

## Amendment A: Groundwater Protection Ordinance

**Revised for January 30, 2023 public hearing**

**Description:** In the Warner Zoning Ordinance amend Articles II and III and add new Article XI-B to adopt district boundaries, definitions, and standards for a new Groundwater Protection District. This amendment also includes the adoption of an accompanying district map.

### **Article II.A Amendment:**

Add “Groundwater Protection District” to the list of district names as an overlay district as item II.A.

### **Article II.C Amendment:**

Amend Article II.C by adding a new item II.C.4 it as follows:

A. Interpretation of Groundwater Protection District Boundaries:

1. District Boundaries. The Groundwater Protection District shall be an overlay district as depicted on a map entitled Warner Groundwater Protection Overlay District and dated March 14, 2023 and filed at the Warner Town Clerk’s Office. Said overlay district is based on aquifer transmissivity data as collected by the U.S. Geological Survey (1989 to 1998) and depicted in N.H. Department of Environmental Services GIS data; and, wellhead protection boundaries for community drinking water supplies as developed by, and depicted in N.H. Department of Environmental Services GIS data.
2. Disputed Boundaries. When the actual boundary of the Groundwater Protection District is in dispute by any landowner or abutter affected by said boundary, the Planning Board, at the landowner/abutter’s expense and request, may engage the services of a professional geologist, hydrologist, or hydrogeologist to prepare a report addressing the location and extent of the aquifer and recharge area relative to the property in question. The Planning Board is further authorized to consider the boundaries in said report, based upon compelling evidence, as the revised boundary of the District for the parcel(s) in question.

### **Article III Amendment:**

Add the following defined terms, alphabetically, to Article III, Definitions:

“**Aquifer**” A geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

“**Biosolids**” means any sludge derived from a sewage wastewater treatment facility that meets the standards for beneficial reuse specified by the New Hampshire Department of Environmental Services as defined in RSA 485-A:2, XXII, as amended.

“**Bulk Plant or Terminal, Petroleum**” That portion of the property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and are stored or

blended in bulk for the purpose of distributing such liquids by tank vessel, pipeline tank car, tank vehicle, portable tank, or container.

**“Bulk Storage”** Is the storage of any regulated substances with an above ground storage capacity of more than 1,320 gallons or any single container with a capacity greater than 660 gallons.

**“Groundwater”** Subsurface water that occurs beneath the water table in soils and geologic formations:

**“Gas Station”** That portion of a property where petroleum products are received by tank vessel, pipeline, tank car, or tank vehicle and distributed for the purposes of retail sale ~~of gasoline.~~

**“Impermeable Surface”** A surface through which regulated substances cannot pass when spilled. ~~Impervious-Impermeable~~ surfaces include concrete unless unsealed cracks or holes are present. Earthen, wooden, or gravel surfaces; or other surfaces which could react with or dissolve when in contact with the substances stored on them, are not considered ~~impervious-impermeable~~ surfaces.

**“Junkyard”** An establishment or place of business whose primary purpose is the storage of unregistered vehicles or other scrap material as maintained in accordance with the standards set forth and enforced by RSA 236:111 through 129, as amended. A junkyard does not include a lawfully permitted auto vehicle dealership.

**“Outdoor Storage”** Storage of materials where they are not protected from the elements by a roof, walls, and a floor with an ~~impervious-impermeable~~ surface.

**“Public Water Supply/Public Water System”** A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year, under RSA 485:1-a.

**“Regulated Substance”** Petroleum products, and substances listed under 40 CFR 302, 7-1-05 edition, as amended.

**“Secondary Containment”** A structure such as a berm or dike with an ~~impervious impermeable~~ surface which is adequate to hold at least 110 percent of the volume of the largest regulated-substances container that will be stored there.

**“Snow Dump”** For the purposes of the Groundwater Protection Ordinance, a snow dump is a location where snow, which has been cleared from off-site locations, is placed for disposal.

**“Stratified Drift Aquifer”** A geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including sand and/or gravel, which contains sufficient saturated permeable material to yield useable quantities of water to wells.

**“Surface Water”** Streams, lakes, and ponds, including marshes, wetlands, watercourses, second order streams or higher, and other bodies of water, natural or artificial.

**“Wellhead Protection Area”** The surface and subsurface area surrounding a water supply well or wellfield that supplies a community public water system, through which groundwater and contaminants could potentially migrate to reach the water well or wellfield.

**Article XI-B Amendment:**

New Article XI-B: Groundwater Protection District.

XI-B: Groundwater Protection District.

A. Authority.

The Town of Warner hereby adopts this ordinance pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II, relative to innovative land use controls, pursuant to RSA 674:21.

B. Purpose.

The purpose of this ordinance is, in the interest of the public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater. The purpose is to be accomplished by regulating land uses which could contribute pollutants to designated wells and/or stratified drift aquifers identified as being needed for present and/or future public water supply.

C. Applicability.

1. The ordinance applies to all new or expanded uses in the Groundwater Protection District, except for Permitted Uses as described in this ~~Chapter~~ordinance.
2. This ordinance does not apply to residential uses.

D. Existing Non-Conforming Uses.

Existing Non-Conforming Uses may continue without expanding or changing to another non-conforming use.

E. Permitted Uses.

All uses permitted by right or by special exception in the underlying district are permitted in Groundwater Protection District unless they are Prohibited Uses or Conditional Uses. This also includes:

1. Any private residence ~~is exempt~~;
2. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle;

3. Temporary storage of construction materials on a site where they are to be used within the site development project within six months of their deposit on site;
4. The sale, transportation, and use of pesticides that are in compliance with any applicable state and federal regulations;
5. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Hw 401.03(b)(1) and Env-Hw 501.01(b);
6. Underground storage tank systems and aboveground systems that are in compliance with applicable state rules, except those associated with a Gas Station, which require a Conditional Use Permit.

#### F. Prohibited Uses.

The following uses are prohibited in the Groundwater Protection District:

1. The development or operation of a solid waste landfill or processing facility;
2. Disposal, processing, storage, or recycling of hazardous waste, as defined in NH RSA 147-A:2, VII;
3. The outdoor storage of road salt or other deicing chemicals in bulk;
4. The development or operation of a junkyard;
5. The development or operation of a snow dump;
6. Biosolids processing/disposal/mixing/application; and,
7. The development or operation of a petroleum bulk plant or terminal.

#### G. Conditional Use Permits

The Planning Board may grant a conditional use permit for a use which is otherwise permitted within the underlying district, if the permitted use is involved in one or more of the following:

1. The development or operation of gas stations.
2. Storage, handling, and use of regulated substances in quantities equal to or exceeding reportable quantities (RQ) as specified in 40 CFR 302, 7-1-05 edition as amended.
3. Any use listed as prohibited in this Article that receives a variance from the Warner Zoning Board of Adjustment.

#### H. Conditional Use Permit Requirements.

In accordance with RSA 674:21, Innovative Land Use Controls, the Planning Board is authorized to issue Conditional Use Permits (CUP) for Conditional Uses within the Groundwater Protection Overlay District in the following manner:

1. A completed application shall consist of a completed application form, fees, a project narrative, and plan depicting the proposal, including any other documents,

permits, studies or analysis the Planning Board may need to make an informed decision on the application.

2. Application Process:

- a. Applications may be processed at a duly noticed public hearing either individually or with a concurrent Site Plan, Subdivision, or Excavation Application, as applicable.
- b. A Conditional Use Permit shall be issued by the Planning Board only if all of the following Conditional Use Permit Elements, in the ~~opinion~~ sole discretion of the Board, have been demonstrated by the applicant:
  - i. That the proposed use complies with the use and dimensional requirements of the underlying zone; or any Variance(s) or Special Exception(s) that may have been granted;
  - ii. Gasoline stations comply with minimum setbacks from public water supply wells per We 600, Part We 602, Section We 602.11, Well Location: Underground Storage Tanks and presents effective practices that limit gasoline discharges via stormwater.
  - iii. That a Spill Prevention, Control, and Countermeasure Plan (SPCC) has been approved by the Fire Chief (EPA Tier 1 Template is recommended);
  - iv. And, that the proposal employs the NHDES standards for “best management practices” in accordance with New Hampshire Code of Administrative Rules Part Env-Wq 401 Best Management Practices for Groundwater Protection as required by NH RSA 485-C:11, as may be amended from time to time.

I. Relationship Between State and Local Requirements.

1. Compliance with the provisions of these Requirements does not preclude or excuse an applicant or landowner from complying with any other local, state, and federal requirements.
2. Where both the State and municipality have existing requirements the more stringent shall govern.

J. Enforcement Procedures/Penalties.

Any violation of the requirements of this ordinance shall be subject to enforcement procedures and penalties detailed in RSA 485-C and RSA 676:17 ~~and RSA 676:17-a~~.

K. Effective Date: ~~(insert)~~ This ordinance shall be effective upon adoption by the legislative body.