

# BETTERMENT FUNDING REGULATION

## BOARD OF HEALTH

### TOWN OF BOURNE

Effective September 20, 1996

Pursuant to Chapter 111, Section 31 of Massachusetts General Law, the Bourne Board of Health, at its regular meeting held on August 28, 1996, voted to adopt the following:

#### SECTION 1: AUTHORITY

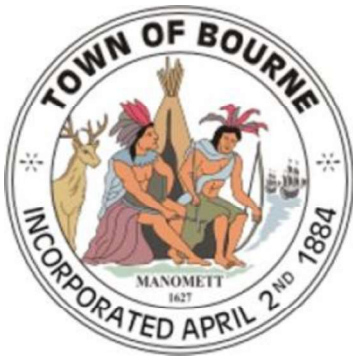
The Board Of Health issues these regulations to govern the remediation of failing residential subsurface sewage disposal systems, the removal of residential underground fuel storage tanks, and the deluding of residential dwellings with dangerous levels of lead, pursuant to its authority under Chapter 111, Section 31, of the Massachusetts Generals Laws and Chapter 111, Section 127B 1/2, of Massachusetts General Laws and funding provided by Article 31 of the 1995 Annual Town Meeting and Article 50 of the 1996 Annual Town Meeting.

#### SECTION 2: PURPOSE

To financially assist residential property owners in the remediation of failing residential subsurface sewage disposal systems, the removal of underground fuel storage tanks and the de leading of residential dwellings with dangerous levels of lead.

#### SECTION 3: DEFINITIONS

The following definitions shall apply in the interpretation, implementation and enforcement of these regulations.



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"Property Owner" A person who, alone or together with other persons, has legal title to residential facilities served by on-site septic systems, residential properties containing underground fuel storage tanks, or residential dwellings with dangerous levels of lead, including but not limited to any agent, executor, administrator, trustee, or guardian of the estate for the holder of legal title.

"Person of low income" shall mean a person who is of low income as based on income criteria used by the Massachusetts Housing Finance Agency.

"Person of moderate income" shall mean a person who is of moderate income as based on income criteria used by the Massachusetts Housing Finance Agency.

"Residential real estate" shall mean land and existing buildings used for human habitation.

"System" shall mean a residential septic system or cesspool.

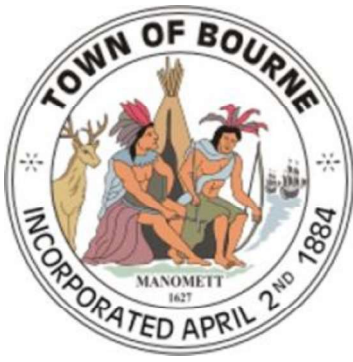
"Upgrade" shall mean repair or replacement of a failing system.

#### SECTION 4: ELIGIBILITY GUIDELINES

The following criteria shall be used to establish a property owner's eligibility for betterment funding under these regulations:

(A) The system must have been designated a failed system by the Bourne Board of Health and/or its agents

(B) The system, underground fuel storage tank, or level of lead, must have been determined by the Board of Health and/or its agents to be threatening public health, safety, welfare or the environment.



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(C) The residential real estate must be an existing owner-occupied single-family or two-family home that is used for residential purposes only.

(D) The residential real estate must be located on a way that is neither currently served by a common sewer line nor likely to be included in any municipal sewer extension project within five (5) years if betterment funding is to be used for a septic system upgrade.

(E) The property owner must not be delinquent on the payment of property taxes, excise taxes, betterment's or any obligations to the Town of Bourne.

(F) The Board of Health will not consider betterment funding of a system upgrade that provides additional wastewater treatment capacity sufficient to accommodate an expansion of the residential estate beyond its current use.

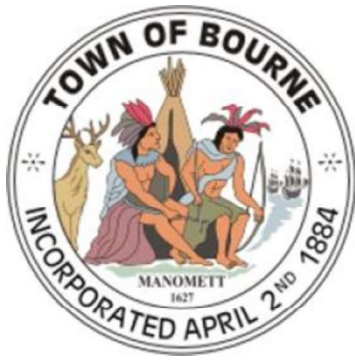
(G) The applicant(s) shall provide written proof that they have been denied a loan by two (2) commercial lending institutions for the amount being requested for the betterment funding.

(H) A certification of authority shall be filed with each application.

(I) The applicant(s) must not be, nor have been, a party seeking personal relief in bankruptcy proceedings within the last seven (7) years from the date of application.

### SECTION 5: APPLICATION PROCEDURES

(A) Application for betterment funding shall be accepted by the Board of Health twice annually, during the 30 days prior to January 15 and July 15, or any time in the event of conditions that, in the judgment of the Board of Health, constitute an environmental or public health emergency.



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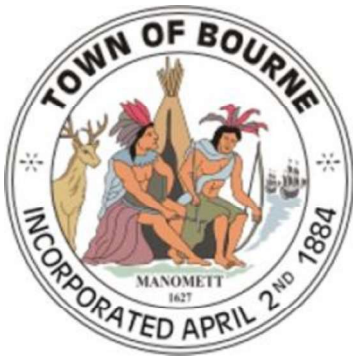
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(B) Property owners wishing to obtain betterment funding for septic system upgrades, removal of underground fuel storage tanks, and removal of dangerous levels of lead, shall complete an application form provided by the Board of Health, a copy of which is attached to these regulations and incorporated herein by reference. In addition to the application form, they must submit to the Board of Health evidence that their systems have been inspected and found to be failing, and/or that the dwelling contains dangerous levels of lead. The applicant shall include the plans, specifications, procedures or design by a licensed engineer, or registered sanitarian. Said plans, specifications, procedures or designs shall comply with Title 5 of the State Environmental Code, state regulations and local Board of Health regulations, or have the necessary variances granted therefrom.

(C) The Board of Health will determine the priority of the need for betterment funding based on the threat(s) posed to the public health, safety, welfare of the environment, together with the financial hardship on the property owner by each failing system, underground fuel storage tank, or dwellings containing dangerous levels of lead, for which upgrade assistance is being sought. .

(D) While all property owners meeting the criteria in Section 4 shall be eligible, available funding may not be sufficient to meet the needs of all applicants. In that event, the Board of Health may require applicants to document financial hardships that would prevent them from undertaking the necessary upgrades without the assistance from the Town of Bourne. The Board of Health reserves the right to obtain a credit report on the applicant(s) and classify them as low or moderate income, only for the purpose of determining financial hardship relative to this betterment program. The Board of Health is obligated to ensure the confidentiality of any financial information provided by the applicant(s) or a credit reporting bureau.



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### SECTION 6: COST ESTIMATES, BIDS AND CONSTRUCTION

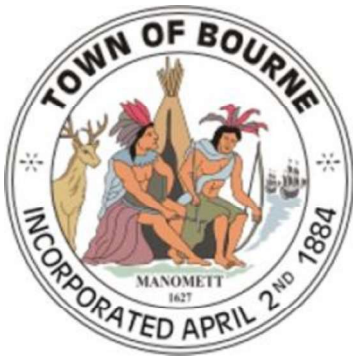
(A)The Board of Health shall develop a scope of work and obtain cost estimates accordingly, for each system upgrade, removal of underground storage tank, and removal of dangerous levels of lead, approved for betterment funding. The Board of Health, in consultation with the Town treasurer, will provide a written estimate of all costs to be levied against the property owner, including but not limited to engineering, design, construction, administrative, legal and other related costs, plus interest.

(B)Upon receipt of a signed Agreement from the property owner, including an approval of the cost estimate, the Board of Health will vote the sum necessary from available funds.

(C)The property owner may rescind the Agreement for any reason within ten (10) days of the date it is received by the Board of Health. The rescission must be in writing.

(D)Upon approval of funding and expiration of the rescission period, the Board of Health or its agent(s) will obtain bids in accordance with Chapter 30B of the Massachusetts General Laws, execute agreements with the necessary contractors, and monitor all system upgrade work performed on the premises of the residential real estate.

(E)The Board of Health or its agent(s) shall, upon completion of all tasks specified in the scope of work, inspect the upgraded system to certify its compliance with Title 5 of the State Environmental Code, state regulations and local Board of Health regulations.



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(F) Any costs associated with the environmental remediation unrelated to the system, removal of the underground fuel storage tank, and removal of dangerous levels of lead, or other ancillary work that may be required upon completion of the upgrade, including landscaping, shall be the sole responsibility of the property owner.

#### SECTION 7: REPAYMENT AND LIEN PROCEDURES

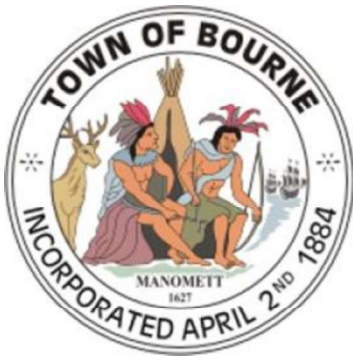
(A) Within six (6) months after construction is completed and the upgraded system is certified by the Board of Health to be in compliance with Title 5 of the State Environmental Code, state regulations and local Board of Health regulations, the total cost, not to exceed the amount stipulated in the Agreement, shall be assigned to the property owner and the time for repayment shall be specified. The property owner shall be personally liable for the repayment of the total cost.

(B) After the Board of Health certifies the total cost to the Board of Assessors, the apportioned assessment shall be committed to the Tax Collector. The Tax Collector may accept settlement in cash for the full amount within thirty (30) days. Otherwise, the Tax Collector shall bill the property owner for the total cost, to be divided over a period of years, with interest to be computed as set forth in Chapter 111, Section 127B 1/2, of the Massachusetts General Laws.

(C) The time for repayment shall be a maximum of ten (10) years for a project cost of under five thousand dollars (\$5,000.00) and a maximum of twenty (20) years for a project cost of five thousand dollars (\$5,000.00) or more.

(D) The Town shall have a lien to secure payment in the same manner as it acquires a lien for a betterment assessment under Chapter 80 of the Massachusetts General Laws.





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### SECTION 8: RIGHT OF ENTRY

The Board of Health and its agent(s) or contractor(s) may enter upon privately-owned property, with reasonable notice and at reasonable hours, for the purpose of ensuring compliance with these regulations.

### SECTION 9: VARIANCES

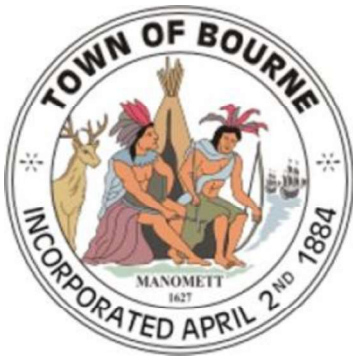
The Board of Health may vary the application of any provisions of these regulations, unless otherwise prohibited by law, in any case when, in the opinion of the Board of Health, enforcement will do manifest injustice. Every request for a variance shall be made in writing, and shall be subject to a public hearing before the Board of Health. The property owner must at his or her sole expense notify all abutters by certified mail at least ten (10) days prior to the public hearing. Any variance granted by the Board of Health shall be in writing. Any denial of a variance request by the Board of Health shall also be in writing and shall contain a brief statement of the reasons for the denial.

### SECTION 10: OTHER APPLICABLE LAWS

These regulations shall not be interpreted or construed to supersede or nullify the requirements of any other applicable environmental or public health codes, regulations or statutes

### SECTION 11: SEVERABILITY

In the event that any provision of these regulations is declared invalid or unenforceable for any reason, all other provisions will be unaffected and shall remain in full force and effect. To that end, the provisions of these regulations are hereby declared severable.



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### SECTION 12: LIABILITY

The Town of Bourne and Board of Health shall be liable only for damage caused by its own negligence or the negligence of its employees or officials in connection with the Program. In no event shall the Town be liable for the acts or omissions of any contractor(s) or agent(s) hired by the Town to perform work during the Program. The property owner(s) covenants and agrees not to sue the Town for any claims of damage to or loss of property of the property owner(s) or others, injury, illness or agents hired by the Town to perform work during the Program. This provision shall have no application to causes of action which may have arisen prior to the execution of the Agreement.

### SECTION 13: EFFECTIVE DATE AND AMENDMENTS

These regulations were approved by the Board of Health on August 28, 1996, at a legally poster meeting and shall take effect immediately upon publication of a summary of their provisions in a newspaper of general circulation in the Town of Bourne.

Amendments may be made to these regulations by a majority vote of the Board of Health. Amendments shall take effect upon their publication in a newspaper of general circulation in the Town of Bourne.