

# FAIRHAVEN CODE

## GENERAL REFERENCES

Conservation Commission – See Ch. 8  
Planning Board – See Ch. 65  
Garages and service stations – See Ch. 125  
Marina regulations – See Ch. 132

Wetlands – See Ch. 192  
Subdivision of land – See Ch. 322  
Animals – See Ch. 405  
Swimming pools – See Ch. 475

---

## ARTICLE 1

### Authority; Purpose; Administration and Enforcement

[Amended 3-23-1968 ATM by Art. 58; 4-4-1970 ATM by Art. 60; 3-15-1973 ATM by Art. 74;  
2-9-1978 STM by Art. 2; 5-3-1986 STM by Art. 6; 5-7-1988 ATM by Art. 10; 5-9-1989 ATM by  
Art. 20; 5-4-1991 ATM by Art. 24]

#### § 198-1. Authority.

This chapter is adopted pursuant to the authority granted by Chapter 40A of the General Laws of the Commonwealth of Massachusetts and any amendments thereof.

#### § 198-2. Purpose

This chapter is enacted for the following purposes:

- A. To promote the health, safety, convenience and general welfare of the inhabitants of the Town of Fairhaven.
- B. To lessen the danger from fire, flood, panic and other natural or manmade disasters.
- C. To improve and beautify the town.
- D. To prevent overcrowding of land.
- E. To avoid undue concentration of population.
- F. To facilitate the adequate needs of water, water supply, drainage, sewerage, schools, parks, open space and other public requirements.
- G. To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment.
- H. To encourage the most appropriate use of land throughout the town.
- I. To preserve and increase amenities by the promulgation of the regulations to fulfill said objectives.

#### § 198-3. Administration.

This chapter shall be administered by the Building Commissioner. No building shall be erected, structurally or externally altered and no use of land or a building shall be started or changed without a building permit having been issued by the Building Commissioner. No premises shall be equipped or used without an occupancy permit issued by the Building Commissioner. No such permits shall be issued for construction or use in violation of any provisions of this chapter.

#### § 198-4. Enforcement.

The Building Commissioner may institute appropriate legal proceedings to enforce the provisions of this chapter or to restrain by injunction any violation thereof, or both, and shall institute and take any and all such action as may be necessary to enforce full compliance with any and all of the provisions of this chapter.

#### § 198-5. Violations and Penalties.

Any person, business or other legal entity violating any provision of this chapter, any conditions under which a permit is issued or any decision rendered by the Zoning Board of Appeals or other special permit granting authority, may be fined not more than \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense.

### **§ 198-6. Planning Board.**

The Fairhaven Planning Board is hereby designated as one of the special permit granting authorities (SPGA) under the provisions of MGL c.40A, § 9. (See § 198-15C of this chapter).

### **§ 198-7. Board of Appeals.**

- A. There is hereby established a Zoning Board of Appeals of five members and four associate members appointed by the Selectmen, as provided in MGL c.40A, which shall act on all matters within its jurisdiction under this chapter in the manner prescribed in Chapter 40A of the General Laws. The Board established hereunder shall act as the permit granting authority for appeals under MGL c.40A, §§ 8 and 10, and one of the special permit granting authorities as provided in MGL c. 40A, § 9. This subsection should not be construed as to limit any of the authority of the Zoning Board of Appeals under any other section of Chapter 40A.
- B. An appeal to the Zoning Board of Appeals may be taken by any person aggrieved by reason of his/her inability to obtain a permit or enforcement action from the Fairhaven Building Commissioner for reasons in violation of the provisions of Chapter 40A or this Chapter 198, Zoning, as provided under MGL c.40A, § 8. An appeal to the Zoning Board of Appeals may also be taken by the Regional Planning Agency for the Town of Fairhaven, an officer or board of the Town of Fairhaven or an abutting city or town of Fairhaven who is aggrieved by an order or decision of the Fairhaven Building Commissioner pertaining to the provisions of Chapter 40A, or this Chapter 198, Zoning, as prescribed under MGL c.40A, § 8.
- C. The Zoning Board of Appeals shall not hear an appeal from any decision made by another special permit granting authority as established under MGL c.40A, § 9. Such appeals shall be made to Superior Court as required under MGL c.40A, § 17. The Zoning Board of Appeals shall hold public hearings in accordance with the provisions of Chapter 40A on all appeals and petitions brought before it.

### **§ 198-8. Special Permit**

- A. A special permit issued by a special permit granting authority (SPGA) as provided for in this chapter shall be required for certain uses permitted in specified districts. Such special permits may be issued for specific uses, which are in harmony with the general purpose and intent of this chapter and shall be subject to additional conditions, safeguards and limitations on time, space and use as the designated SPGA may reasonably require. A special permit shall not be issued by an SPGA for an excluded or prohibited use as defined in this chapter. The SPGA shall take into account the general purpose and intent of this chapter and, in order to preserve the community values, may impose conditions and safeguards deemed necessary to protect the surrounding neighborhood, in addition to the applicable requirements of this chapter, and shall not issue a special permit which shall appear to be detrimental to the public interest because:
  - (1) It appears that the intent of the performance standards of § 198-24 or other requirements of this chapter cannot be or will not be met.
  - (2) Traffic generated or patterns of access and egress would cause congestion, hazard or substantial change in established neighborhood character.
  - (3) The continued operation of or development of adjacent uses as permitted by this chapter would be adversely affected by the nature of the proposed use.
  - (4) A nuisance or hazard would be created.
  - (5) The specific proposal derogates from the intent and purpose of the chapter.
- B. No Special Permit shall be issued except following a Public Hearing within 65 days after filing of an application with the granting authority. Failure of the special permit granting authority to act within 90 days following said public hearing shall be deemed a grant of the application. A special permit granted under this section shall lapse if substantial use thereof or construction has not begun within two years, except for good cause.

**§ 198-9. Variances.**

The Zoning Board of Appeals may authorize upon appeal, or upon petition in cases where dimensional modifications are sought with respect to a particular parcel of land or to an existing building thereon, a variance from the terms of this chapter, where, owing to conditions specifically affecting each parcel or such building, but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the appellant and where desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise. The Zoning Board of Appeals shall hold a public hearing in accordance with the provisions of Chapter 40A on all variance applications brought before it.

**§ 198-10. Amendments.**

This chapter may from time to time be changed by amendment, addition or repeal by the Town Meeting in the manner provided in MGL c.40A, § 5, and any amendments therein.

**§ 198-11. Validity**

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof.

**§ 198-12. Applicability of greater restrictions**

Where the application of this chapter imposes greater restrictions than those imposed by any other regulations, permits, restrictions, easements, covenants or agreements, the provisions of this chapter shall control.

**§ 198-13. When effective**

This chapter shall take effect when, following adoption by the town, it is approved by the Attorney General of the Commonwealth of Massachusetts and is published or posted as provided by law. Upon its effective date, it shall supersede the Zoning Bylaw and all amendments to it previously in effect.