-100. Service bar.

In the event that an area is designated as a "service bar," which is distinct from what is commonly referred to as a "bar," no liquor is to be served to the public at such service bar and no stools or chairs are to be placed at said service bar.

Sec. 16-101. Non-disposable glass or cup.

All alcoholic beverages must be served with a non-disposable glass or cup. This requirement does not apply to the license area of a golf course, including the clubhouse.

Sec. 16-102. Alcoholic beverages to remain on the premises.

No alcoholic beverages shall be removed from the premises.

Sec. 16-103. Supervision - Presence.

The licensee or a manager shall at all times during which alcoholic beverages are being sold pursuant to the license, be present in the licensed premises and shall be available to the licensing authority and its agents during all such times, unless some other person, similarly qualified, authorized and satisfactory to the Select Board, and of whose authority to act in place of such manager shall first have been certified to the licensing authorities in the manner aforesaid, is present in the premises and is acting in the place of such manager.

Sec. 16-104. Staffing.

Licensees shall maintain an adequate ration of staff to patrons in order to properly monitor beverage sales and consumption.

Sec. 16-105. Establishment of written policies.

Licensees should establish written policies regarding the service of alcoholic beverages based upon the requirements of the regulations of the Alcoholic Beverage Control Commission and these regulations.

Sec. 16-106. Alcohol policy for staff while serving.

Licensees, managers, principal representatives and employees are required to be alcohol free while serving patrons.

Sec. 16-107. Alcohol management or server training.

(a) Individual licensees and the manager(s) of other licensed establishments are required to successfully complete an alcohol management or server training course, approved by a professional organization qualified to approve such courses within three (3) months of beginning in their respective positions, although it is encouraged that successful completion

occur within one (1) month of beginning work. Said persons must be successfully retrained, if and when the certification period ends.

(b) All servers of alcoholic beverages shall attend and complete a server training course approved by the Liquor Liability Joint Underwriting Association of Massachusetts or an equivalent organization, within three (3) months of beginning in their respective positions or six (6) months of the adoption of this regulation, whichever is later.

Sec. 16-108. Liquor liability insurance requirement.

The liquor liability insurance requirements of Section 12 of Chapter 138, added by Chapter 116 of the Acts of 2010, and as may be further amended, are incorporated herein by reference.

State law reference – G.L.c.138, Sec. 12 requires “liquor legal liability insurance for bodily injury or death for a minimum amount of \$250,000 on account of injury to or death of one person, and \$500,000 on account of anyone accident resulting in injury or death of more than one person. Proof of insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority”

Sec. 16-109. List of alternative transportation.

Licensees shall maintain a written list of the telephone numbers of local taxicab companies next to the public telephone. If there is no public telephone, the list should be available for patrons when requested.

Sec. 16-110. Orderly closing.

Licensees shall ensure that patrons leave the premises at the closing hour in an orderly manner.

Sec. 16-111. Information regarding the alleged service of alcohol prior to violation for driving under the influence of intoxicating liquors.

Upon the receipt of a letter for the Office of the Attorney General or the Middlesex District Attorney's Office pursuant to G.L. c. 90, sec. 24J, regarding the alleged service of alcohol to an individual who is subsequently convicted or pleads guilty to a violation of driving under the influence of intoxicating liquors or enters a disposition under section 24D of Chapter 90, the Select Board:

- i. Shall forward a copy of the letter to the licensee cited, along with a copy of these Rules and Regulations.
- ii. May request that the licensee appear before the Board to respond to the allegation. Upon the receipt of two or more letters in a two year period, the

licensee shall be required to appear before the Board to respond to the allegations.

Any disciplinary action taken by the Board shall be taken in accordance with the provisions of these Rules and Regulations and applicable law. Neither a letter from the Office of the Attorney General or the Middlesex District Attorney's Office, nor the original letter from the court to these law enforcement agencies shall, by itself, constitute sufficient evidence so as to allow for a finding that a licensee has committed a violation.

Sec. 16-112. Reserved.

Sec. 16-113. Reserved.

Sec. 16-114. Reserved.

APPLICABLE TO LICENSEES AUTHORIZED TO SELL FOR CONSUMPTION
OFF THE PREMISES (PACKAGE GOODS STORE LICENSEES)

Sec. 16-115. No sale of alcoholic beverages for consumption on premises.

No alcoholic beverages may be sold for consumption on the premises.

Sec. 16-116 Prohibition on sale of products not directly associated with the sale of alcoholic beverages.

Package goods store licensees shall not sell products that are not directly associated with the sale of liquor. Tobacco products and lottery tickets shall be excluded from this provision. In making such determination, the Select Board shall take into consideration whether the sale of such merchandise could be undertaken as a business independent of the sale of liquor.

Sec. 16-117. Management and employee alcohol management training.

(a) Individual licensees, or the managers or principal representatives of other licensed establishments are required to successfully complete an alcohol management training course, approved by the Liquor Liability Joint Underwriting Association of Massachusetts or the Massachusetts Package Stores Association, within three (3) months of beginning in their respective positions, although it is encouraged that successful completion

occur within one (1) month of beginning work. Said persons must be successfully retrained, if, and when, the certification period ends.

(b) Licensees are encouraged to have employees who sell alcoholic beverages attend and complete an alcohol management course approved by the Liquor Liability Joint Underwriting Association or the Massachusetts Package Stores Association. A discount of ten percent (10%) or two hundred dollars (\$200), whichever is greater, shall be given on the annual license fee, when, at the time of license renewal, seventy-five per cent (75%) or more of the employees who sell alcoholic beverages have successfully completed, and are still certified by, such a program.

Sec. 16-118. Hours of operation and sale.

Subject to further limitations fixed, or from time to time modified by the Select Board with respect to a particular license and those set forth in these rules and regulations and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any licensee shall be from 8:00 P. M. to 11:30 P.M. on Monday through Saturday and 8:00 A.M. to 11:30 P.M. on any day immediately preceding a legal holiday, except when prohibited by Section 33 of Chapter 138.

SPECIFICALLY APPLICABLE TO CLUB LICENSEES

Sec. 16-119. No off premises advertising.

No club licensed to sell alcoholic beverages shall use any signs, printed matter or other means to publicly advertise the sale of alcoholic beverages. This shall not prohibit the use of reasonable and proper signs.

SPECIFICALLY APPLICABLE TO THEATERS

Sec. 16-120. Minimum seating requirement.

A license shall not be granted for a theater having a seating capacity of less than three hundred (300) persons. (5-7-01, Art. 34). See Chapter 167 of the Acts and Resolves of 2001.

See also Chapter 167 of the Acts of 2015 (Date of Town Meeting Petition, October 30, 2014.)

Sec. 16-121. Incorporated by reference from rules and regulations “Applicable To All Licensees (Other Than Theaters) Authorized To Sell For Consumption On The Premises”.

The following rules and regulations are incorporated by reference from those “Applicable To All Licensees (Other Than Theaters) Authorized To Sell For Consumption On The Premises”: Sections 16-96, 16-102, 16-103, 16-104, 16-105, 16-106, 16-107, 16-108, 16-109, 16-110, and 16-111.

Sec. 16-122. Events.

Alcoholic beverages shall be served only to patrons and participants in performances, conferences, functions, meetings or in cultural or educational activities which have a stated theatrical, cultural or educational or public service purpose.

Sec. 16-123. Hours – sale of alcoholic beverages.

(a) Subject to further limitations fixed, or from time to time modified by the Select Board with respect to a particular license and those set forth in these rules and regulations and the General Laws of Massachusetts, the hours during which sales of alcoholic beverages may be made by any theater licensee shall be from 11:00 A. M. to 11:30 P.M. on Monday through Saturday; 12:00 Noon to 11:30 P.M. on Sunday.

(b) No alcoholic beverage may be sold more than one-half hour (30 minutes) prior to the event, nor more than one-half hour (30 minutes) after the event.

(c) All alcoholic beverages shall be cleared within one half hour (30 minutes) after the legal time for sale.

Sec. 16-124. Arrangement and service.

The arrangement for display and sale of alcoholic beverages shall be done in a manner conducive to safety and control. Only theater personnel or persons under the control of the theater, meeting the requirements of these Rules and Regulations shall dispense alcoholic beverages. Patrons may not serve themselves.

Sec. 16-125. Areas of service.

Alcoholic beverages may be sold and consumed only in those areas authorized by the Select Board.

Sec. 16-126. Eligible purchasers.

Only persons who are ticket holders or function participants may be served an alcoholic beverage.

Sec. 16-127. Containers.

Alcoholic beverages may be sold only in individual open containers with a capacity of not more than twelve (12) fluid ounces.

Sec. 16-128. Transporting.

No patron may take their own alcoholic beverage to the theater. No alcoholic beverage or container (even if empty) may be removed from the theater by anyone other than the theater staff or its vendors.

Sec. 16-129. Advertising.

No exterior sign or advertising shall reference the fact that alcoholic beverages are for sale in the theater.

SPECIFICALLY APPLICABLE TO HOTELS, INNS AND MOTELS

Sec. 16-130. Room service only upon express approval.

Room service to registered guest of a hotel, inn or motel shall be permitted only by express approval of the Select Board.

SPECIAL LICENSE (ONE DAY PERMIT)

Sec. 16-131. One day permits - generally.

The Select Board may in its discretion grant one day permits in accordance with the requirements of Section 14 of Chapter 138. All pertinent provisions of the above entitled sections: "applicable to all licensees" and " applicable to licensees authorized to sell for consumption on the premises," including the liquor liability insurance requirement of paragraph 34, shall be applicable to special licenses. Insurance policies must be written on an "Occurrence Basis." See also paragraph 5, above.

FEEES

Sec. 16-132. The annual fee for a license.

- a. Restaurant/all alcoholic
 - No bar seating \$2,250
 - With bar seating maximum of 15 seats \$2,500
 - With bar seating between 16 and 20 seats \$2,300
 - With bar seating between 21 and 25 seats \$3,500
- b. Restaurants/beer and wine
 - No bar seating \$2,250
 - With bar seating maximum of 15 seats \$2,500
 - With bar seating between 16 and 20 seats \$2,300
 - With bar seating between 21 and 25 seats \$3,500
- c. Package Goods Store/ all alcoholic* \$1,500
- d. Package Goods Store/beer and wine* No Licenses
- e. Clubs \$350
- f. Special License (One-day permit) \$25

*A discount of ten percent (10%) or two hundred dollars, (\$200), whichever is greater, is available annually for package store licensees who meet the server or employee training provisions of Sec. 16-117(b).

Sec. 16-133. Effective date of rules and regulations.

These rules and regulations are effective upon adoption by the Select Board.

Sec. 16-134-149. Reserved.

Article V. Town Common Regulations.

Sec. 16-150. Town Common Regulations.

The following Regulations are promulgated by the Town Administrator and the Select Board for the Town Common, pursuant to M.G.L. c. 45, §5. (Wherever authorization or approval of the Town Administrator is required by these regulations, such authorization/approval may be made by a designee of the Town Administrator. All authorizations/approvals shall be in writing, unless otherwise provided.)

Sec. 16-151. Regulations Applicable To All Persons Including Groups.

(a) *Alcoholic Beverages – Prohibited.* No alcoholic beverage shall be consumed without the approval of the Select Board.

(b) *Amusement Rides (Mechanical) - Prohibited.* No mechanical amusement rides are allowed.

(c) *Animals – Restrictions.* No animals other than dogs, cats and other household pets shall be allowed, without the approval of the Town Administrator.

(d) *Audio Devices – Restricted.* No person shall create or allow the emission of any amplified sound, except from a radio, recorder or other device possessed and used by an individual for his/her own enjoyment and operated in such a manner so as not to interfere with the use and enjoyment of the Town Common by an other person, unless authorized by the Town Administrator.

(e) *Camping – Prohibited.* No overnight camping or sleeping is allowed.

(f) *Damaging Town Common – Prohibited.* No person shall remove, break, deface or defile the Town Common or any part thereof.

(g) *Electrical or Electronic Device(s) Requiring Outdoor Auxiliary Equipment.* No person shall use any electrical or electronic device or equipment requiring outdoor auxiliary power without the approval of the Town Administrator.

(h) *Fireworks – Prohibited.* No person shall use or discharge fireworks.

(i) *Litter, Trash, etc.* All litter, cans, refuse, bottles and trash shall be removed by the user(s), unless placed in a trash receptacle provided or authorized by the Town.

(j) *Motor Vehicles – Restricted.* No motor vehicle shall be allowed on the Town Common, except Town vehicles and those vehicles authorized by the Town Administrator.

(k) *Open Fires – Prohibited.* No open fires or flames, including cooking on an open grill, is allowed.

(l) *Solicitation and Sale of Goods or Services – Restricted.* No solicitation or sale of goods or services is allowed, except for an event by or for a non-profit group with written permission of the Town Administrator.

(m) *Sporting Events.* There shall be no organized sporting events.

(n) *Structures and Buildings – Restricted.* No person shall station or erect any building, tent, canopy, stand, bandstand, stage, tower, scaffold, sound stage, platform, rostrum or other structure on the Town Common without the approval of the Town Administrator.

(o) *Trees, Shrubs, and Flower: Planting and removal, etc. – Restricted.* No person, other than a Town employee or contractor, shall plant, remove, cut, deface or otherwise damage any tree, shrub or flower, unless authorized by the Town Administrator.

Sec. 16-152. Regulations Applicable to Group Use.

(a) *Application/Approval For Group Use.*

(1) No organized group may use the Town Common without submitting a written application on a form provided by the Town to the Town Administrator or his/her designee and receiving approval by the Town Administrator.

(2) Applications may not be submitted by a minor.

(3) Applications may be made up to one (1) year in advance.

(4) Applications shall be processed in order of receipt and shall be allocated in order of receipt of fully executed applications. Annually occurring events, such as Town Day, shall at all times be deemed to be fully executed applications for each year following the prior year's event.

(5) The Town Administrator may establish an application fee and/or user fee schedule for group events.

(6) Applications for activities or events which require insurance, approval or permits from other governmental entities, or compliance with other terms or conditions, will be reviewed and, if the application otherwise conforms to all other requirements, a conditional approval will be issued. If, within the time prescribed by the Town Administrator, any required fee or security deposit is not paid, or an insurance certificate evidencing the requisite insurance is not filed with the Town Administrator, or the approval or permit of other governmental entities has not been received, or the other terms and conditions have not been met, the conditional approval will automatically expire, the application for permit will be deemed denied and no written notice of denial will be required. For events or activities which involve the use of special facilities or activities, all terms and conditions for issuance of the permit, including securing insurance and payment of all fees and security deposit, must be completed at least thirty (30) days prior to the event unless otherwise a different time period is prescribed by the Town Administrator.

(7) No permit shall be issued unless all applicable fees and security deposit, if any, are paid within the times prescribed by the Town Administrator. Failure to pay fees or security deposit within that time shall cause the application to be deemed denied, without further notice to the applicant.

(8) The applicable provisions and procedures for denial of an application and notice thereof are set out in Section 16-154 of these Regulations.

(9) Any amendment or revision of an application or approval shall, for purposes of determining the priority of the application for permit, relate back to the original filing thereof; but the time in which the Town shall grant or deny the application for permit and serve notice of such granting or denial shall be computed from the date of the proposed amendment or revision.

(10) Applications and approvals shall be limited to no more than for one (1) day.

(11) If estimated attendance exceeds two hundred (200) persons, a copy of this application must be submitted to the Stoneham Police and Fire Chiefs for their review. The Police and Fire Chiefs have the right, in their reasonable discretion, to require detail officer(s). The applicant is responsible for the implementation of all recommendations from these departments' reviews.

(b) *Indemnification.* The Town Administrator may institute an indemnification requirement for group events, in which the applicant shall execute a written agreement with the Town, on a form prescribed by the Town Administrator, by which the applicant (group) shall covenant to hold harmless and indemnify the Town of Stoneham, its officials, employees and agents against all costs, damages, losses, claims, and expenses, including reasonable attorney fees, incurred, directly or indirectly, as a result of such applicant's use of the Town Common. Such costs, damages, losses, claims, and expenses shall include, without limitation, any damage to the Town Common or adjacent Town property, the cost of employee overtime, the cost of police and fire protection, and any claim asserted by a third

party against the Town of Stoneham, its officials, employees or agents on account of any alleged injury arising from the use of the Town Common, This agreement shall also constitute a release by the applicant and each and all of its members of any claim against the Town of Stoneham, its officials, employees or agents for any injury to persons or damages to property suffered by such applicant or any of its members during or as a result of using the Town Common, except insofar as such injury or damage is directly and solely caused by the negligence or intentional misconduct of any person belonging to or acting on behalf of the Town of Stoneham.

(c) *Insurance.* The Town Administrator may institute an insurance requirement for group events, requiring insurance with such coverages and in such amounts as shall reasonably be required by the Town, which shall name the Town of Stoneham as an additional insured thereunder. The amounts and type of insurance required shall be determined by the Town Administrator based upon the nature of the activity and the risk involved. The Town Administrator shall prepare a uniform schedule of insurance guidelines for particular types of activities. The Applicant shall provide the Town Administrator with a certificate from an insurer evidencing such coverage prior to the applicant's use of Town Common, and within the time prescribed by the Town Administrator. The certificate shall also provide that the insurer shall give the Town reasonable advance notice, of no less than thirty (30) days, of insurer's intent to cancel or amend the insurance coverage provided.

(d) *Security Deposit.*

(1) The Town Administrator may institute a security deposit requirement. The security deposit shall be in an amount in accordance with a schedule of fees. The amount of the security deposit set in the schedule of fees shall be equal to the estimated cost of policing, cleaning up, and restoring the park upon the conclusion of the use or activity. Promptly after the conclusion of a permit activity, the Town shall inspect the premises and equipment used by the permittee.

(2) If it is determined that there has been no damage to the Town Common or equipment beyond reasonable wear and tear, the security deposit shall be refunded in full within thirty (30) days of the conclusion of the permitted event.

(3) If it is determined by such inspection that the permitted event proximately caused damage to the Town Common in excess of normal wear and tear and which requires repairs in excess of routine maintenance, the Town shall retain the security deposit or any portion thereof necessary to pay for the cost repair or any fines assessed against the applicant. The Town Administrator shall give written notice of the assessment of damages or fine and retention of the security deposit to the permittee by personal delivery or by deposit in the United States mail, with proper postage prepaid, to the name and address set forth in the application for permit. Any assessment of damages in excess of the security deposit shall be paid to the Town within thirty (30) days after notice of such assessment of damages is sent.

(e) *Waiver of Application/User Fee, Insurance Requirement and/or Security Deposit.* Any requirements for an application and/or user fee, insurance, or security deposits

may be waived by the Town Administrator if the activity is protected by the First Amendment of the United States Constitution and the requirement would be so financially burdensome that it would preclude the applicant from using the Town Common for the proposed activity. Fees for equipment and services shall not be waived pursuant to this subsection. Application for a waiver of a user fee, security deposit, or certificate of insurance shall be made on a form prescribed by the Town Administrator and must include an affidavit by the applicant and sufficient financial information about the applicant to enable the Town Administrator to determine whether the requirement(s) would be so financially burdensome that it would preclude the applicant from using the Town Common property for the proposed activity. If no written denial is issued within thirty (30) days of the date on which the application for such waiver is fully completed, executed and filed with the Town Administrator, the waiver request shall be deemed approved, contingent upon the applicant complying with all other permit requirements.

(f) *Approvals For Designated Areas Only.* All approved applications shall be for the use of designated areas only and shall not exceed the scope of the approval.

(g) *Town Common To Be Generally Available For Use By Individual Members of the Public.*

IT IS THE STRONG POLICY OF THE SELECT BOARD AND THE TOWN OF STONEHAM THAT THE TOWN COMMON BE GENERALLY AVAILABLE FOR USE BY INDIVIDUAL MEMBERS OF THE PUBLIC WITHOUT THE INTERFERENCE OF GROUP USE. ACCORDINGLY, GROUP USE SHALL BE REASONABLY LIMITED IN TIME, PLACE AND MANNER BY MEANS OF THE APPROVAL PROCESS.

(h) *Time Restriction.* No activity may occur between the hours of 10:00 p.m. to 6:00 a.m., unless otherwise authorized by the Town Administrator.

(i) *Liability For Property Damage.* Reservation of the Town Common is granted with the understanding that the Applicant shall be liable for any property damage and shall be required to reimburse the Town for such damage.

(j) *Trash and Litter.* All trash resulting from the event shall be removed by the Applicant from the Town Common area immediately following the event and properly disposed of. Failure to do so shall result in a charge for removal and disposal by the Town.

(k) *Use of Adjacent and/or Municipal Parking For Non-Parking Purposes.* Use of parking adjacent to the Town Common or other municipal parking for non-parking purposes must be authorized by the Town Administrator.

(l) *Portable Toilets – Prohibited.* Portable toilets are prohibited.

(m) *Trash Dumpsters – Prohibited.* Trash dumpsters are prohibited.

(n) *No Fee Charged By Applicant.* No fee may be charged by the Applicant for admission to the event.

Sec. 16-153. Denial of An Application For Group Use - Procedures and Provisions.

(a) *Notice of Denial.* Notice of denial of an application for permit shall clearly set forth the grounds upon which the application was denied and, where feasible, shall contain a proposal by the Town for measures by which the applicant may cure any defects in the application for use or otherwise procure approval. Where an application has been denied because a fully executed prior application for the same time and place has been received, and approval has been or will be granted to the prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the particular area, the Town may propose an alternative place, if available for the same time, or an alternative time, if available for the same place.

(b) *Grounds for Denial of Application.* To the extent permitted by law, the Town may deny an application if the applicant or the person on whose behalf the application was made has on prior occasions made material misrepresentations regarding the nature or scope of an event or activity previously permitted or has violated the terms of prior approvals or permits issued to, or on behalf, of the applicant. The Town may also deny an application on any of the following grounds:

(1) the application (including any required attachments and submissions) is not fully completed and executed;

(2) the applicant has not tendered the required application fee, if any, with the application or has not tendered the required user fee, indemnification agreement, insurance certificate, or security deposit within the times prescribed;

(3) the application contains a material falsehood or misrepresentation;

(4) the applicant is legally incompetent to contract;

(5) the applicant or a party on whose behalf the application was made has on prior occasions damaged Town property and has not paid in full for such damage;

(6) a fully executed prior application for the same time and place has been received, and an approval or permit has been or will be granted to a prior applicant authorizing uses or activities which do not reasonably permit multiple occupancy of the Town Common;

(7) the use or activity intended by the applicant would conflict with previously planned programs organized and conducted by the Town and previously scheduled for the same time and place;

(8) the proposed use or activity is prohibited by or inconsistent with the classifications and uses of the Town Common or part thereof so designated;

(9) the use or activity intended by the applicant would present an unreasonable danger to the health or safety of the applicant, other users of the Town Common, Town employees or of the public;

(10) the applicant has not complied or cannot comply with applicable licensure requirements, bylaws or regulations of the Town concerning the sale or offering for sale of any goods or services; or

(11) the use or activity intended by the applicant is prohibited by federal, state or town law, bylaw or regulations.

Sec. 16-154. Compliance with Applicable Law and Penalties.

Persons shall comply with applicable state laws and regulations and Town bylaws and regulations.

Sec. 16-155. Failure To Comply With Town Common Regulations.

Any person who fails to comply with any of these Town Common Regulations is subject to revocation of their application approval Depending on the severity of the offense, or the frequency of other offenses, the Town may initiate legal action.

Sec. 16-156. Penalty For Violation.

Pursuant to M.G.L. c. 45, '4, violation of any of these regulations is subject to being "punished by a fine of not more than two hundred dollars."

Article VI. Review Fees For Outside Consultants.

Sec. 16-165. Rules and Regulations for the Implementation of Review Fees for Outside Consultants Pursuant to M.G.L. c. 44, sec. 53G For The Grant of Permits and Licenses Including Grant of Location By The Select Board.

(a) Pursuant to M.G.L. c. 44, sec. 53G, the Select Board ("Board"), through this regulation, may impose reasonable fees for the employment of outside consultants for specific consultant services deemed necessary by the Board to review, issue a decision, permit and/or license and/or otherwise implement its authority, with respect to the issuance of permits and licenses, including grants of location pursuant to M.G.L. c. 166, sec. 22, ("permit or licenses"), arising from the Board's authority to grant:

- (1) Grants of Location pursuant to M.G.L. c. 166, sec. 22 et seq.;

- (2) Alcoholic beverage licenses, including wine and malt, licenses or permits pursuant to M.G.L. c. 138, including Sections 12 (on-premises); Section 14 (special licenses, including one-day licenses); Section 15 (not on- premises), and Section 16A (renewal of Section 12 and/or Section 15 licenses).
- (3) Common victualler licenses pursuant to M.G.L. c. 140, sec. 2;
- (4) Entertainment/Automatic Amusement licenses pursuant to: (a) M.G.L. c. 140, 183A (holders of alcoholic licenses and/or common victualler licenses); (b) M.G.L. c. 140, sec. 181(theatrical exhibits, public shows, public amusements and exhibitions) and (c) M.G.L. c. 140, sec. 177A (automatic amusement devices).
- (5) Motor Vehicle Dealers licenses - Class I (new vehicles); Class II (used vehicles) (M.G.L. c. 140, secs. 58 and 59) and Class III Gunked vehicles).
M.G.L. c. 140, sec. 58 and 59.
- (6) Vehicles For Hire license and permits, including taxis and liveries, pursuant to M.G.L. c. 40, sec. 22.
- (7) Lodging House licenses pursuant to M.G.L. c. 140, sec.23;
- (8) Fortune Teller license -M.G.L. c. 140, sec. Section 1851; and
- (9) Any other municipal permit or license for which authority to grant is conferred upon the Board under any applicable statute or bylaw, as provided in M.G.L. c. 44, sec. 53G

(b) The Board may determine that the assistance of an outside consultant(s) is warranted due to the size, scale or complexity of the petition or application ("application") for the permit or license, the proposal or because of its potential impact(s). The Board may require that the petitioner or applicant ("petitioner/applicant") pay a review fee consisting of the reasonable cost, as determined by the Board, for the employment of an outside consultant(s) to be engaged by the Board to assist in the review of and/or determination regarding the application and/or proposal ("application/proposal").

(c) In hiring outside consultants, the Board may engage engineers, designers, financial analysts, planners, traffic consultants, lawyers and/or other appropriate professionals who can assist the Board in reviewing and analyzing an application/proposal to ensure compliance with all relevant laws, bylaws and regulations, best practices within the consultant's field of expertise and/or the protection of the public, including health, welfare and safety. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three (3) or more years of practice in the field at issue or a related field.

(d) Any applicant may take an administrative appeal from the selection of an outside consultant(s) to the Select Board itself. The grounds for such an appeal shall be limited to claims that the consultant(s) selected has a conflict of interest or does not possess the minimum required qualifications. Such appeal must be made in writing and must be received by the Board within fourteen (14) days after the Board has mailed or hand-delivered notice to the applicant of the selection of the consultant(s). In the event that no decision regarding the appeal is made by the Board within one month following the filing of such appeal, then the selection of the Board shall stand. The time limit, if any, for the Board's action on the petition shall be extended by the duration of any such administrative appeal.

(e) Failure of the applicant to pay a review fee within fourteen (14) days after the provision of notice by the Board to the applicant as set out in Paragraph (c) above (or in the case of a timely appeal by the applicant pursuant to Paragraph (c) above, within fourteen (14) days of the applicable decision by the Board or the expiration of the time for such decision shall be grounds for the denial of the petition.

(f) If at a later time in the process regarding the subject application/proposal, the Board determines that additional funds are needed for outside consultant services, the Board may provide written notice of said further and/or additional need for such funds in the same manner, and subject to the same provisions and requirements, as set out in Paragraphs (a) through (d) above.

(g) Funds received by the Board pursuant to this regulation shall be deposited with the Town Treasurer who shall establish a special account for this purpose in accordance with the provisions of M.G.L. c. 44, sec. 530. This account and funds therein shall be kept separate and apart from other monies. Expenditures from this special account, including interest, if any, shall be made at the direction of the Board in connection with application/proposal for which a review fee has been collected without further appropriation.

(h) Review fees may be spent only for consultant services rendered in connection with the application/proposal for which they were collected. At the completion of the Board's review of an application/proposal, as reasonably determined by the Board, any excess amount in the account, including interest, attributable to the

specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. Any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.

(i) Nothing in these regulations shall be deemed to create establish or otherwise implement a license or permit or a process therefore with respect to any type of permit or license referenced above as being subject to the implementation of review fees for outside consultants

Note - For review fees for outside consultants for the site plan process see Chapter 15, Zoning Bylaws, Section 7.2.7

Article VII. Grant of Location in Public Ways

Sec. 16-166. Grants of Location & Rights-of-Way

Sec. 16-166.1 Preamble

In partial fulfillment of the obligation to see to the prudent management of the Town's affairs and assets and in light of the continuing technological revolution in telecommunications, passage of the Telecommunications Act of 1996 and deregulation of the electric and natural gas industries in the Commonwealth, the Town hereby establishes a comprehensive, non-discriminatory, and fair system of regulation for all entities which desire to use the Town's Rights-of-Way.

This Bylaw is adopted in accordance with the authority granted, inter alia, by Amendment Article 89 to Article II of the Massachusetts Constitution, M.G.L. Chapter 43B section 13, M.G.L. Chapter 40 sections 4, 21 and 22F, and Chapter 85.

Sec. 16-166.2 Introduction

The purpose and intent of this Bylaw is to:

- (a) Provide the Town with accurate and current information concerning all facilities located in the Town's Rights-of-Way together with current information concerning entities owning or controlling the Facilities, and
- (b) Permit and manage reasonable access to the public Rights-of-Way on a competitively neutral basis, and

- (c) Manage Grants of Location in Public Ways, and
- (d) Conserve the limited physical capacity of the Rights-of-Way held in public trust by the Town, and
- (e) Assure that the Town is appropriately compensated when its Rights-of-Ways are utilized by non-governmental entities, and
- (f) Assure that the Town's current and on-going costs of granting and regulating private access to and use of the public Right-of-Way are fully paid by the persons seeking such access and causing such costs, and
- (g) Assure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.

Sec. 16-166.3 Definitions

Applicant: Any person or entity, including without limitation implied, Public Utility, Telecommunications Carrier, Local Exchange Carrier or municipal department that owns or exercises general responsibility and control over any Facility.

Application: The written application on a form prescribed by the Awarding Authority with any required documentation and the application fee by which an Applicant or Co-Locator requests a Right-of-Way Permit.

Application Fee: A non-refundable processing fee which shall accompany each application for a Right-of-Way Permit. The application fee shall be in the amount set forth by separate action by the Select Board.

Attachment: Any device, apparatus, appliance, equipment, wire or cable or other thing including any Telecommunication Facility installed or proposed to be installed on or in any existing facility whether by Applicant or Co-Locator or proposed to be installed on any new facility by Applicant or Co-Locator.

Awarding Authority: The Select Board of the Town of Stoneham which has authority to exercise the powers granted by this Bylaw.

Construction: Those activities requiring a street opening or building permit, and shall also include any site preparation, cemetery burial and caretaking operations, seismic surveys, grading, assembly, erection, substantial repair, alteration, or similar action, including

demolition, for or of public or private rights-of-way, structures, utilities or similar property.

Contractor: All officers or employees of Applicant or Co-Locator who perform or any person or entity engaged by or on behalf of Applicant or Co-Locator to perform construction, repair or maintenance work on overhead or underground facilities owned by Applicant and permitted by the Awarding Authority which are located in the Right-of-Way. The contractor for purposes of this Bylaw and for all questions of liability in connection with any construction, repair, or maintenance work on overhead or underground facilities owned by Applicant, which are located in the Right-of-Way shall be conclusively deemed an agent of Applicant or Co-Locator for whom Applicant or Co-Locator is fully responsible.

dBA: The A-weighted sound-pressure level expressed in decibels and referenced to 20 micropascals.

Default: The failure of the permit holder (including all contractors or other agents of permit holder)

- (i) to pay when due any license rental,
- (ii) to perform fully any covenant of the license or otherwise fail to comply with any provision of the license agreement, the Right-of-Way Permit or the Bylaw following ten days prior written notice to Licensee from Town
- (iii) to keep its Certificate of Insurance in full force and effect, or
- (iv) to provide the service that is outlined in its Application (except for interruptions in service due to emergency repair Work) for a period of six (6) consecutive months.

DTE: The Massachusetts Department of Telecommunications and Energy created by Chapter 25 M.G.L.

Effective Date: The date upon which this Bylaw becomes effective.

Emergency Repair Work: Right-of-Way work which must be commenced immediately to correct a hazardous condition in which the safety of the public is in imminent danger, such as a threat to life or health of the public or where immediate correction is required to maintain or restore essential public utility service.

Excess Capacity: The volume or capacity in any existing facility that is not being used or is not proposed to be used as part of a concrete plan for the future at the time that an application is made for a Right-of-Way Permit by an Applicant or Co-Locator.

Existing Facility: An overhead or underground facility in existence on the date of the Application for a Right-of-Way Permit.

Facility: Any overhead or underground facility or attachment thereto including without limitation any utility or other pipe, duct, line, pole, wire, cable, transmission line, conduit, pedestal, wave guide, dish, antenna, electronic or other thing located or proposed to be located in, on, above, along, under or across a Right-of-Way.

FCC: Federal Communications Commission.

Grandfathered Facility: An overhead or underground facility in existence on the Effective Date.

Grant of Location: Permission granted by the Awarding Authority of the Town to a public Utility or Person, in order to conduct its regulated activities, to locate poles, piers, abutments or conduits or attachments thereto or railway routes on, in, above, along, under or across a Public Way in accordance with the procedures set out in M.G.L. Chapter 166 section 22, Chapter 161 section 70, Chapter 162 section 8 and with this Bylaw.

Grant of Location Applicant: An Applicant or Co-Locator which is a public utility conducting a business described in section 21 of Chapter 166 of the Massachusetts General Laws of a Person.

Highway Superintendent: That individual, appointed or elected in accordance with Chapter 41, sections 1, 66 or 69E of the M.G.L.

Inspector of Wires: That individual appointed by the Town to fulfill the responsibilities set out in M.G.L. Chapter 166 section 32.

License Agreement: An agreement between the Town and an applicant owner of a facility setting forth detailed contractual terms and obligations of the owner of a facility and entered into incident to the grant of a Right-of-Way Permit.

Licensed Contractor: A contractor authorized by the Awarding Authority as a provision of the license agreement with the Applicant to undertake work in the Town Right-of-Way.

Local Exchange Carrier: Every person or entity that directly or indirectly owns, controls, operates and manages plant, equipment or property within the Town used or to be used for the purpose of offering telephone service and which is licensed by the FCC and certified by the DTE under C. 159 M.G.L. as a local exchange carrier.

Measurable Interference: Interference as defined by FCC Regulations (47 C.F.R.) which

affects the telecommunications services provided by a permit holder.

Modification: A material physical change to an existing facility such that its use, capacity or location is materially altered.

Network: All public and private poles, towers, transmitters, receivers, relay devices, conduits, pipelines, cables, wires, ducts, structures, manholes, hand holes, and related structures and equipment, which are sited in a public way or a public Right-of-Way or any part of a public way or public right-of-way and which are used for telecommunications services.

New Facility: An overhead or underground facility or an attachment that has not yet been constructed but that is proposed and described in an application for a Right-of-Way Permit.

Normal Working Hours: 7:30 a.m. to 4:30 p.m. Monday through Friday excluding Town holidays.

Occupied Area: The area in square feet to be occupied by an overhead facility (including space adjacent to the facility and rendered practically unusable by others whether because of physical limitations or potential measurable interference or otherwise) all as reasonably determined by the Awarding Authority. In the case of pole lines, for the purposes of computing square feet, the width dimension generally shall be determined with reference to the maximum distance that protuberances such as crossarms, guy wires, etc. extend perpendicularly from the center-line of the poles. Also included in the license for a pole and at no additional rental, is the right to penetrate the surface of the Right-of-Way to the depth reasonably necessary to support the pole.

Occupied Volume: The volume measured in cubic feet occupied by an underground facility (including a minimum of three [3] foot space adjacent to the facility rendered practically unusable by others whether because of physical limitations or potential measurable interference or otherwise) all as reasonably determined by the Awarding Authority.

Overhead Facility: Any tower, telecommunication facility and pole including poles and overhead wires and associated overhead structures including attachments located or proposed to be located above the surface of the Right-of-Way including the underground supports and foundations for such facilities.

Overhead License Rental Payment: The annual dollar amount to be paid by an Applicant to the Town for using the Right-of-Way for an overhead facility.

Overhead License Rental Rate: Shall have the meaning subscribed to it and shall be

computed annually as set out in Section 16-166.8 of this Bylaw.

Permit Holder: An Applicant or Co-Locator to whom a Right-of-Way Permit has been granted.

Permit Term: The period for which the permit holder has been granted a Right-of-Way Permit. Said period shall be as set forth in Section 16-166.7 of this Bylaw.

Planning Board: The Planning Board of the Town of Stoneham.

Pole or Poles and Overhead Wires and Associated Overhead Structures: poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, communication circuits, appliances attachments, and appurtenances located above ground, upon, along or across any Public Way or private ways of the Town and used or useful in the transmission of intelligence by electricity or otherwise, or for the transmission of television signals, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction or operation of a street railway or an electric railroad; **provided**, that said phrase shall not mean or include any of the following:

- (i) poles, towers, overhead wires and associated overhead structures used exclusively in the transmission but not the distribution of electricity;
- (ii) poles used exclusively for police and fire alarm boxes or any similar municipal equipment installed under the supervision and to the satisfaction of the engineer of the municipality;
- (iii) wires (exclusive of supporting structures) crossing any portion of any underground utility district from which overhead wires have been prohibited, or connecting to buildings on the perimeter of such portion, when such wires originate in an area from which poles and overhead wires and associated overhead structures are not prohibited;
- (iv) overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the same building or to an adjacent building without crossing any public Right-of-Way;
- (v) radio antennae, their associate equipment and supporting structures used by a utility for furnishing communication services; and
- (vi) service terminals including transformers in pedestals above ground used to distribute electric or communication service in underground systems.

Pole Attachment: An attachment which is a wire or cable for transmission of intelligence by telegraph, telephone or television, including cable television, or for the transmission of electricity for light, heat, or power or for the transmission of telecommunications services and any related device, apparatus, appliance or equipment installed upon any pole or in any telegraph duct or conduit owned or controlled in whole or in part by one or more public utility.

Public Utility: A gas and electric company subject to M.G.L. Chapter 164, telephone and telegraph company subject to M.G.L. Chapter 166, cable TV company subject to M.G.L. Chapter 166A, water and aqueduct company subject to M.G.L. Chapter 165, or street railway subject to M.G.L. Chapter 161 or electric railroad subject to M.G.L. 162.

Public Utility Use: The use of a facility by a public utility during the permit term in conducting its regulated activities but not including any non-public utility use by such public utility or any use by a non-regulated affiliate of a public utility or any other use by any other person or entity.

Public Way: Any road (including such appurtenances as berms, curbs, drains, sewers, water mains, sidewalks and paved and unpaved shoulders within the paper layout) to which the public has access and that the Town is responsible for maintaining.

Public Works Construction License: A license or authorization granted by the Awarding Authority as a provision of the license agreement with the Applicant for all Contractors (who are not officers or employees of a public utility or of a municipal department) to perform road opening work in the Public Ways of the Town.

Regulated Activities (of Public Utilities): The transmission of natural gas and electricity by a gas or electric company subject to M.G.L. Chapter 164, the transmission of voice or telegraph messages by a telephone and telegraph company subject to M.G.L. Chapter 166, the transmission of video broadcasts by television or cable television (including other activities deemed incidental thereto by federal law) subject to M.G.L. Chapter 166A, the provision of street railway services subject to M.G.L. Chapter 161 or transportation by electric railroad subject to M.G.L. Chapter 162.

Right-of-Way: The surface and space on, along, above and below any real property which is a Public Way or other way in which the Town has an interest in law or equity, whether held in fee or other estate or interest, or as trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, park, skyway, or skyway bridge.

Right-of-Way Permit: A permit granted by the Awarding Authority to an Applicant for

permission to construct, to repair and maintain, and to use overhead and underground facilities that it owns and which are located or to be located in the Right-of-Way. Also a permit granted by the Awarding Authority to a Co-Locator for an attachment to a new or existing facility.

Right-of-Way Work: Any construction, repair or maintenance of utility or other pipes, ducts, lines, poles, wires, cables, conduits, pedestals, antennas, dishes, electronics or other thing located in, on, above, under or across a Right-of-Way.

Street Opening Work: Any cutting, excavating, compacting, construction, repair or other disturbance within or under a Public Way together with restoration of the Public Way in accordance with the Town Street Opening Bylaw following such disturbance but excluding the location or relocation of utility poles for which a Grant of Location has been obtained pursuant to M.G.L. Chapter 166 section 22.

Telecommunications: The transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

Telecommunications Carrier: Every person or entity that directly or indirectly owns, controls, operates or manages plant, equipment or property within the town used or to be used for the purpose of offering telecommunications service and which is licensed by the FCC and certified by the DTE under C.159 M.G.L. as a telecommunications common carrier.

Telecommunications Facility: A facility other than customer premises equipment used by a telecommunications carrier to provide telecommunications service and includes software integral to such equipment (including upgrades), cables, wires, lines, wave guides, electronics, dishes and antennas.

Telecommunications Service: The offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public regardless of the telecommunications facilities used.

The Telecommunications Act of 1996: Public Law 104-104-Feb. 8, 1996. 110 Stat.57.

Town: The Town of Stoneham.

Transmission Line: Lines and associated structures used for the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.

Underground Facility: Any pipe, duct, line and conduit and telecommunications facility or

other thing including attachments located or proposed to be located under the surface of the ground but excluding the underground foundations or supports for overhead facilities.

Underground License Rental Payment: The annual dollar amount to be paid by an Applicant for use of the Right-of-Way for an underground facility.

Underground License Rental Rate: Shall have the meaning subscribed to it and shall be computed annually as set out in Paragraph VIII B of this Bylaw.

Usable Space: The total usable capacity of any overhead or underground facility located in the Right-of-Way as reasonably determined by the Awarding Authority.

Sec. 16-166.4 Necessity of a permit

No work in, on, under, along, above or across a Right-of-Way or use of a Right-of-Way shall commence until the Applicant and any Co-Locator each shall have applied for and obtained from the Awarding Authority a Right-of-Way Permit. Applicants with grandfathered facilities and any Co-Locator with grandfathered facilities located in the Right-of-Way shall be deemed to have applied for and been granted a valid Right-of-Way Permit for the permit term for such facilities and to be subject to all of the provisions of the license agreement substantially in such format as the Awarding Authority might deem appropriate.

An Applicant or Co-Locator which wishes to continue to use a grandfathered facility after the expiration of the permit term each must file an Application and treat such facility as a new facility. From and after the Effective Date, Applicant or Co-Locator must also obtain a Right-of-Way Permit for any modification of or new attachment to a grandfathered facility.

Any Applicant or Co-Locator using a grandfathered facility for any purpose other than a public utility use must notify the Town of such use of each such facility within one hundred eighty (180) days after the Effective Date. Any Applicant or Co-Locator which after the Effective Date wishes to make a use of its grandfathered facility which is not a public utility use must, prior to commencing such use, apply for and obtain a Right-of-Way Permit for such non-public utility use.

Traffic lights, fire hydrants, mail boxes and similar intrusions in the Right-of-Way that are accessory uses to the primary use of the property such as awnings, balconies, over-hanging signs and sidewalk cafes are exempted from this Bylaw.

Prior to the Town accepting a private way as a Public Way, such Applicant with a facility located in, on, under or across the private way and each Co-Locator using such facility including a Co-Locator Public Utility shall apply for and obtain a Right-of-Way Permit from the Awarding Authority.

A public utility that is petitioning for a Grant of Location in accordance with Ch. 166 section 22, Ch. 161 section 70, or Ch. 162 section 8 of the M.G.L. as part of its Application for a Right-of-Way Permit shall so indicate on the Application. A Right-of-Way Permit granted to a public utility for a facility to the extent of public utility use shall constitute a Grant of Location as well.

No Right-of-Way Permit shall be granted unless Applicant demonstrates to the reasonable satisfaction of the Awarding Authority that sufficient existing capacity remains in existing facilities to accommodate an attachment or that Applicant will construct new facilities in accordance with the requirements of this Bylaw. Except for transmission lines, in the event that all of the usable space of existing overhead facilities has been used up, the Town may in its reasonable discretion require that the Applicant construct new underground facilities.

All construction work contemplated by this Bylaw shall be done in a good and workmanlike manner using the best engineering and construction practices and shall be done in accordance with:

- (1) all applicable laws and regulations,
- (2) all of the provisions of this Bylaw,
- (3) any conditions contained in the Right-of-Way Permit, and
- (4) such reasonable supplemental instructions not inconsistent with the foregoing as the Awarding Authority or its authorized representative may from time to time issue.

Work that involves road opening activity must comply with the Town Street Opening Bylaw and Department of Public Works' Procedures. Applicants proposing road opening activity must contact and consult with the Town's Director of Public Works regarding further information and requirements.

No person or entity may perform any work in or under a Right-of-Way unless it is a permit holder and:

- (1) is a municipal department, public utility, telecommunications carrier or local exchange carrier or their respective officers or employees or
- (2) has engaged a Town licensed contractor and such holder performs all such Right-of-Way Work as agent of permit holder after complying with the Town Street Opening Bylaw.

Sec. 16-166.5 Requirements of application

A. Information Required of All Applicants and Co-Locators

Applicants or Co-Locators seeking a Right-of-Way Permit shall file on forms designated by the Awarding Authority a completed and signed Application at the office of the Awarding Authority which shall include the following information:

- (1) The identity and legal status of the Applicant or Co-Locator including any parent or affiliated corporation.
- (2) The address and telephone number of the corporation and the name of the officer, agent or employee responsible for the accuracy of the Application.
- (3) If a public utility (or municipal department), the federal identification number of the entity. All others must in addition specify their FCC license number and submit evidence of certification by the DTE.
- (4) A general description of Applicant's existing overhead or underground facilities within the Town that it is using to provide service and the service that it is currently providing.
- (5) A detailed description of the service that Applicant or Co-Locator intends to offer or provide to persons, forms, businesses or institutions within the Town and whether the use of the facility to provide the service will constitute a public utility use.
- (6) A detailed description of the underground or overhead facilities Applicant or Co-Locator intends to use or construct, their useful life and full dimensions of the proposed facility including but not limited to the following as applicable: height of poles, number of wires and their diameter, height of wires above the Right-of-Way, voltage of electric transmission lines, diameter of mains and conduits.
- (7) Maps or plans showing the exact location of the existing or proposed new facility in the Right-of-Way using engineering metes and bounds, street names and intersecting street names. All maps and plans must show a north arrow and include a Locus Map at an appropriate scale (1-inch equals 400 feet is the preferred scale). A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.
- (8) A statement as to whether new facilities will be built or existing facilities will be used and who is the Applicant with respect to such facility.
- (9) In the case of a Co-Locator seeking a permit for an attachment to a facility, the Applicant of which is exempt in whole or part from the obligation to make annual license rental payment for the facility as provided herein, such application shall be made jointly by Applicant and Co-Locator. Each must sign the application and Applicant must acknowledge in writing in form and substance satisfactory to the Town, its obligation to

pay the amount, if any, of annual license rental payment due the Town in respect of such attachment.

- (10) The names of Co-Locators who share or will share the facility. Applicants must provide evidence that Co-Locators have received their own Right-of-Way Permit and identify all pending Co-Locator Application.
- (11) Evidence that Applicant or Co-Locator has obtained all other governmental approvals and permits needed to use existing facilities and to offer or provide services.

B. Petitions for Grants of Location

Applicants or Co-Locators that are public utilities and that are seeking a Grant of Location as part of the Right-of-Way Permit shall also provide the following information as part of the application:

- (1) A statement as to the demonstrated need to construct the new facility or make an attachment to an existing facility.
- (2) A list of abutters' names and addresses within two hundred (200) feet.
- (3) The kind, size and tested strength of supporting or service wires for poles.
- (4) The maximum voltage that will be transmitted over wires and the maximum cubic feet of gas that will be transported through mains.
- (5) The size and pressure of gas mains and what the main is made of.
- (6) A list of all posts, poles or other supports of wires included in the Grant of Location.
- (7) The number of cross arms in use with each pole and the number of wires that are already attached thereto and the number of wires that are proposed.
- (8) The location of conduits and manholes in relation to all of the existing underground facilities, including those not owned by Applicant, and proposed new underground facilities.

C. Applications for New Facilities - Supplemental Information Required.

If new facilities are to be constructed, Applicant must submit the following additional information as part of the Application:

- (1) Preliminary engineering plans, specifications and a Site Plan of the facilities to be located within the Right-of-Way at a scale of one inch equals forty (40) feet which shall show
 - (a) all property lines,
 - (b) the exact location of the proposed new facilities, and
 - (c) existing facilities, streets, landscape features, residential dwellings, and all buildings located within two hundred (200) feet of the new facility prepared by a Professional Engineer registered to perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts.
- (2) A network map showing the location and route of the new facilities superimposed on the Public Ways of the Town on a scale of one (1) inch equals two hundred (200) feet prepared by a Professional Engineer registered to perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts. The Awarding Authority may permit an alternate scale if unique circumstances warrant an alternate scale and scale of the map permits adequate conveyance of the information depicted.
- (3) A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.
- (4) The location of all existing facilities, including those not owned by Applicant, located along the proposed route.
- (5) The specific trees, structures, improvements, facilities and obstructions, if any, that Applicant proposes to temporarily or permanently remove or relocate.
- (6) Evidence as to what, if any, excess capacity is available for attachment to existing facilities located along the proposed route with a specification of how much excess capacity will exist after the installation of the new facility. If co-location is not proposed, an affidavit attesting to the fact that Applicant made diligent but unsuccessful efforts to obtain permission to install or co-locate new facilities on existing facilities, the reason for the denial of co-location and whether an appeal to the DTE has been adjudicated.
- (7) If new facilities are to be constructed, the excess capacity that will exist in or on them after their installation and use by the Applicant and any identified Co-Locator.
- (8) The useful life of the proposed facility or attachment.
- (9) Information as to the type and frequency of any telecommunications equipment that will be installed.

- (10) A preliminary construction schedule and completion date.
- (11) Financial statements prepared in accordance with generally accepted accounting principles demonstrating Applicant's financial ability to construct, operate, maintain, relocate and remove the proposed Facilities.
- (12) Information in sufficient detail to establish Applicant's technical qualifications, experience and expertise regarding the facilities to be constructed and operated.
- (13) Evidence that Applicant has obtained all other governmental approvals and permits needed to construct the new facilities.
- (14) The name of the licensed contractor who will perform the construction work. In extraordinary situations where the work will be / is out for bid, provide the anticipated bid response date. The Contractor will need to apply to be licensed by the Town.
- (15) An application fee.
- (16) A Certificate of Insurance in coverages as specified in Section 16-166.7 J.
- (17) Such other information as may be reasonably required by the Awarding Authority.

D. Number of Copies Applications Required.

Applicants must submit at least seven (7) copies of ALL application materials.

Sec. 16-166.6 Application procedure

A. Departmental Reviews Required.

Upon receipt of a completed and signed Application, the Awarding Authority shall submit the application and associated plans to the Conservation Commission, Department of Public Works, Planning Board / Town Planner, Police Department, Fire Department and the Building Department (hereafter referred to as "the departments") for review. The departments shall promptly review the Application and make written recommendations concerning approval to the Awarding Authority and, if appropriate, shall include recommendations concerning permit conditions and supplemental instructions. The departments requested to review the application and plans shall submit their comments within thirty-five (35) days of the date of Application. Failure to respond within this time frame shall be deemed as having no objection to the application. The Awarding Authority

shall not act on any application until the thirty-five (35) day period for departmental reviews has lapsed.

B. Application and Review Fees.

The Applicant, as part of the filing of an Application, shall pay such application fees as established by the Select Board which shall not be less than one hundred (100) dollars. Further, the Applicant shall be responsible for any and all expenses associated with giving notice of a public hearing if any such hearing is required.

Further, if the application involves the construction of new facilities, the modification of existing facilities or a program of attachments the total construction cost of any of the foregoing is estimated to exceed one million (1,000,000) dollars, the Town may require the Applicant to enter into an agreement with the Town to reimburse the Town for the reasonable cost of engineering review by the Town's consultant of the plans submitted. Applicants shall submit a deposit to secure the cost of this review.

C. Grant of Location Public Hearing.

If the Right-of-Way Application includes a Petition of the Applicant for a Grant of Location for a new facility, the Awarding Authority shall promptly schedule a public hearing to be held within sixty-five (65) days of the date of a completed and signed application.

Notice of the public hearing shall be published in a newspaper of general circulation in the Town of Stoneham for no less than two (2) consecutive weeks prior to the Public Hearing.

Further notice shall be posted in the Town Hall. Owners of property abutting within two hundred (200) feet the location on which the new facility is proposed shall be notified by mail with a copy of the newspaper advertisement at least fourteen (14) days prior to the public hearing and given the opportunity to speak at the public hearing and present evidence. A copy shall also be sent to the Town Clerk at 35 Central Street. The Applicant shall be responsible for all costs related to a public hearing.

D. Timely Decision.

The Awarding Authority shall make a Decision on approval or disapproval of the application in a timely manner, but within no more than one hundred eighty (180) days of the date of submittal of the application or public hearing, whichever is later.

The Awarding Authority shall review the application, any evidence presented at a Grant of Location public hearing, and the recommendations received from the departments and make a determination on the application taking into account the recommendations received,

testimony and evidence presented if any, and such other facts as it may reasonably consider such as:

- (1) The likelihood that the new facility will incommode the public use of public ways or endanger or interrupt navigation.
- (2) The financial and technical ability of the Applicant or Co-Locator to construct new facilities or to use the Right-of-Way.
- (3) The capacity of the Right-of-Way to accommodate the proposed new facilities, modifications or attachments.
- (4) The capacity of the Right-of-Way to accommodate additional new facilities if the permit is granted.
- (5) Potential damage or disruption (including measurable interference with telecommunications services) to existing facilities, or public property if the permit is granted.
- (6) The effect, if any, on public health, safety and welfare if the permit is granted.
- (7) The availability of alternate routes and/or locations for the proposed new facilities.
- (8) Applicable federal and state laws and Town Bylaws which might prohibit or affect the permit if granted.

If the application is considered favorably, a Right-of-Way Permit containing such conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate shall promptly issue upon the satisfaction of any conditions precedent which the Awarding Authority may establish. If the application is not favorably considered, the Awarding Authority shall communicate in writing to the Applicant or Co-Locator the reasons its application was not favorably considered.

E. Posting of Decision.

Upon issuance of a decision to approve or disapprove, the Awarding Authority shall cause the decision to be posted in the Office of the Town Clerk for public review.

This decision shall include the reasons for the decision and any conditions attached to said decision. A decision to grant Approval shall include an Order of Conditions which incorporates, but is not limited to the following provisions:

- (1) Reimbursement of all reasonable costs associated with regulatory review and oversight which were not covered by the application fees and engineering fees previously paid; insurance, and all municipal costs associated with road opening, traffic control, utility and conduit location, and utility permitting, monitoring and relocation.
- (2) Indemnification of the Town of Stoneham for all costs, damages, and liability associated with property damage or personal injury claims of any sort related to the project.
- (3) A requirement that the Applicant shall obtain permits from the appropriate departments and agencies for all project work including but not limited to road openings, network location, safety of proximate structures, road repair and resurfacing, wiring, connections, and wetland alterations and crossings.
- (4) A requirement that the Applicant shall make unused or vacant conduit capacity available for sale or leased use by other networks and networks developers in conformity with the provisions of this Bylaw.
- (5) Construction must begin within six (6) months from the date of the decision and be completed within a construction period to be specified in the Order of Conditions.

F. Grant of Location to be Included in Right-of-Way Permit.

If a Grant of Location has been requested as part of the application for a Right-of-Way Permit and the Application has been considered favorably, the Right-of-Way Permit shall also constitute an order granting the location. The Grant of Location will specify where the new facility or attachment may be placed, and (with the exception of Grants of Location for transmission lines) the kind or poles, piers or abutments which may be used, the number of wires or cables which may be attached thereto, the height to which the wires or cables may run and the maximum voltage between conductors to be carried through same. Grants of Locations for poles are limited to one pole per location. The Grant of Location may contain such other conditions and supplemental instructions as the Awarding Authority reasonably deems appropriate.

Sec. 16-166.7 Terms of the Right-of-Way permit

A. Conditions of Permit.

All Right-of-Way Permits granted are conditioned upon:

- (1) the Applicant having obtained and submitted to the Awarding Authority, prior to construction and installation of its new facilities, a Bond as required in subsection (K)(2) hereafter, and,

- (2) Permit holder's agreement to make any excess capacity of its facility available to other Applicants on commercially practical and technically feasible terms, and,
- (3) to the extent feasible and subject to reasonable availability and agreement between a telecommunications carrier and the Town concerning price, maintenance, access and security, interconnection of the new telecommunications facility with public buildings, and
- (4) the execution and delivery of a Town of Stoneham Right-of-Way license agreement in the form and substance satisfactory to the Awarding Authority.

B. Permit Term.

Rights-of-Way Permits shall be valid for the period commencing on the date of filing of an application and ending upon the earlier to occur of:

- (1) the expiration of the useful life of the facility as reasonably determined by the Awarding Authority or
- (2) twenty years from the date of the application.

A permit holder desiring to continue to use the facility after the expiration of the permit term shall not more than one hundred eighty (180) days nor less than ninety (90) days before expiration of the current permit file an application with the Town for a permit as though the existing facility were a proposed new facility. Each Co-Locator must also file for a new permit.

C. Revocation of Permits.

Except to the extent that a Right-of-Way Permit also constitutes a statutory Grant of Location and current law limits the ability of the Awarding Authority to revoke a Grant of Location, the Awarding Authority during the permit term may revoke a Right-of-Way Permit granted hereunder after notice and hearing if it shall reasonably determine that:

- (1) permit holder is in default
- (2) permit holder fails to start to construct the facilities for which a permit was granted within six (6) months of granting of the permit
- (3) permit holder has failed to relocate its facility or attachment to a new location within the designated time following an order from the Awarding Authority to relocate such facility or attachment or
- (4) if the Awarding Authority determines that public necessity and convenience requires the revocation of a Grant of Location held by a street railway. The permit holder shall be

given not less than ten (10) days prior written notice of the time and place of the hearing on revocation and shall have the opportunity at the public hearing to present evidence.

D. Removal of Facilities.

Following revocation of the permit or the expiration of the permit term without an application to continue to use the facility unless then existing statutes shall require a different result and, if ordered by the Town, permit holder shall cease using the Right-of-Way. Permit holder shall remove all of its overhead and underground facilities from the Right-of-Way and restore the area to its original condition within six (6) months following expiration of revocation of the permit. In the event that the permit holder fails to remove its facilities, the Awarding Authority may treat such as abandoned property and, among other remedies, remove the facilities and restore the area at the owner's sole cost and expense.

E. Removal of Unauthorized Facilities.

With the exception of permits held by municipal departments and permits held by public utilities, within thirty (30) days following written notice from the Town, any person or entity that owns, controls or maintains any overhead or underground facilities located within the Right-of-Way for which a permit has not been obtained and which is not a grandfathered facility shall apply for a permit and may request a hearing before the Awarding Authority and shall have the opportunity at the hearing to present evidence. If the Application for a permit is denied, Applicant shall, at its own expense, remove such facilities from the Right-of-Way and restore the area to its original condition within six months of the date of the denial of the permit.

In the event that the Applicant fails to remove its facilities, the Awarding Authority may treat such as abandoned property and, among other remedies, remove the facility and restore the area at owner's sole cost and expense.

F. Re-Location of Facilities due to Public Necessity.

The location of any overhead or underground facility covered by a Right-of-Way Permit may be changed by order of the Awarding Authority if it determines in its reasonable discretion that public necessity requires relocation of the facility. Except for emergency repair work, Applicant is required to notify all Co-Locators upon receiving an order to relocate the facility from the Awarding Authority. Applicant and all Co-Locators shall, at their own expense, relocate their facilities to such location as shall have been approved by the Awarding Authority within ninety (90) days of the receipt of the order of the Awarding Authority. Upon relocation Applicant shall promptly supply Awarding Authority with "as built" plans of the relocated facility. Following the transfer of the facility and any attachments from the

existing facility to the new facility, the existing facility shall be removed from the site within ninety days from the date of the completion of the transfer.

Unless directly and proximately caused by the willful, intentional or malicious acts by the Town, the Town shall not be liable for any damage to or loss of any overhead or underground facility located in the Right-of-Way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling or work of any kind in the Right-of-Way by or on behalf of the Town. Rights-of-Way Permits and Grants of Location for facilities that have been ordered to be relocated will be amended to reflect the new location once the facilities have been re-located.

G. Assignment of Facilities.

Except in connection with a transaction to which Section 15B of Chapter 166 of the Massachusetts General Laws applies, a Right-of-Way Permit is not assignable. If a permit holders transfers ownership or use of its facilities to another entity, such entity must apply for and receive its own permit in accordance with this Bylaw.

H. Non-exclusive grant.

No permit granted under this Bylaw shall confer an exclusive right, privilege, license or franchise to occupy or use the Right-of-Way of the Town for delivery of services or any other purposes. No permit granted under this Bylaw shall convey any right, title or interest in the Right-of-Way but shall be deemed a license to use and occupy the Right-of-Way in accordance with the terms of this Bylaw and the Town of South Hadley Right-of-Way license agreement. Further, no permit shall be construed as a warranty of title. A permit shall be limited to a license to use only that specific portion of a Right-of-Way as specified in the plan that accompanies the Application and in any permit or license agreement.

I. Co-Location of Facilities.

Issuance of a Right-of-Way Permit is conditioned upon the agreement of the Applicant(s) to make excess capacity available to other Co-Locators on commercially practical and technically feasible terms. All new facilities for which a Right-of-Way Permit has been issued shall be constructed, installed and located in accordance with the following terms and conditions:

- (1) Attachments shall be installed within existing underground or overhead facilities whenever excess capacity exists within such existing facility.
- (2) Whenever existing facilities have been required by the Town to be located underground within a Right-of-Way, no permit will be granted for an overhead facility.

- (3) Whenever any existing facility is required by the Town for reasons of public necessity to be relocated, each Applicant owner shall relocate its facilities within a reasonable period of time and all Co-Locators who share the facility shall, absent extraordinary circumstances or undue hardship as determined by the Awarding Authority, also relocate their attachments concurrently to minimize the disruption of the Right-of-Way.
- (4) Whenever new underground facilities must be constructed because the excess capacity of existing facilities has been exhausted, Applicant shall anticipate its needs for at least thirty years and is encouraged to construct new underground facilities sufficient to meet its needs for this time period as well as provide excess capacity to Co-Locators on commercially practical and technically feasible terms.
- (5) The Town shall have the right, free of charge, to place its fire alarm telegraph, telephone and police and traffic signal wires upon any poles or within any conduits in each case when it is practicable and safe so to do. In every underground conduit hereafter constructed, four (4) ducts (being agreed as sufficient space) not less than three (3) inches in diameter, spaced three (3) inches apart and encased in concrete shall be reserved and maintained for the above enumerated systems of the Town, and the Town shall have the right of access thereto at all reasonable times for purposes of repair, alteration, installation or maintenance thereof. Handholes shall be installed, spaced no further than two hundred fifty (250) feet apart and located at every street intersection to accommodate cable installation.

J. Insurance.

The permit holder shall acquire and continuously maintain while it possesses a Right-of-Way Permit liability insurance coverage on all personnel and equipment used to construct, operate, maintain and repair the overhead and underground facilities located within the Right-of-Way.

This insurance must be with insurance companies licensed to do business in the Commonwealth of Massachusetts and shall contain the following coverages and be in the following minimum amounts:

Commercial General Liability Insurance – including operation, independent contractors, complete operations for a period of one (1) year from completing the Right-of-Way Work, XCU hazards, broad form property damage and personal injury.

General Aggregate:	\$ 2,000,000.00
Products and complete operations	
Aggregate	\$ 2,000,000.00
Each occurrence	\$ 1,000,000.00

This bond shall be maintained in force until one (1) year after the completion of the construction work.

- (3) Construction of new facilities must conform to the plan accompanying the Application and to the terms of the permit and license agreement. All Right-of-Way Work must conform to the Americans with Disabilities Act and the Architectural Access Board Regulations as currently in effect.
- (4) Right-of-Way Work shall comply with the following:
 - (a) **Working Hours.** Except for emergency repair work, Right-of-Way Work shall occur during normal working hours. Permit holder must give notice of the intended Right-of-Way Work seventy-two (72) hours in advance to the Town's Director of Public Works and unless the requirement for a police detail is waived by the Police Chief of the Town or by other Bylaw, must arrange for and pay for a police detail to be present throughout the period of time that the Right-of-Way Work is being conducted.
 - (b) **Obligation to Locate Existing Facilities.** Permit holder or contractor must inform itself as to the existence and location of all existing facilities located in the same general area as the new facilities are to be located and must confer with the owners thereof in order to obtain information as to the vertical and horizontal locations of the facilities and other conditions that might affect the Right-of-Way Work.
 - (c) **Non-Interference with Existing Facilities.** Permit holder or contractor shall not interfere with an existing facility without the written consent of the Awarding Authority and the owner of the existing facility. If it becomes necessary to relocate an existing facility to accommodate the new facility, this shall be done by its owner and the cost of such work shall be borne by the permit holder.
 - (d) **Dig Safe.** Permit holder shall, in accordance with Chapter 164 section 76D of the M.G.L., notify all Public Utilities seventy-two hours in advance of making any excavation in a Public Way. Such notification shall be made by means of obtaining a DIG-SAFE number. Said number shall be provided on the road opening application.
 - (e) **Protection of Existing Facilities.** Permit holder or contractor shall adequately support and protect by timbers, sheeting, etc. all existing overhead or underground facilities which may be in any way affected by the Right-of-Way Work and shall do everything necessary to support, sustain and protect them under, over, along or across such work area. Excavation work shall be performed and conducted in such manner that it shall not interfere with access to fire stations, fire hydrants, water gates, underground vaults, catch basins, manholes or any other public structure.

- (f) **Adjoining Property.** Permit holder or contractor shall, at all times at its own expense, preserve and protect from injury any adjoining property and shall take such precautions as may be necessary for this purpose. Permit holder shall be responsible for all damages to public or private property or streets resulting from its failure to properly protect and carry out the Right-of-Way work.
- (g) **Trees.** Permit holder or contractor shall not remove, even temporarily, any trees or shrubs which exist in the Right-of-Way work area without first obtaining the consent of the Town Tree Warden. In the event a tree is either accidentally destroyed by the permit holder or contractor or is authorized for removal by the Town Tree Warden, permit holder or contractor shall remove the tree, stump and debris from the work site and replace the tree with a tree meeting specifications provided by the Town Tree Warden in a location approved by the Town Tree Warden. Replacement quantity shall be determined by measuring the circumference of the tree(s) at four (4) feet off the ground divided by 3.14 to determine an equivalent caliper. The equivalent caliper shall be multiplied by one and one half (1.5) to determine the minimum caliper replacement required by one (1) or more trees.
- (h) **Excavated Material.** Permit holder or contractor shall remove all excess excavated material, surplus water, muck, silt, residue or other run-off pumped or removed from excavations from the Right-of-Way work site.
- (i) **Temporary Repairs of Underground Facilities.** At the end of each day, all trenches must be plated if repair work is not completed. No un-plated trenches are permitted overnight and work in plated trenches must be continually prosecuted to completion to minimize the time trenches are plated.
- (j) **Noise.** Permit holder or contractor shall perform the Right-of-Way work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. During the hours from 7:00 p.m. to 7:00 a.m. permit holder or contractor shall not use, unless otherwise specifically permitted by the Awarding Authority any tool, appliance or equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property.

(1) Construction Noise Levels

7:00 a.m. to 5:00 p.m. (Monday – Friday)

9:00 a.m. to 5:00 p.m. (Saturday)

70 dBA L10 level with a Maximum Noise Level not to exceed 86 dBA.

Construction noise levels shall not exceed General Noise Levels on Sundays, Legal Holidays, Saturdays before 9:00 a.m., Saturdays after 5:00 p.m. and weekdays between the hours of 5:00 p.m. and 7:00 a.m.

(2) General Noise Levels - Everyday

Daytime - 7:00 a.m. to 7:00 p.m.	
Less than 10 Minutes	75 dBA
Between 10 Minutes and 2 Hours	70 dBA
In excess of 2 Hours	60 dBA
Night time - 7:00 p.m. to 7:00 a.m.	
Less than 10 Minutes	60 dBA
Between 10 Minutes and 2 Hours	55 dBA
In excess of 2 Hours	45 dBA

- (k) Debris and Litter. The permit holder or contractor shall remove all debris and litter remaining from the Right-of-Way work site in a timely manner.
- (l) Lawn Surfaces and Plantings. All lawn surfaces which are disturbed during Right-of-Way work shall be replaced with sod or six (6) inches of screened loam, lime, fertilized and re-seeded with good quality lawn seed at the discretion of the Town. Any areas containing plantings shall be restored to their original condition with the same or similar plantings.
- (m) Erosion Control. Permit holder shall be responsible for all erosion control and for obtaining any necessary permits from the Town. Permit holder or contractor shall protect drainage structures from siltation by whatever means required including but not limited to the installation of hay bales and/or filter fabric. In the event that a drainage structure becomes damaged from siltation as a result of the Right-of-Way work, permit holder or contractor shall clean the structure before completing the Right-of-Way work.
- (n) As Built Plans. Within thirty (30) days following completion of construction of new facilities, permit holder shall file with the Awarding Authority complete As-Built Plans of the new facilities including an accurate map certifying the location of all facilities within the Right-of-Way prepared by a Professional Engineer registered to perform the required work in the Commonwealth of Massachusetts or other qualified professional registered to perform the required work in the Commonwealth of Massachusetts. A copy of the maps and plans must be provided in an appropriate digital format as specified by the Awarding Authority.

- (o) Tree trimming. Permit holders who own and maintain overhead facilities are responsible for trimming trees or other vegetation growing in the Right-of-Way to prevent their branches or leaves from touching or otherwise interfering with the overhead facility. All trimming or pruning shall be at the sole expense of the permit holder and performed under the supervision of the Town Tree Warden. Approval by the Town Tree Warden must be granted prior to undertaking trimming of trees or vegetation within the Right-of-Way. Permit holder must respond within five (5) calendar days, excluding weekends and holidays, of a request to trim trees by the Town Tree Warden.

L. Emergency Repair Work.

When notified by the Town, permit holder is required to respond to calls for emergency repair work within two (2) hours of the notice and to commence repairs immediately upon arrival at the site to protect the public.

M. Maintenance.

Permit holder shall at all times employ ordinary and reasonable care and install and maintain in use nothing less than commonly accepted methods and devices for preventing failures of overhead or underground facilities and accidents which are likely to cause damage, injuries or nuisances to the public. Owners of poles shall, upon the receipt of written notice served by the Inspector of Wires, promptly make such substitution or repairs of such poles, wires, posts, supports or attachments as may be required by the Inspector of Wires.

Sec. 16-166.8 Rental payments

A. Overhead License Rental Payments

- (1) The overhead license rental payment for each overhead facility shall be computed by multiplying the occupied area of the facility by the applicable overhead license rental rate.
- (2) The occupied area of an overhead facility shall be determined in the reasonable discretion of the Awarding Authority.
- (3) The overhead license rental rate shall be determined annually by the Awarding Authority within sixty (60) days of the commencement of each fiscal year utilizing assessment data for the fiscal year just ended. The rate for the fiscal year in which an Application is filed (or the year of the Effective Date in the case of grandfathered facilities) shall be the applicable rate for the entire permit term.

- (4) An annual overhead license rate shall be calculated by:
- (a) determining the assessed value of all taxable land in the Town for the previous fiscal year, and
 - (b) dividing the amount obtained in (a) by the total number of acres of land in Town subject to tax in that fiscal year and by expressing this quotient on a dollar per square foot basis (this represents a reasonable method to derive the value of the Town's investment in its Rights-of-Way) and
 - (c) determining in the reasonable judgement of the Awarding Authority the Town's cost of long-term capital and a reasonable capital amortization term. The combination of these two items shall be expressed as an amortization constant. (This constant represents the Town's reasonable judgment of the term over which the Town should recover its investment in its Rights-of- Way and a reasonable return on such investment which shall not exceed twenty (20) years) and
 - (d) multiplying the quotient obtained in (b) above by the constant determined in (c) and by expressing this product in dollars per square foot.

B. Underground License Rental Payment

- (1) The underground license rental payment for each underground facility shall be computed by multiplying the occupied volume of the facility by the applicable underground license rental rate.
- (2) The occupied volume of an underground facility shall be determined in the reasonable discretion of the Awarding Authority.
- (3) The underground license rental rate shall be determined annually by the Awarding Authority within sixty (60) days of the commencement of each fiscal year utilizing assessment data for the fiscal year just ended. The rate for the fiscal year in which an Application is filed (or the year of the Effective Date in the case of grandfathered facilities) shall be the applicable rate for the entire permit term.
- (4) An annual underground license rate shall be calculated by dividing the product obtained from the calculation described in Paragraph A (4) (d) above by the useable depth of the Rights-of-Way in the Town of Stoneham as reasonably determined by the Awarding Authority and expressing the quotient so obtained in dollars per cubic foot.

C. Exemption from Rental Payments

Applicants utilizing facilities (which includes use by Co-Locators) on the terms described below shall be exempt from the payment of underground or overhead license rental payments during the periods described as follows:

- (1) Applicants which are municipal departments to the extent that such facilities are used only for municipal purposes are exempt from the payment of rental payments hereunder.
- (2) Applicants with grandfathered facilities shall be exempt from the payment of rental payments to the extent of the type and extent of the uses being made of such grandfathered facilities as of the Effective Date and during the period commencing on the Effective Date and ending on the expiration or earlier termination of the permit term.
- (3) Applicants with grandfathered facilities which after the Effective Date propose to make uses of them, or allow Co-Locators to make uses of them which are not Public Utility Uses, shall have the exemption described in sub-paragraph (2) above reduced pro-tanto as to reasonably determined by the Awarding Authority and shall forthwith begin paying a pro-tanto portion of the annual rental payment for the use of the facility no longer subject to exemption. The rental payment shall be calculated as described above and the calculation shall utilize the fiscal year in which the Application for non-exempt use is made.

The pro-tanto non-exempt portion of the annual rental payment shall be reasonably determined by the Awarding Authority by comparing the portion of the occupied Area or occupied volume subject to nonexempt use to the total occupied area or occupied volume use being made of the facility. Evidence of well-established uniform practices evidenced by written policies or procedures of Applicants in establishing pole attachment fees or other similar charges to Co Locators or in allocating costs among affiliates shall be considered as prima facie evidence in determining reasonable allocation by the Awarding Authority.

- (4) Applicants with new and existing facilities which after the Effective Date propose to make public utility use or allow Co-Locators to make public utility use of a facility shall be pro-tanto exempt during the permit term from the payment of the appropriate annual rental payment otherwise payable with respect to such facility to the extent of its public utility use determined as set out in sub-paragraph (3) above.
- (5) The routine replacement of a portion of a facility or a minor adjustment of the location of part of a facility (such as the replacement or relocation of a pole or replacement of wires or cables) in situations where the use and capacity remain unchanged in some circumstances may require an Applicant or Co-Locator to file an application for a Right-

of-Way Permit but in such situations the exempt status of the facility shall not be affected.

- (6) All exemptions except those for municipal departments shall end upon the end of the initial permit term, but in no event later than July 1, 2020 unless then applicable law shall require a continuation of the exemption.

Sec. 16-166.9 Recording of orders and decisions

All orders and decisions by the Awarding Authority regarding Grants of Location, Rights-of-Way Permits, Transfers, Alterations, or any other actions authorized by this Bylaw are to be recorded and posted in the Office of the Town Clerk.

Sec. 16-166.10 Expiration of approval due to failure to act

In the event the recipient of the Grant of Location, Alteration, Right-of-Way Permit, or a Transfer of a License fails to act to begin and complete the work in accordance with the time schedule set forth in the Order of Conditions, the Approval shall expire. The Applicant shall not be entitled to reinstatement of the Order of Conditions.

Sec. 16-166.11 Appeals

A person or entity aggrieved by a decision of the Awarding Authority under this Bylaw may appeal such decision to the appropriate court of competent jurisdiction or, to the extent applicable law provides, to the DTE or the FCC.

Sec. 16-166.12 Severability

If any clause, section, or other part of this Bylaw shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Bylaw shall not be affected thereby but shall remain in full force and effect.

Article VIII. Social Host Responsibility.

Sec. 16-167. Prohibition against consumption of alcoholic beverages or drugs by minors on private property.

(a) *Legislative Intent & Purpose.* It is the purpose of this section to protect the public interest, welfare, health and safety within the Town of Stoneham by prohibiting the service to and consumption of alcoholic beverages and drugs by persons under the age of twenty-one (21) on private property located within the Town. The Select Board finds that the occurrence of social gatherings at private premises where alcoholic beverages or drugs are

served to or consumed by persons under the age of twenty-one (21) is harmful to such persons themselves and a threat to public welfare, health and safety. The Select Board finds further that persons under the age of twenty-one (21) often obtain alcoholic beverages or drugs at such gatherings and that persons who rent, own or otherwise control the premises at which such service and/or consumption is occurring will be more likely to ensure that alcoholic beverages and drugs are neither served to nor consumed by persons under the age of twenty-one (21) at these gatherings.

(b) *Definitions.* For purposes of this section, the following terms shall be defined as follows:

“Alcoholic beverage” means any liquor, wine, beer, spirits, cider or other liquid or solid, patented or not, composed of or containing alcohol or spirits, whether or not brewed, fermented or distilled, and capable of being consumed by a person.

“Control” means the authority and ability to regulate, direct, or dominate.

“Drug” means any substances recognized as drugs in the official United States Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; or any substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; or any substances, other than food, intended to affect the structure or any function of the body of man and animals.

“Open House Party” means a social gathering at a residence or other private property with minors present

“Person” means a human being, and where appropriate, a public or private corporation, company, an unincorporated organization or association, or a partnership.

“Premises” means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented or used with or without compensation. The term “premises” shall also include private functions held at public facilities within the Town of Stoneham.

(c) *Prohibition.* Any person who owns, rents or otherwise controls any premises shall be responsible when an open house party takes place at said residence where any alcoholic beverage or drugs is being unlawfully possessed, served to or consumed by persons under the age of twenty-one (21) at these gatherings at said premises.

(d) *Exceptions.* The provisions of this section shall not apply to:

- (1) The possession or consumption of a drug for which the individual has a current, valid prescription or as otherwise permitted by any other applicable law;
- (2) The use of alcoholic beverages, which occurs exclusively between a person under the age of twenty-one (21) and his/her parent or legal guardian; and
- (3) The practice of legally recognized religious observances

(e) *Penalties.* Failure to comply with subsection (c) above shall constitute a violation of this ordinance punishable by a fine and/or prosecution as outlined below:

(1) *Fines.*

- a. A first violation of this ordinance shall be punishable by a warning which shall be issued by the Chief of the Stoneham Police Department
- b. A second violation of this ordinance at the same premises or by the same person, within a twelve (12) month period shall be punishable by a fine of \$150.00
- c. A third or subsequent violation of this ordinance at the same premises or by the same person, within a (12) month period shall be punishable by a fine of \$300.00

(2) *Prosecution.* Any violation hereof may also be prosecuted under the applicable provisions of Gen. L. c. 138 §34.

The fine schedule prescribed in this subsection shall be based upon a “rolling schedule” meaning that in calculating the fine payable to the Town, the Police Chief shall count backward starting from the date of the most recent violation of this ordinance to determine how many previous violations of said ordinance have taken place at the premises or been committed by the same person during the statutory twelve (12) month period. A warning given pursuant to this ordinance shall remain in effect for the premises until a full twelve (12) month period has elapsed during which there has been no response to the premises.

(f) *Appeal.* Any person upon whom is imposed a fine/penalty pursuant to this ordinance shall have the right to appeal the imposition of such fine/penalty in a non-criminal proceeding by making a written request within 21 days to the Clerk Magistrate for the Woburn District Court or such other the District Court having the Town within its jurisdiction .

(g) *Inconsistency with Other Laws.*

- (1) If any part of provision of this section is inconsistent with any federal or state statute, law, rule, or regulation, then such statute, law, rule, or regulation shall prevail.
- (2) If any part of provision of this section of the applicability thereof to any person or circumstance be adjusted invalid by a court of competent jurisdiction, such judgement shall be confined in its operation to the part or provision of or application directly involved in the controversy in which such judgement shall have been rendered and shall not affect or impair the validity of the remainder of this section, or the application thereof to other persons or circumstances.