

## **APPENDIX L**

Establishment of Board of Water and Sewer Commissioners, May 13, 2008

Board of Selectmen Wastewater Financing Policy, August 21, 2008

Sewer Use Regulations: draft Table of Contents and proposed Flow Neutral Provisions

Board of Health Nutrient Management Regulations, November 18, 2008

Acceptance of MGL Chapter 83 §1A, May 11, 2009



# TOWN OF ORLEANS

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Telephone (508) 240-3700 Extension 305 - Fax (508) 240-3388

OFFICE OF  
TOWN CLERK

**The following is a certified copy of Article #45 and the "DOINGS" thereof from the Annual Town Meeting of May 13, 2008:**

## **ARTICLE 45. AMEND HOME RULE CHARTER CHAPTER 6 APPOINTED MULTI-MEMBER BODIES, BOARD OF WATER AND SEWER COMMISSIONERS**

To see if the Town will vote to adopt the following proposed Order of Amendment to the Orleans Home Rule Charter:

Delete clause 8 in its entirety, which currently reads as follows:

~~"Section 8 Board of Water Commissioners~~

~~6-8-1 The provisions of Chapter 418 of the Acts of 1953 shall be modified by this Section concerning all matters delineated herein. Effective July 1, 2001, the members of the Board of Selectmen will cease to be Water Commissioners, the Water Advisory Board shall be disestablished and its five (5) members shall be sworn in as members of the Board of Water Commissioners and continue to serve as such until expiration of a period of time equal to their remaining term as a member of the Water Advisory Board prior to its disestablishment. Thereafter appointments to the Board of Water Commissioners shall be made in accordance with Clause 6-8-2.~~

~~6-8-2 The Board of Selectmen shall appoint four members of the Board of Water Commissioners for three-year over-lapping terms. The Board of Health shall appoint one member of that board for the same term.~~

~~6-8-3 The Board of Water Commissioners shall set policy ensuring the adequate production and high quality of potable water. The Board shall be responsible for all functions cited in Chapter 418 of the Acts of 1953, except for the following functions vested in the Board of Selectmen for which they shall consult with the Board of Water Commissioners: establish water rates; contract with a municipality; acquire or take water resources, rights-of-way or easements; issue bonds to defray development and construction costs. In discharging its duties and responsibilities, the Board of Water Commissioners shall coordinate~~

~~with the Town Administrator and receive technical support from the Water Superintendent.~~

~~6-8-4 The Board shall develop annual operating and capital projections, and Capital Improvement Plan projections for the Water Commission/Department, and make recommendations to the Town Administrator in accordance with Chapter 8 of this Charter.~~

And insert in place thereof the following new clause 8, as follows:

§8. Board of Water and Sewer Commissioners

6-8-1 The provisions of Chapter 418 of the Acts of 1953 shall be modified by this Section concerning all matters delineated herein. **Effective July 1, 2009 or after passage of a Comprehensive Wastewater Management Plan by Town Meeting, whichever shall occur later,** the Board of Water Commissioners will be disestablished and a new Board of Water and Sewer Commissioners shall be established. Appointments to the Board of Water and Sewer Commissioners shall be made in accordance with clause 6-8-2.

6-8-2 The Board of Selectmen shall appoint three members and two associate members to the Board of Water and Sewer Commissioners for three-year overlapping terms. The Board of Health and the Planning Board shall each appoint one member to the Board of Water and Sewer Commissioners for three-year overlapping terms.

6-8-3 The Board of Water and Sewer Commissioners shall be responsible for all functions cited in Chapter 418 of the Acts of 1953, except for the following functions vested in the Board of Selectmen for which the Board of Selectmen shall consult with and receive recommendations from the Board of Water and Sewer Commissioners: establish water rates; contract with a municipality; acquire or take **water** resources, rights-of-way or easements; issue bonds to defray development and construction costs. In discharging its duties and responsibilities, the Board of Water and Sewer Commissioners shall coordinate with the Town Administrator and receive technical support from the Water/Sewer Superintendent(s). The Board of Water and Sewer Commissioners shall set policy ensuring: 1) the adequate production and the high quality of potable water; 2) development of a sewer works system consistent with the Comprehensive Wastewater Management Plan and oversight of that system when operational. **The Board of Selectmen shall establish sewer rates and shall consult with and receive recommendations from the Board of Water and Sewer Commissioners with respect to sewer rates.**

6-8-4 The Board of Water and Sewer Commissioners shall develop annual operating and capital budget projections and Capital Improvements Plan projections for the Water and Sewer Department, and make recommendations to the Town Administrator and Board of Selectmen in accordance with Chapter 8 of

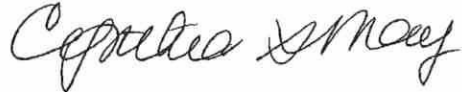
this Charter.

(2/3 vote required)

**MOTION:** To accept and adopt Article #45 as printed in the warrant.

**ACTION:** Voted, voice vote carries unanimously.

A TRUE COPY, ATTEST:

A handwritten signature in cursive script, appearing to read "Cynthia S. May".

Cynthia S. May, Town Clerk

BOARD OF SELECTMEN  
MEETING MINUTES

August 27, 2008

Approved on September 10, 2008

A meeting of the Orleans Board of Selectmen was held in the Nauset Meeting Room of the Town Hall. Present were Chairman David Dunford, Vice Chairman Mark Carron, Clerk Jon Fuller, Selectman John Hinckley, Selectwoman Margie Fulcher, Town Administrator John Kelly, and Recording Secretary Lindsay Stranger.

Chairman Dunford called the meeting to order at 6:30 pm.

Public Comment (00:00:18)

Gary Clinton spoke about the article that was in the newspaper regarding the wastewater financing. (00:00:30)

Leo Byrnes spoke about funding for the wastewater project, and that there may be opportunities through the County for financing. (00:06:39)

Approval of Meeting Minutes (00:13:52)

**On a motion by Mr. Carron and seconded by Mrs. Fulcher, the Board voted to approve the Executive Session meeting minutes of August 13, 2008. Vote 5-0-0 (00:13:59)**

**On a motion by Mr. Fuller and seconded by Mrs. Fulcher, the Board voted to approve the meeting minutes of August 13, 2008, as amended. Vote 5-0-0 (00:14:23)**

**On a motion by Mrs. Fulcher and seconded by Mr. Hinckley, the Board voted to approve the meeting minutes of May 21, 2008. Vote 5-0-0 (00:16:18)**

**On a motion by Mrs. Fulcher and seconded by Mr. Hinckley, the Board voted to approve the meeting minutes of November 28, 2007, as amended. Vote 5-0-0 (00:18:26)**

Committee Interview/Appointment (00:20:02)

- Zoning Bylaw Task Force Committee Appointment

**On a motion by Mr. Carron and seconded by Mrs. Fulcher, the Board voted to appoint Jim O'Brien to the Zoning Bylaw Task Force Committee with a term ending date of 6/30/11. Vote 5-0-0**

Police Chief Report (00:21:52)

Chief Roy gave an update on the Police Department for the month of July.

**On a motion by Mrs. Fulcher and seconded by Mr. Fuller, the Board authorized Mr. Kelly to send a letter to Officer Wilcox for a great job while**

**off duty and a letter to Lt. Wells for a job well done with the Block Party and Pops in the Park. Vote 5-0-0 (00:32:57)**

Fire Chief Report (00:37:11)

Chief Quinn gave an update on the Fire Department for the month of July.

Police Station Feasibility Review Committee (00:46:45)

**On a motion by Mr. Fuller and seconded by Mrs. Fulcher, the Board voted to put the Design Article Request for the proposed new police station on the Fall Special Town Meeting Warrant in the amount of \$425,000. Vote 5-0-0 (01:04:14)**

Meet with Wastewater Management Steering Committee (01:11:10)

- Wastewater Financing Policy

**On a motion by Mr. Carron and seconded by Mrs. Fulcher, the Board voted to amend the plan with the addition of “and prior to submission of said plan” after established in the first sentence on the second page. Vote 5-0-0 (02:05:15)**

**On a motion by Mr. Hinckley and seconded by Mr. Carron, the Board voted to amend the plan with the addition of “with the goal of balancing costs between user and non user” on the first page at the end of the first bullet. Vote 5-0-0**

**On a motion by Mr. Carron and seconded by Mr. Fuller, the Board voted to amend the plan with the addition of “and”, in between draft and final in the first paragraph on the first page. Vote 5-0-0**

→ **On a motion by Mrs. Fulcher and seconded by Mr. Fuller, the Board voted to approve the plan as amended. Vote 5-0-0**

Town Maintenance Facility Committee Charge (02:18:03)

**On a motion by Mrs. Fulcher and seconded by Mr. Fuller, the Board voted to approve the Town Maintenance Facility Committee Charge as revised by the Town Administrator. Vote 5-0-0 (02:19:43)**

Town Administrator FY09 Goals (02:20:18)

**On a motion by Mrs. Fulcher and seconded by Mr. Hinckley, the Board approved the Town Administrator’s Goals for FY09 as amended. Vote 5-0-0 (02:27:33)**

Town Administrator’s Report (02:28:19)

- Preservation Restrictions

**On a motion by Mr. Fuller and seconded by Mrs. Fulcher, the Board voted to authorize the Chairman to sign the Preservation Restrictions on behalf of the Town. Vote 5-0-0 (02:29:40)**

Liaison Reports (03:04:25)

Mr. Fuller gave updates on the Lighthouse Charter School and the Planning Board.

Mr. Hinckley gave updates on the Water Quality Task Force and the Renewable Energy Wind Power Committee.

Mr. Dunford gave an update on the Citizens Advisory Committee.

Other Business

- Application for Temporary Trailer-15 Barney Way (03:15:01)

**On a motion by Mr. Carron and seconded by Mr. Fuller, the Board voted to approve the application for a temporary trailer for 15 Barney Way, due to a house fire, for the period of 9/2/08 through 3/2/09. Vote 5-0-0**

Adjourn

**On a motion by Mr. Carron and seconded by Mr. Hinckley, the Board voted to adjourn. Vote 5-0-0**

Respectfully submitted,

Lindsay Stranger

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Jon R. Fuller, Clerk

DRAFT

POLICY STATEMENT

FINANCING TOWN-WIDE COMPREHENSIVE WASTEWATER  
PLAN INFRASTRUCTURE

It shall be the policy of the Orleans Board of Selectmen to develop financing methods for the capital cost of infrastructure in conjunction with the development of the Draft Final Town-Wide Comprehensive Wastewater Plan (Plan).

The purpose of this policy is as follows:

- To establish guidelines for the fair and equitable distribution of the cost of the capital outlay for infrastructure related to the Plan.
- To insure that there is a uniform and consistent payment formula for the many phases of installation of the system infrastructure.
- To reassure citizens that the increases in financial obligations will be incremental, in an effort to make it affordable.

As the funding for the required capital components of the Plan will be a multi-year and costly undertaking, all possible funding methods will be explored to insure that the best are chosen for the Town.

The repayment of the bonds that will be issued by the Town will primarily come from two sources – individual betterments that are only charged to those properties to be served by the public sewer and through property taxes to be paid by all property owners. The repayment of the bonds will be apportioned so that twenty percent (20%) comes from betterments and eighty percent (80%) comes from property taxes. All costs associated with the connection of an individual property to the public sewer will be the responsibility of the property owner.

Once the public sewer system is operational, the goal will be to have the system become fully self supporting. In order to accomplish this, the Town will implement a user fee system for those properties that are connected to the public sewer based on water usage.

As the final elements of the Plan are more fully established, the Board will review this financing policy and make any adjustments that may be necessary to insure that the overall goal of a fair and equitable assessment of capital costs is maintained.

Date Prepared: 21 August 2008  
Date Revised:  
Date Adopted:

# SEWER USE REGULATIONS

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<p>Any property owner who connects to the municipal sewer system shall limit the wastewater flow from that property to the quantity which could be discharged to an on-site wastewater disposal system on that property under Commonwealth and Town regulations and bylaws in effect on _____, including 310 CMR 15, any Town supplements to 310 CMR 15, and the Orleans Board of Health Nutrient Management Regulations (adopted November 18, 2008 and effective July 1, 2009).</p>	
<p>Wastewater flow limits shall be determined using provisions set forth in 310 CMR 15.203 (System Sewage Flow Design Criteria) and any Town supplements to those provisions.</p>	
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## SEWER USE REGULATIONS

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# SEWER USE REGULATIONS

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**Town of Orleans  
Board of Health  
Nutrient Management Regulations**

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**Section 1 Authority**

1.1 The Town of Orleans Board of Health, in accordance with, and under the authority of, Chapter 111, Section 31 of the Massachusetts General Laws, does hereby adopt the following rules and regulations.

1.2 The effective date of this regulation shall be July 1, 2009.

**Section 2 Preamble**

Orleans, like most of the towns on Cape Cod, has experienced rapid population growth and development since the early 1960's. Local responses have included adoption of 1 acre zoning in 1973. Also the Board of Health adopted Subsurface Sewage Disposal Regulations to supplement and augment the provisions of Title 5 of the State Environmental Code. However, many under-sized lots remain 'buildable', and numerous pre-Title 5 subsurface wastewater disposal systems continue to operate.

The Federal Clean Waters Act (1977) requires the Massachusetts Department of Environmental Protection (DEP) to limit the discharge of pollutants entering water resources. Excess nitrogen has been identified as the major contributing factor in the declining health of the marine water environment. Excess phosphorus, and to some degree excess nitrogen, are the major contributing factors in the declining

health of the freshwater environments. Ninety-nine percent of sewage disposal systems in town do little to remove nitrogen or phosphorus. A few systems are in place that partially remove nitrogen for the property they serve. In Orleans, this translates to an immediate concern over the level of nitrogen entering local groundwater and its subsequent effect on marine estuaries. Phosphorus has similar effects on freshwater resources.

In 2000, Orleans and other Southeastern Massachusetts communities joined the Department of Environmental Protection's Massachusetts Estuaries Project (DEP-MEP). The result of many years of water quality testing and five years of scientific analysis was the publication of a technical report by the DEP. This technical report led to the establishment of Total Maximum Daily Limit (TMDL) standards of nitrogen for each estuary studied.

Local health officials now realize that on-site septic systems (both Title 5-compliant and not), soil conditions and hydrology allow rapid migration of groundwater to surface water bodies (ponds and estuaries). Sewage disposal systems in Orleans, while adequately protecting public health do not remove any meaningful amounts of nitrogen or phosphorus and their discharge migrates rapidly into the groundwater. Locally controllable sources of nitrogen are primarily from septic system effluent and to a lesser extent from lawn fertilizer.

The Town of Orleans is in the process of developing a Comprehensive Wastewater Management Plan (CWMP). When adopted, the Plan will guide the phased construction of facilities to control nitrogen and phosphorus loading. This costly undertaking will likely take more than a decade to begin operating at an effective level, and longer to be fully functioning.

The documented scientific need and the regulatory mandate to address the issue of excess nitrogen released into local estuaries and the extraordinary lead-time required to fundamentally alter the way wastewater is managed are well known. *The Orleans Board of Health adopts these regulations to minimize, to the extent possible, the increase of excess nitrogen and phosphorus in the local environment.*

### **Section 3 Purpose**

Currently nitrogen and phosphorous in groundwater is steadily increasing. The town must regulate the increase in nutrients entering the ground water from septic systems that might affect ponds and estuaries. To minimize this increase in nutrients, the town must address the generation of wastewater on a parcel-specific basis by relating development potential to parcel size.

## Section 4 Definitions

For purposes of this regulation, the following definitions shall apply:

**Apartment:** A structure, regardless of form of tenure, containing three (3) or more dwelling units, or a mixed-use structure containing three (3) or more dwelling units having a majority of floor area devoted to non-residential use.

**Approved Capacity** – The capacity of a 1978 Code system reflected by the sewage flow as shown on the Disposal Works Construction Permit Application or as shown on the Certificate of Compliance, whichever is less for that system and not the calculated capacity based on 1978 Code loading rates which may account for over design or safety factors.

For a system designed in accordance with 310 CMR 15.000, the approved calculated capacity is based on the loading rates found at 310 CMR 15.242.

**Bedroom:** Any portion of a dwelling which meets the Minimum Standards of Fitness for Human Habitation, (Chapter II of the State Sanitary Code), and is designed to furnish the minimum isolation necessary for use as a sleeping area, and includes, but is not limited to, bedroom, den, study, sewing room, sleeping loft or enclosed porch, but does not include kitchen, bathroom, dining room, halls, living room, sun porch (as defined in these regulations) or unfinished basement.

**Design Flow:** The quantity of sanitary sewage, expressed in gallons per day (gpd), for which a system must be designed in accordance with 310 CMR 15.203.

**Division of Land:** The division of a parcel of land or the modification of lot lines to create a new lot, including preliminary and definitive subdivisions, Approval Not Required (ANR) plans, Open Space Residential Developments (OSRD) , and other legal means, and shall include re-subdivisions. The modification of existing lot lines, not resulting in the creation of additional buildable lots, shall not be a division of land.

**Dwelling Unit:** One (1) or more rooms intended as a single housekeeping unit for the use of one (1) or more individuals living together, and having cooking, sanitary and sleeping facilities. A "dwelling unit" does not include garages, sheds or an accessory or additional structure, whether attached or unattached.

**Enhanced Treatment Systems:** A septic system that is designed to increase removal of nitrogen from effluent as compared to that removed by a standard Title 5 septic system.

**Facility** - Any real property (including any abutting real property) and any buildings thereon, which is served, is proposed to be served, or could in the future be served, by a system or systems, where:

(a) legal title is held or controlled by the same owner or owners; or  
(b) the local Approving Authority or the Department (DEP) otherwise determines such real property is in single ownership or control pursuant to 310 CMR 15.011 (aggregation).

**Lot:** An area or parcel of land in undivided ownership with definite boundaries, used or available for use as the site of one (1) or more buildings.

**Multi-Family Housing:** Condominiums, apartments, apartments incidental to commercial space, boarding houses and congregate, cluster or attached housing where the individual units are either owned or rented.

**New Construction:** The construction of a new building for which an occupancy permit is required or an increase in the actual or design flow to any existing structure through addition, renovation or modification or a change in use. New construction shall not include replacement or repair of an existing building totally or partially destroyed or demolished if there is no increase in flow.

**Nitrogen:** All nitrogenous compounds.

**Non-conformity:** Does not meet the requirements of Title 5 or the Orleans Board of Health Regulations.

**Nutrient Sensitive Area:** Those portions of the mainland of Orleans where groundwater, the aquifer, and adjacent estuarine environments can be significantly altered by addition of nitrogen or phosphorus; or those areas identified and required by Department of Environmental Protection-TMDL's to have nitrogen input mitigated.

**On-site Subsurface Sewage Disposal System:** A system or series of systems for the treatment and disposal of sanitary sewage below the ground as defined by 310 CMR 15.000 of the State Environmental Code, Title 5.

**Phosphorus:** All phosphoric compounds.

**Sun Room/Porch:** A room designed to have a minimum of 40% glazed area (window area) of the total combined exterior wall and ceiling area of the room. In calculating the total glazed area only the translucent or transparent window area should be considered (rough opening or unit dimension shall not be considered).

**Watershed:** For the purposes of this regulation a watershed is defined as the area of land under which the ground water collects and flows towards or into a specific pond and/or estuary.

## **Section 5 Transition Rules:**

Except as explicitly set forth in Section 6.2 the provisions of the Orleans Nutrient Management Regulations shall apply to all facilities (properties) regardless of date of permit approval, construction or approved capacity of any septic system in the Town of Orleans.

### **5.1 Applications for New Construction, renovations, additions or change of use of a facility that increases the design flow to the septic system.**

#### **5.1.1 Disposal Works Construction Permit Application**

5.1.1.1 Complete Applications for Disposal Works Construction Permits filed prior to July 1, 2009 shall be reviewed, and if approved, such system shall be constructed and a Certificate of Compliance shall be issued within three years of the date the application was approved.

5.1.1.2 Upon receipt of a written request detailing the facts that prevented the filing of an application for a Disposal Works Construction Permit prior to July 1, 2009, the Board of Health or its agent may grant an applicant a six month extension to the required submittal date as defined in Section 5.1.1.1. Only one extension may be granted per parcel.

#### **5.1.2 Building Permit Applications filed after the effective date of this regulation shall be reviewed as follows:**

5.1.2.1 If a there is an Active Disposal Works Construction Permit on file with the Health Department prior to the effective date of these regulations showing an Approved Capacity adequate for a specific project the Board of Health will sign off on a building

permit application for that project if the applicant demonstrates that the sewage disposal system will be constructed and connected to the foundation wall and a Certificate of Compliance can be issued prior to the expiration of the Disposal Works Construction Permit.

- 5.1.2.2 If there is a complete Application for Disposal Works Construction Permit filed with the Health Department prior to the effective date of these regulations showing an Approved Capacity adequate for a specific project the Board of Health will sign off on a building permit application for that project if the applicant demonstrates that the sewage disposal system will be constructed and connected to the foundation wall and a Certificate of Compliance can be issued prior to the expiration of the Disposal Works Construction Permit.
- 5.1.2.3 If there is an existing septic system with an Approved Capacity as shown on the Disposal Works Construction Permit or as shown on the Certificate of Compliance on file with the Health Department, which Approved Capacity is sufficient for the proposed project, the Board of Health will approve the project if the building permit application for the project is filed prior to July 1, 2012.
- 5.1.2.4 Any application for a building permit filed after July 1, 2012, regardless of the Approved Capacity of the septic system will be subject to the full provisions of these regulations.

## **Section 6 Applicability**

6.1 The following projects shall be subject to the provisions of this regulation:

- 6.1.1 New commercial development with a Title 5 sewage flow under 10,000 gallons per day.
- 6.1.2 Existing commercial development with a total Title 5 sewage flow of under 10,000 gallons per day where an addition or a change in use is proposed that will increase the sewage flow over the existing flow but still be less than 10,000 gallons per day.
- 6.1.3 Division of Land creating more buildable lots, regardless of existing dwelling units.
- 6.1.4 Construction of multi-family housing.
- 6.1.5 Construction of single family dwellings.

- 6.1.6 Alterations, additions or changes in use to existing dwellings that would increase the calculated sewage design flow.
- 6.1.7 The division of land involving existing dwelling units.
- 6.2 The following are exempt from the provisions of this regulation:
  - 6.2.1 Facilities with a design flow of 10,000 gallons per day or greater which fall under the jurisdiction of the Massachusetts DEP Groundwater Discharge Permit Program.
  - 6.2.2 Properties located within the Village Center District as defined by The Orleans Zoning Map.
  - 6.2.3 Properties located within the General Business District as defined by The Orleans Zoning Map with the exception of apartment developments having three or more dwelling units.
  - 6.2.4 Properties located in the Industrial District as defined by The Orleans Zoning Map.

## **Section 7 General Requirements**

- 7.1 No Disposal System Construction Permit shall be issued by the Board of Health or its Agent for any of the projects described in Section 6.1 above unless the proposed system is designed to receive or shall receive four hundred forty (440) gallons per day or less per forty thousand square feet (40,000) of lot area or ratio thereof.
- 7.2 This regulation shall not prohibit the construction of a two (2) bedroom house on any lot providing that said lot is not in an area subject to Nitrogen Loading Limitations or a Nitrogen Sensitive Area, as defined in Title 5 or in District II of the Orleans Ground Water Protection District and all other Local and State requirements are met.
- 7.3 No facility described in Section 6.1 shall be expanded or have a change of use that increases the design flow until a Disposal System Construction Permit has first been obtained, unless the Board of Health, or its Agent, determines that the existing sewage disposal system is adequate (per Title 5 and the Orleans Board of Health Subsurface Sewage Disposal Regulations), including documentation that the facility's design flow is less than or equal to 440 gallons per 40,000 square feet of lot area or the ratio thereof.

- 7.4 The owner of any lot reduced in area by the laying out, and acceptance of, a road or roads as a public way or ways, or for any other municipal purposes serving the common good, shall be allowed to use the area taken in determining compliance with this regulation. This shall apply only to the owner of record at the time of the lot's reduction in area.
- 7.5 The division of land involving existing dwelling units shall not render the existing dwelling unit as noncompliant with these regulations.

## **Section 8 Variances**

- 8.1 Variances from this regulation may be granted by the Board of Health only as follows:

- 8.1.1 Variance Requests not Demonstrating a Hardship:

- 8.1.1.1 For residential lots less than 40,000 square feet the Board may allow, by variance, an additional 110 gallons per day over the number allowed by Sections 7.1 and 7.2 with the use of an Innovative/Alternative Nutrient Reducing Technology in conjunction with the on-site subsurface sewage disposal system.
- 8.1.1.2 If applying for a variance under Section 8.1.1.1 an applicant shall supply a nitrogen loading report, accepted by the Board of Health, prepared by a Professional Engineer or Registered Sanitarian demonstrating that the proposed septic system will offer the same level of protection to the ground or surface water resource as would be provided by the strict application of this regulation.
- 8.1.1.3 Only technologies approved by the DEP for enhanced nutrient removal pursuant to either the piloting, provisional or general use certification provisions in Title 5 (310 CMR 15.281 through 15.288) may be used to comply with Section 8.1.1.1.

- 8.1.2 Standard of Review for all other variances:

- 8.1.2.1 If the applicant demonstrates to the satisfaction of the Board of Health, that a literal enforcement of this regulation would involve substantial hardship, financial or otherwise, to petitioner(s), i.e. it would deprive the landowner of reasonable use of the lot in question; and

- 8.1.2.2 If the applicant demonstrates to the Board of Health that the discharge of effluent from the proposed septic system will offer the same level of protection to the ground or surface water resource as would be provided by the strict application of this regulation.
- 8.2 Every request for a variance shall be made in writing and shall state the specific variance sought and the reasons therefore. No variance shall be heard except after the applicant has notified all abutters by certified mail at his own expense at least ten (10) days before the Board of Health meeting at which the variance request will be on the agenda. The notification shall state the specific variance sought and the reasons therefore.
- 8.3 If applying for a variance under subsection 8.1.2 above, the petitioner shall at a minimum submit:
  - 8.3.1 Written documentation as to why the enforcement of this regulation would cause hardship.
  - 8.3.2 A nitrogen loading report, accepted by the Board of Health, prepared by a Professional Engineer or Registered Sanitarian demonstrating that the proposed septic system will offer the same level of protection to the ground or surface water resource as would be provided by the strict application of this regulation.
  - 8.3.3 A plan prepared by a Professional Engineer or Registered Sanitarian indicating:
    - a. The Watershed and Sub-Watershed in which the proposed septic system is located;
    - b. Depth to ground water;
    - c. Soil conditions; topography;
    - d. All surface waters;
    - e. All wetlands located within two hundred feet (200') of the proposed system;
    - f. Any other information deemed pertinent by the Board of Health.
- 8.4 The Board of Health will consider, but not be limited to, the following factors when reviewing a variance application:
  - 8.4.1 Setbacks from surface water resources.
  - 8.4.2 Present or future private or public drinking water wells.
  - 8.4.3 The implementation schedule of the town's Comprehensive Wastewater Management Plan.

- 8.5 Any variance granted by the Board of Health shall be in writing. Any denial of a variance shall also be in writing and shall contain a brief statement of the reasons for the denial. While it is in effect, a copy of each variance granted shall be made available to the public at all reasonable hours in the office of the Health Department.
- 8.6 Any variance or other modification authorized to be made by this regulation may be subject to such qualifications, revocations, suspensions, or expiration as the Board of Health expresses in its grant. A variance or other modification authorized to be made by this regulation may otherwise be revoked, modified, or suspended, in whole or in part, only after the holder thereof has been notified in writing and has been given the opportunity to be heard, in conformity with the requirements for an order and hearing as contained in 310 CMR 11.07 and 11.08 of the State Environmental Code, Title 5.
- 8.7 Any variance or modification authorized by this regulation shall be subject to a covenant from the owner which shall be recorded in the Registry of Deeds or Registry District of the Land Court, as appropriate, stating that:

“At such time as the Town of Orleans through its Board of Health and/or Board of Water Commissioners, or the equivalent of those Boards, directs the connection of the land herein described to a municipal sewer, the construction of enhanced wastewater treatment system, connection to a shared septic system, or any other wastewater management option for the removal of nitrogen (or phosphorus), [owner], for myself and my successors and assigns, covenant and agree to comply with such direction. The Board of Health and/or the Board of Water Commissioners, or the equivalent of those Boards, shall determine the schedule for compliance.”

## **Section 9 General Enforcement**

The Orleans Board of Health, its designated agents, enforcement officers and anyone with police powers, may enforce this regulation.

## **Section 10 Orders: Service and Content**

- 10.1 The Board of Health and its designated agents may issue orders requiring the owner or operator of a facility to comply with the provisions of this regulation or to take any other action necessary to protect public health, safety, welfare, or the environment.

- 10.2 Orders may be served on any person responsible for a violation of this regulation in accordance with the following procedure:
- 10.2.1 Personally, by any person authorized to serve civil process,  
or
  - 10.2.2 By any person authorized to serve civil process by leaving a copy of the order at his/her last and usual place of abode, or
  - 10.2.3 By sending the owner a copy of the order by registered or certified mail, return receipt requested, if he is within the Commonwealth, or
  - 10.2.4 If his last and usual place of abode is unknown or outside the Commonwealth, by posting a copy of the order in a conspicuous place on or about the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building or premises affected is situated.

## **Section 11 Hearing**

- 11.1 Unless otherwise specified in this regulation, any person aggrieved by the determination of the Health Department or other personnel of the Board of Health, may request a hearing before the Board of Health by filing a written petition to the Board of Health.
- 11.2 Upon receipt of such petition, the Board of Health shall set a time and place for such hearing and shall inform the petitioner thereof in writing. The hearing shall be commenced no later than 30 days after the day on which the order was served. The Board of Health, upon application of the petitioner, may postpone the date of hearing for a reasonable time beyond such 30-day period if, in the judgment of the Board of Health, the petitioner has submitted a good and sufficient reason for such postponement.
- 11.3 At the hearing the petitioner shall be given the opportunity to be heard, to present witnesses or documentary evidence, and show why the decision of the Health Department or other agents of the Board of Health should be modified or withdrawn. Failure to hold a hearing within the time period specified shall not affect the validity of any order.

## **Section 12 Appeal**

Any person aggrieved by the final decision of the Board of Health with respect to any order issued under the provisions of this regulation may seek relief there from in any court of competent jurisdiction, as provided by the laws of this Commonwealth.

## **Section 13 Penalties**

- 13.1 Violation of this regulation will be subject to the provisions of Massachusetts General Laws, Chapter 40, Section 21D, regarding non-criminal dispositions as adopted by the Town of Orleans.
- 13.2 Any person who knowingly violates any provision of this regulation may be subject to a One Hundred Dollar (\$100) fine for each offense. Each day of noncompliance constitutes a separate offense.

## **Section 14 Severability**

- 14.1 Whenever possible, these regulations shall be deemed to be supplementary to (not contradictory with) state and federal statutes and regulations.
- 14.2 In the event any of these regulations shall be held invalid, any such regulation or regulations shall be deemed to be severed from the others and struck from these rules, but the remaining regulations shall continue in full force.

Sims McGrath, Jr., Chairman  
Robin K. Davis, Vice Chairman  
Susan B. Christie  
Augusta F. McKusick  
Jan Schneider, M.D.

ORLEANS BOARD OF HEALTH  
November 18, 2008

Adopted: November 18, 2008  
Effective: July 1, 2009



# TOWN OF ORLEANS

19 SCHOOL ROAD ORLEANS MASSACHUSETTS 02653-3699  
Telephone (508) 240-3700 Extension 305 - Fax (508) 240-3388

OFFICE OF  
TOWN CLERK

**The following is a certified copy of Article #17 and the "DOINGS" thereof from the Annual Town Meeting of May 11, 2009:**

## **ARTICLE 17. ACCEPTANCE OF M.G.L. CH. 83 §1A: REGARDING INSTALLATION OF SEWER MAINS**

To see if the Town will vote to accept the provisions of M.G.L. Chapter 83 §1A, as amended by Ch. 312 of the Acts of 2008, which authorizes the Town to lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for that part of its territory as it adjudges necessary to reduce or eliminate the impacts of nutrient enrichment on surface water bodies or sources of drinking water with such connections and other works as may be required for a system or systems of sewerage and drainage and sewage treatment and disposal, or to take any other action relative thereto. (Simple Majority Vote Required)

**MOTION:** To accept and adopt Article #17 as printed in the warrant.

**ACTION:** Voted, voice vote carries unanimously.

A TRUE COPY, ATTEST:

Cynthia S. May, Town Clerk