

946 CMR 4.00: DEVENS REGIONAL ENTERPRISE ZONE : GENERAL PROVISIONS

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4.01: Scope and Purpose

946 CMR 4.00 establishes the basic public safety rules within Devens. They are designed to provide peace and security for those individuals who work or live within this zone. They are similar in language and scope to the public safety ordinances employed by the cities and towns of the Commonwealth.

4.02: Definitions

As used in 946 CMR 4.00:

Agency shall mean the Massachusetts Development Finance Agency (the “Agency”) created by St. 1998, c. 289, §§ 23, 29 and 33.

Devens the Devens Regional Enterprise Zone created by St. 1993, c. 498 and described in St. 1993, c. 498, § 2(3) as the regional development zone created by the act, the boundaries of which include all the land area of Fort Devens lying north of Route 2, part of a former federal military base located in the towns of Ayer, Harvard, and Shirley and certain land adjacent to Fort Devens owned by the Commonwealth, and certain land adjacent to Fort Devens currently owned by the Springfield Railway Terminal, Inc. or affiliate thereof or successor thereto, and currently used primarily for railroad purposes.

Devens Properties the lands and waters, including all easements, reservations and rights and rights appurtenant thereto, and all buildings, structures, utilities, improvements, facilities, materials and supplies located at Devens owned, leased, operated or controlled by the Agency.

Executive Director the individual appointed by the Board of Directors of the Agency to be the Chief Executive Officer of the Agency.

Industrial User any user of the Devens sewage system, including agriculture, forestry, fishing, mining, manufacturing, transportation, communication, electric, gas and sanitary services and any other industrial services discharging into the Devens sewer system any industrial wastewater.

Industrial Wastewater all water, solids, liquid and gas wastes resulting from any industrial, manufacturing or food processing operation or process or from the development of any natural resource, or any mixture of these fluids and domestic sewage, or any mixture of these fluids with any water or any other liquid.

4.02: continued

Motor Vehicle shall mean all vehicles designed for propulsion by power other than muscular power, including such vehicles when pulled or towed by another motor vehicle; except vehicles running only upon rails, or tracks and vehicles designed especially for use elsewhere than on traveled parts of ways.

Police shall mean the members of the Massachusetts State Police and such others as are appointed or employed by the Agency pursuant to St.1993, c, 498, as amended.

Recreational vehicle any motor vehicle designed or modified for use over unimproved terrain if used for recreation or pleasure off a public way as defined in M.G.L. c. 90 and all legally registered motor vehicles when used off a way, as defined under M.G.L. c. 90.

Snow vehicle a motor vehicle designed to travel over ice or snow supported in whole or in part by skis, belts, or cleats.

Vehicle shall mean and include automobiles, trucks, buses, motorcycles, horse- drawn vehicles, bicycles, pushcarts and other device in or upon by which any person or property is or may be transported, carried, or drawn upon land except railroad rolling equipment or other devices running only on stationery rails or tracks.

4.03: Compliance with 946 CMR 4.00

Any permission granted by the Agency directly or indirectly, expressly or by implication, to any person or persons to enter upon or use of Devens or any part thereof (including persons doing business with the Agency, its lessees, sublessees, permittees, licensees, and all other persons whomever, whether or not of the type indicated) is conditioned upon compliance with 946 CMR 4.00, and entry upon or onto Devens or any part thereof by any person shall be deemed to constitute an agreement by such person to comply with 946 CMR 4.00.

The Executive Director, the Treasurer, the Chief Operating Officer, the Devens Operations Director, attorneys in the Office of the General Counsel and the Police are authorized to act for the Agency in connection with the enforcement of 946 CMR 4.00.

4.04: Rules for the Use of the Devens Properties

(1) No person shall travel on portion of the Devens Properties, except upon the roads, walks or places provided for the class of traffic; nor occupy roads or walks in such manner as to hinder or obstruct their proper use.

(2) The Police shall have the right to remove from the Devens Properties any unauthorized vehicles, and the Agency shall have the right to retain such vehicle until the owner and or operator thereof shall reimburse the Agency for all costs of the removal and storage of said vehicle.

(3) No person shall tamper with heater valves, hydrants, sprinkler valves and devices, blower motors or any other Devens Properties at any time. No person other than an authorized employee of the Agency or agent shall be permitted to operate such devices, machinery or equipment.

(4) Unless otherwise provided in a lease or other agreement with the Agency, no person shall use any area of the Devens Properties for the storage of property. If, notwithstanding the preceding prohibition, a person uses such areas for storage as aforesaid without first obtaining such permission, then the Agency may order the property removed.

(5) No person who is unable to give satisfactory explanation of his presence shall loiter in or about any toilet, corridor, stairway, lobby, waiting room or other appurtenance of the Devens Properties.

(6) No person shall commit any disorderly, obscene or indecent act, or commit any nuisance, or abandon any personal property on the Devens Properties.

4.04: continued

(7) No person shall destroy, injure, deface or disturb, tamper with, or attempt to destroy, injure, deface, disturb any building, sign, equipment, fixture, marker or any other structure or property of the Devens Properties.

(8) No person shall destroy, injure, deface or disturb the trees, flowers, shrubs, or other vegetation, trees, lawns or seeded areas on the Devens Properties.

(9) No person shall withdraw water from any hydrant, standpipe or body of water owned, operated or under the care of the Agency unless the person has been authorized to do so by the Agency.

(10) No person shall place or cause to place on any of the Devens Properties any rubbish, ashes, debris or garbage or the containers thereof, or abandon on the Devens Properties vehicles of any kind, refrigerators or other appliances.

(11) No person shall drive any vehicle of any kind upon or across any of the Devens Properties, except where the streets, highways, alleys, roadways, parking lots or driveways have been properly laid out and are open to the public.

(12) No motor vehicle shall be operated within the Devens Properties unless such vehicle is registered in accordance with the laws of the Commonwealth of Massachusetts.

(13) No person shall drive a motor vehicle anywhere upon Devens Properties without a regular motor vehicle operator's or chauffeur's license issued by a State Registry of Motor Vehicles permitting the driving by such person of the particular type of vehicle driven.

(14) Swimming and ice-skating shall be permitted in the Devens Properties only in areas specially designated and posted by the Executive Director.

(15) The Agency may post rules restricting recreational activity to designated areas and times and may require that a permit be obtained in advance.

(16) Drunkenness, breach of the peace, profanity, amplified sound, or disorderly conduct offensive to the general public is strictly forbidden.

(17) Striking golf balls outside of areas designated by the Agency is prohibited.

(18) No person shall open or close any street, highway, way, driveway, alley or path on the Devens Properties unless such person has been authorized to do so by the Agency.

4.05: Public Drinking Prohibited

No person shall drink any alcoholic beverages as defined in M.G.L. c. 138, § 1 within Devens while on, in or upon any public way or upon any way to which the public has a right of access, or any place to which members of the public have access as invitees or licensees, or on any private land or place or that part of the Devens Properties not opened to the public, without the consent of the owner or person in control of such public or private land or place. All alcoholic beverages being used in violation of 946 CMR 4.05 shall be seized and safely held for adjudication of the charge against the person or persons arrested or summoned before the court, at which time they shall be returned to the person entitled to lawful possession.

4.06: Proper Disposal of Wastewater

No person shall place or cause to be placed in any public street or way of Devens any rubbish, debris, ashes, or garbage or the containers thereof.

4.07: Littering/Defacing Devens Properties or Private Property

No person shall discard objects in the public ways or lands of Devens or on private property without the consent of the owner, and no person shall deface, mar, injure or destroy any of the Devens Properties or private property within Devens, or make any marks, letters, or figures of any kind or post any bills upon any wall, fence post, tree, building or structure, not belonging to the person so doing, without permission of the owner thereof.

4.08: Discharge of Wastewater into the Devens Ways

No person shall drain his sink, stable, cesspool, basement sump pump, or any offensive matter onto a public highway, street, way, or public grounds.

4.09: Trespass

Within Devens, no person shall enter upon the premises, or any part thereof, of another, including any part of the Devens Properties in violation of a notice posted or exhibited at the main entrance to said premises or at any point of approach or entry to said premises or in violation of any notice, warning or protest given orally or in writing, by any owner or occupant thereof or fail to refuse or depart from the premises of another in case of being requested, either orally or in writing by any owner or occupant thereof.

4.10: Discharge of Weapons within Devens

No person shall discharge any firearm, air gun, beebee gun, bow, or any toy gun projecting lead, missile or arrow; provided that 946 CMR 4.10 shall not be construed to prohibit any officer of the law from discharging a Firearm in the performance of his duty; nor to any person authorized by the Executive Director to maintain or reduce the size of bird flocks or the number of wild animals within Devens; nor to any citizen from discharging a firearm when lawfully defending person or property.

4.11: Recreational Vehicle and Snow Vehicles Prohibited

No person shall operate a snow vehicle or a recreation vehicle as those terms are defined in M.G.L. c. 90B, § 20 on any public way, street, alley or path within Devens or any part of the Devens Properties. In the event of a determination by the Executive Director of the Agency, that because of emergency conditions, public ways within Devens are rendered impassable to conventional motor vehicles, the Executive Director may authorize the officer in charge of the Police to grant permits to civil defense volunteers to operate snow vehicles on such ways for such purposes as may be necessary to ensure the health and safety of the public. Such permits shall be rescinded promptly upon the abatement of such emergency conditions.

4.12: Adoption of M.G. L. c. 140, § 147A Regulation of Dogs

The Agency accepts the provisions of M.G.L. c. 140, § 147A and issues the following rules governing the control of dogs within Devens:

(1) The Agency appoints the Director of the Devens DPW as the Devens Dog Officer, and authorizes such of his assistants or agents as he chooses to assist him in this role. The Dog Officer and his assistants or agents appointed under 946 CMR 4.12(1) shall have the authority to enforce the laws and rules relating to dogs. It shall be the duty of the Police to assist the Dog Officer and his assistants in this enforcement effort.

(2) No owner or keeper of any dog shall permit such dog, to run at large or be a public nuisance upon any part of Devens or the Devens Properties. All dogs shall be leashed, except that a dog may, for purposes of a sporting event, such as field trials, or training be exempt from this requirement or restraint during such period of time as the dog is actually engages in the event or sport.

4.12: continued

(3) All dogs six months old or over kept or coming within Devens shall be licensed in accordance with the provisions of M.G. L. c. 40, § 137 and shall have been vaccinated as required by M.G.L. c. 40, § 145B. Residents in Devens shall obtain the required dog licenses from the Dog Officer's clerk and pay to the clerk the required fee.

(4) It shall be the duty of the Dog Officer or the Police to apprehend any dog not on a leash or found running at large and to impound such dog in a suitable place. If such dog so impounded has upon it the name and address of the owner thereof, or if the name of such owner is otherwise known, then the Dog Officer or the Police shall immediately notify the owner. If the owner is not known, then no notice shall be necessary. The owner or keeper of any dog so impounded may reclaim such dog upon payment to the Dog Officer or his agent, of any impoundment fee as determined by the by the Dog Officer or his agent, for each 24 period or part thereof that the dog has been held. However, that if the dog is not licensed, a license as required by law shall be secured.

(5) Any dog, which has been impounded and has not been redeemed by the owner within ten days, shall be disposed of as provided by M.G.L. c. 140, § 152A, as amended.

4.13: Conduct

(1) No person shall, at or upon Devens, do or omit any act if the doing or omission or is likely to endanger person or property.

(2) No person shall loiter in or about any public or non-public area at Devens.

(3) No person shall commit any disorderly, obscene, indecent or unlawful act, commit any nuisance or abandon any personal property in or about any public or non-public area at Devens.

4.14: Report of Accidents

Whenever a person operating a motor vehicle in Devens is involved in an accident at Devens is of a magnitude requiring that person to report that accident to the police; the person shall file the report at the headquarters of the Police at Devens.

4.15: Commercial Activity, Soliciting, Advertising, Rights of Free Speech

(1) No person, unless duly authorized by the Executive Director shall in or upon any area of the Devens Properties, including but not limited to any lobby, sidewalk, stairway, or any other appurtenance of the Devens Properties or on any public way or any way open to the public within Devens:

- (a) Sell, or offer for sale any article of merchandise.
- (b) Carry on any commercial activity or conduct operations of a commercial nature.
- (c) Solicit any business or trade.
- (d) Solicit alms or funds for any purpose. Post, distribute or display signs, advertisements, circulars, printed or written matter.
- (e) To conduct a parade or motorcade in or upon any public way, way, sidewalk or alley in Devens or knowingly participate in any such parade or motorcade.

4.16: Special Use Permits or Parade Permits

No person shall conduct any commercial or special activity or event upon the lands or waters of the Agency without first obtaining a special use permit from the Executive Director or his designee.

Persons applying for permission or authorization to display signs or distribute circulars, leaflets or other printed or written matter or to conduct a parade on any part of the Devens Properties, shall, if it is established to the reasonable satisfaction of the Executive Director or his designee that such activity is in the exercise of a constitutionally protected right, be granted such permission or authorization subject to conditions and limitations reasonable imposed for the safety of the applicants and the safe, proper and normal functioning of Devens and the orderly flow of the traveling public at Devens.

4.17: Industrial Wastewater Discharge Contract Required

No person shall discharge any industrial wastewater into the Devens Sewer System without first signing a contract with the Agency agreeing to abide by the Devens Sewer Use Rules & Regulations, including the Industrial Pretreatment Program and its Enforcement Response Program. A person who fails to comply with the requirements of 946 CMR 4.17 or the Devens Sewer Use Rules & Regulations, including the Industrial Pretreatment Program and its Enforcement Response Program shall be subject to one or all of the following actions:

The disconnection of water service and sewer to the premises.

Appropriate court action to enforce compliance of the rules.

Complaint in the District Court for the levy of a fine for each day of violation.

4.18: Excavation, Removal, Disturbance of Items

(1) The purpose of 946 CMR 4.18 is to maintain the public safety, health, and welfare of the residents of and visitors to Devens by proscribing activities that may disturb or otherwise lead to the exposure of dangerous or potentially dangerous items from the lands or waters of Devens. As a former military installation of the United States, munitions and explosives of concern (MEC), including unexploded ordnance (UXO) (as defined in 10 U.S.C. 101(e)(5)), discarded military munitions (DMM) (as defined in 10 U.S.C. 2710(e)(2) or munitions constituents (MC) (e.g., TNT, cyclotrimethylenetrinitramine (RDX)) (as defined in 10 U.S.C. 2710(e)(3)), present in high enough concentrations to pose an explosive hazard (DESR 6055.09)), have been, and continue to be, found in Devens. The Agency, in addition to other entities of competent jurisdiction, have posted educational signage around Devens explaining what UXO and MEC are and how to identify it in various public locations around Devens. Emergency disposal teams have been dispatched to respond to recovered MEC in Devens which were determined to pose an explosive hazard to the public, and the Agency has determined that there is a substantial risk that such unauthorized recovery activity or attempts to recover MEC may continue if not regulated.

(2) Unless authorized by the Agency, or another entity of competent jurisdiction with notice to the Agency, no person shall excavate, disturb, dislodge, retrieve, take possession of or dispose of, or attempt to excavate, disturb or dislodge, retrieve, take possession or dispose of any manmade item or portion thereof from any lands or waters of Devens. The foregoing prohibition shall not apply to activities conducted by an owner (or his or her agent) of a privately-owned residential parcel on said parcel; provided, however that such activities are being conducted in accordance with the Agency's Devens Soil Management Policy as amended from time to time and available at:

[http://www.devensec.com/development/Devens\\_Soil\\_Mgmt\\_and\\_UXO\\_Policies\\_and\\_Procedures.pdf](http://www.devensec.com/development/Devens_Soil_Mgmt_and_UXO_Policies_and_Procedures.pdf).

For the purposes of 946 CMR 4.18(2), "attempt" shall include the use of "metal detectors" or any device utilizing magnetic, electromagnetic, SONAR or ground penetrating radar energy to detect or locate unseen or submerged metallic objects.

(3) The activity known as "magnet fishing", in which a magnetic device is used to retrieve items from a body of water or watercourse is expressly prohibited. Use of any equipment including, but not limited to, dredging equipment, grappling hooks or equipment used for dragging or trawling, that may remove, retrieve or otherwise dislodge any manmade object from a body of water or land underlying a body of water is prohibited. These prohibitions shall not apply to common recreational fishing poles and associated tackle.

PENALTIES AND ENFORCEMENT DEFINED

4.95: Enforcement of Rules

Except when otherwise provided by law, prosecutions for offenses under 946 CMR 4.00 on behalf of the Agency may be made by any person so authorized by the Agency or the Police.

4.96: Criminal Complaint

Whoever violates any provision of 946 CMR 4.00 may be penalized by complaint brought in district court. Each day on which a violation exists shall be deemed a separate offense. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation or offense, brought in such manner, shall be \$500.00.

4.97: Noncriminal Disposition

Pursuant to M.G.L. c. 40, § 21D, the Agency adopts 946 CMR 4.97 providing for the noncriminal disposition of violations of any provisions of 946 CMR 4.00, and permits any person taking cognizance of a violation of a specific part of 946 CMR 4.00 which he is empowered to enforce, as an alternative to initiating criminal proceedings to give to the offender the notice described in M.G.L. c. 40, § 21D and to follow the procedure set forth in 946 CMR 4.97. Without intending to limit the generality of the foregoing, it is the intention of 946 CMR 4.97 that the specific penalties as listed in 946 CMR 4.98 are to be included within the scope of 946 CMR 4.97, that the specific penalties as listed shall apply in such cases (except as otherwise provided by law) and that in addition to Police, who shall in all cases be considered enforcing persons for the purposes of 946 CMR 4.97, any person so authorized by the Agency, shall be enforcing persons for 947 CMR 4.97. Each day on which any violation exists shall be deemed to be a separate offense.

4.98: Noncriminal Disposition Fines

The following fines shall be in effect for violations disposed pursuant to the provisions of 946 CMR 4.97:

- (1) For violations of 946 CMR 4.04:
  - (a) First offense a warning or a fine of \$150.00.
  - (b) Second or any subsequent offense within 12 months of the first offense a fine of \$300.00.
- (2) For violations of 946 CMR 4.05:
  - (a) First offense a fine of \$100.00.
  - (b) Second offense within 12 months of the first offense a fine of \$200.00.
  - (c) Third offense within 12 months of the first offense a fine of \$300.00.
- (3) For violations of 946 CMR 4.06 through 4.09:
  - (a) First offense a fine of \$200.00.
  - (b) Second or any subsequent offense within 12 months of the first offense a fine of \$300.00.
- (4) For violations of 946 CMR 4.10:
  - (a) First offense a fine of \$100.00.
  - (b) Second offense or subsequent offense within 12 months of the first offense a fine of \$300.00.
- (5) For violations of 946 CMR 4.11 and 4.12:
  - (a) First offense a warning.
  - (b) Second offense or subsequent offense within 12 months of the first offense a fine of \$50.00.
- (6) For violation of 946 CMR 4.13:
  - (a) First offense a fine of \$150.00.
  - (b) Second or subsequent offense within 12 months of first offense a fine of \$300.00.
- (7) For violation of 946 CMR 4.14 a fine of \$20.00.
- (8) For violation of 946 CMR 4.16:
  - (a) First offense a fine of \$100.00.
  - (b) Second or subsequent offense within 12 months of first offense a fine of \$300.00.
- (9) For violation of 946 CMR 4.17: For the first and any subsequent offense a fine of \$300.00.
- (10) For violation of 946 CMR 4.18: For the first and any subsequent offense a fine of \$500.00.

REGULATORY AUTHORITY

946 CMR 4.00: St. 1998, c. 289, §§ 23, 29 and 33; St. 1998, c. 266, § 2; St. 1993, c. 498, § 12.

NON-TEXT PAGE