

GENERAL BYLAWS
OF THE
TOWN OF AMHERST
MASSACHUSETTS



October 2006

TOWN OF AMHERST, MASSACHUSETTS

Amended through October 2006

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TOWN BY-LAWS

ARTICLE I THE TOWN GOVERNMENT (ATM - March 20, 1939 - Art. 12)

RULES OF ORDER FOR TOWN MEETING (ATM - March 20, 1939 - Art. 12) (STM – Oct. 27, 2003 – Art. 2) (ATM – May 1, 2006 – Art. 7)

1. **CONSENT CALENDAR.** At least five business days prior to the opening of the first session of the Annual Town Meeting or any Special Town Meeting, the moderator shall propose to all members a “Consent Calendar” listing all articles and budget areas which, based on the records of recent town meetings, the moderator deems to be non-controversial. At the first session of the meeting, at the request of any five members present, any article or budget area shall be removed from the Consent Calendar so that it can be debated and voted upon in accordance with the provisions of these Rules of Order. All items remaining in the Consent Calendar shall then be voted upon by a single vote without debate.
2. Any motions shall be in writing if requested by the moderator.
3. Any question may be divided on call of a member when the sense will admit of such division.
4. **GREEN AND RED CARDS DURING DEBATE.** To assist the moderator in shaping an orderly and equitable debate, green and red cards shall be used by members to indicate a desire to speak for or against the current motion on the floor. A desire to speak without advocacy or to ask a question shall be indicated by a raising a hand without a green or red card.
5. When a question is under debate, the moderator shall receive no motion but to adjourn, to dismiss, for the previous question, to postpone for a day certain, to commit, or to amend, which several motions shall have precedence in the order herein mentioned. The meeting shall not vote to dismiss an article without having heard a voter speak in its favor, unless no one seeks to do so.
6. Following a motion under any article, the Moderator shall first recognize the proponent thereof to speak for up to five (5) minutes in favor of the motion, or with leave of Town Meeting, for additional time. Thereafter, and in the absence of leave of Town Meeting granting additional time, each subsequent speaker shall be limited to three (3) minutes. No person shall speak more than twice on the same subject, without leave of the meeting, except to raise a point of order or to answer a question.
7. When two or more motions are made with regard to the same subject relating to sums of money, numbers or times, the question shall first be put upon the largest sum or number, and the longest time.

8. VOICE VOTES, TALLIED VOTES, AND STANDING VOTES. All votes unless otherwise provided for by law shall in the first instance be taken by 'ayes' and 'noes' voice vote.

If any member questions the voice vote, or if a four-fifths or nine-tenths vote is required by statute and the vote is not unanimous, the vote shall be taken by counted standing vote. When a two-thirds vote is required by statute, a counted standing vote shall not be taken unless the voice vote is doubted by the moderator or questioned by a member.

If, within a short but reasonable period of time following the voice vote, which period of time shall be fixed by the moderator, any member requests a tally vote and if 14 members manifest their concurrence with that member, the vote of each member shall be tallied by the use of a color-coded (green for aye, red for no) cards. Each such card shall bear the member's name and indicate his/her vote. Each member shall cast his/her own vote only. Such cards shall be collected and counted by the tellers, which count shall be determinative of the question.

9. A vote may be reconsidered only on motion of a member who did not vote with the minority. When a motion for reconsideration is decided that decision shall not be reconsidered, and no question shall be twice reconsidered.

10. A motion to dissolve shall be debatable, but a motion to adjourn to a day certain shall not be debatable.

11. No motion to dissolve a town meeting shall be in order until every article in the warrant therefor has been acted upon.

12. A registered voter of the town who ceased to be an elected town meeting member upon election as chair of the finance committee and who subsequently ceases to be a town meeting member at large upon ceasing to be chair of the finance committee shall be a town meeting member at large for a period ending on the date of the next annual town election.

13. After 10:00 PM, and in the absence of a majority vote of Town Meeting so permitting, no motion under any article other than the article then under debate may be made.

THE FINANCE COMMITTEE
(ATM - March 20, 1939 - Art. 12)

1. There shall be a finance committee consisting of seven members to be appointed by the moderator. The members shall hold office for three years and their terms of office shall be so arranged that the terms of two members shall expire at the end of one year, and the terms of two members at the end of the next year, and the terms of three members at the end of the third year, the terms of such members to expire on June 30 of the third year following their appointment. After each June 30 the moderator shall appoint as many members to said committee as are necessary to replace members whose terms expired on that June 30 date. The moderator shall fill by appointment any vacancy in the membership of the committee.

2. The committee shall annually elect its own chairman, secretary, and other necessary officers.
3. It shall be the duty of this committee to investigate all proposals in the articles of the warrant for any town meeting that shall in any way affect the finances of the town and to recommend to the town at the time of said meeting a course of action thereon, and in general to make recommendations to the town in regard to any financial business of the town.
4. It shall have control of the Reserve Fund of the town, and make appropriations there from, in accordance with the provisions of Chapter 347 of the Acts of 1912, and of Chapter 645 of the Acts of 1913.

TOWN MEETING COORDINATING COMMITTEE

(STM – November 2, 2005 – Art. 16)

(a) The Town Meeting Coordinating Committee. Duties of the Committee

There shall be a Town Meeting Coordinating Committee consisting of seven members who shall be elected, as required by Section (b) “Committee Elections,” by the members of Town Meeting at the Annual Town Meeting.

Duties of the Committee. The first duty of this Committee shall be to provide continuing leadership and organization to Town Meeting and to extend outreach to the community on behalf of Town Meeting. The duties the Committee shall undertake shall include, but not be limited to the following: (1) organizing warrant forums prior to Town Meeting open to the public, (2) communicating to the public about Town Meeting through various means, (3) taking responsibility for the education and orientation for new Members. The Committee shall perform such other duties as Town Meeting shall determine from time to time.

(b) Committee Elections; Term of Office; Termination of Membership; Committee Vacancies

Committee Elections. The members shall hold office for two years. Four members shall be elected in even-numbered years and three in odd-numbered years. Nominations to the Committee shall be made in writing and delivered to the Town Clerk, with the consent of the nominee recorded on the nomination paper. Nominations shall be accepted at a session of each Annual Town Meeting to be determined by the Moderator after consultation with the Town Clerk or at the Town Clerk’s Office prior to that session. The Town Clerk shall prepare a ballot of those nominated, which ballot shall be presented to each Town Meeting Member at a subsequent session of the Annual Town Meeting to be determined by the Moderator after consultation with the Town Clerk. Each Town Meeting Member shall cast a number of votes less than or equal to the number of seats available.

Term of Office. Committee members’ terms shall begin upon the dissolution of the Town Meeting at which they were elected and expire upon the dissolution of the Annual Town Meeting of the second year following their election. Members shall be sworn in by the Town Clerk.

Termination of Membership. Membership on the Committee shall terminate when the member submits a letter of resignation to the Town Clerk or ceases to be a Town Meeting member.

Committee Vacancies. When a position on the Committee becomes vacant for any reason other than expiration of a term, the Moderator shall appoint, from among those unelected candidates of the most recent Committee election who are still Town Meeting members and still willing to serve, the candidate who received the highest number of votes in said election, ties to be resolved by a coin toss. If no unsuccessful candidate from the most recent election meets these qualifications, the Moderator shall appoint a Committee member from among the current Town Meeting members. Appointed Committee members shall serve the remainder of the uncompleted term.

(c) Committee Internal Organization and Procedures: Officers, Subcommittees, Minutes

Officers. Upon dissolution of each Annual Town Meeting, the Committee shall elect from their membership a chairperson, vice-chairperson, a clerk, and a stacker, to serve until the dissolution of the next Annual Town Meeting.

Subcommittees. The Committee may, from time to time, constitute subcommittees as it deems appropriate. Subcommittees may include Town Meeting members who are not members of the Coordinating Committee. Each subcommittee shall be chaired by a member of the Coordinating Committee and appointed by the Chair of the Coordinating Committee.

Minutes. The Committee shall keep minutes of its proceedings and shall file these minutes with the Town Clerk. The proceedings of the subcommittees shall be rendered as reports to be included in the Committee's minutes.

STREET NAMES AND NUMBERS

(ATM - March 20, 1939 - Art. 12)

1. Numbers of houses constructed hereafter shall be assigned by the planning board in conformity with the uniform system of house numbering adopted by the selectmen in 1938. Names of new streets constructed hereafter must avoid similarity or duplication with names of existing streets and must meet the approval of the planning board before they may be accepted.

CLASSIFICATION OF NEW BY-LAWS

(ATM - March 20, 1939 - Art. 12)

1. As new by-laws are adopted by the town and become effective, the town clerk shall allocate each to an appropriate article in the scheme of town by-laws, giving it a suitable label if necessary, and numbering the sections thereof in continuation of the numbering of the sections of that article, or by affixing letters to a section number if the new by-law seems to belong in the

middle of an article; and wherever in the new by-laws a reference is made to a section which will be misleading because of renumbering of the sections or because of incorporation of a new section in the old by-laws, the town clerk shall make such change in the reference as will make it apply to the section originally indicated, and shall cause a footnote to be printed on the same page with the reference, indicating which are the newly adopted sections, how they were originally numbered, and what was the wording in the reference as originally adopted.

SPECIAL BOARD OF APPEALS

(ATM - May 21, 1951 - Art. 3)

1. The board of appeals established under the zoning by-law shall act as the board of appeals under General Laws, Chapter 41, Section 81R, and the provisions of the zoning by-law for associate members of said board shall be applicable when the board acts under said Chapter 41.

HUMAN RIGHTS BYLAW

(STM – November 8, 1999 - Art. 16)

1. The Town of Amherst hereby adopts a “Human Rights Policy” pursuant to which it shall be the policy of the Town that no person, public or private, shall be denied any rights guaranteed pursuant to local, state, and/or federal law on the basis of race or color, gender, physical or mental ability, religion, socio-economic status, ethnic or national origin, affectional or sexual preference, lifestyle, or age.
2. There shall be a Human Rights Commission (“the Commission”) of nine Amherst residents broadly representative of the community, appointed to three-year terms by the Select Board. Four members shall constitute a quorum.
3. There shall be a Human Rights Director (“the Director”) appointed pursuant to the Town Manager Act.
4.
 - a) The Commission shall advise the town, provide education and mediation to the community, and review all matters brought to its attention by the Director.
 - b) The Commission, in conjunction with the Director, shall act to promote full implementation of the Town’s “Human Rights Policy,” as set forth in this bylaw, for any and all persons coming within the town of Amherst.
 - c) The Commission shall advise and assist the Town Manager and Director in the achievement of affirmative action/equal opportunity objectives.
 - d) The Commission shall conduct and participate in educational activities related to its responsibilities.

5. a) The Director shall enforce and carry out the “Human Rights Policy” adopted in this bylaw to its fullest extent.
 - b) The Director shall, upon receiving a written complaint from any person or regarding matters pursuant to this bylaw otherwise brought to his/her attention, investigate promptly the circumstances of any situation within the town allegedly denying or threatening to deny in whole or in part to any person within the town, because of race or color, gender, physical or mental ability, religion, socio-economic status, ethnic or national origin, affectional or sexual preference, lifestyle, or age any right to which a person is entitled by law. The Director shall act as he/she deems appropriate to ascertain the facts concerning such alleged denial of rights in accordance with the procedures to be adopted pursuant to section 5 c) of this bylaw. The Director shall coordinate efforts with law enforcement in the investigation, prosecution and prevention of hate crimes. Complaints against the Town Manager shall be referred to the Select Board for appropriate action, and complaints against the Select Board shall be reported to a governmental agency having jurisdiction; the Director shall inform the chair and vice-chair or co-chairs of the Commission of all such complaints.
 - c) The Director shall, in writing, establish procedures by which such investigations shall be conducted. In establishing such procedures the Director shall consider the privacy and other rights of the complainant, respondent, and witnesses in light of the Public Record Law, Massachusetts General Laws, Chapter 4, Section 7, Clause 26, and Chapter 66, Section 10, the right against self-incrimination, and the right to due process of law. Any such procedures shall be approved by the Town Manager prior to their implementation.
 - d) The Director shall, thereafter, make such efforts (including conciliation conferences) as he/she deems reasonable and appropriate to resolve, by voluntary action on the part of those persons involved, the situation giving rise to the investigation.
 - e) If such voluntary action is not forthcoming or is deemed by the Director to be inadequate, the Director shall, after notice to all persons involved, report the matter to the Town Manager, the Select Board, local or state police on any matter within their jurisdiction, respectively, the Massachusetts Commission Against Discrimination, the Office of the Attorney General, the United States Department of Justice, or any other governmental agency having jurisdiction of the matter in question.
6. No less than twice per year, the Director, in conjunction with the Town Manager, shall inform the Commission of his/her activities, and the Commission shall provide input on those activities and other matters of concern to the Commission.
 7. The Commission, in conjunction with the Director, shall annually prepare and submit a report on “The State of Human Rights in Amherst” with such recommendations as it deems appropriate concerning matters within its charge. The Commission shall furthermore, as part of its review function, submit reports and recommendations to the Select Board and/or Town Meeting and/or civil rights agencies outside of Amherst as it deems necessary. Said reports shall take reasonable precautions to protect the privacy interests of all parties involved.

RESPONSIBLE EMPLOYER BYLAW FOR GENERAL BIDDERS, GENERAL CONTRACTORS AND FILED SUBCONTRACTORS ON PUBLIC CONSTRUCTION PROJECTS IN THE TOWN OF AMHERST

(ATM – April 26, 2000 – Art. 6)

A. All bidders and all subcontractors under the bidder for projects subject to M.G.L. 149, c. 44A(2) shall, as a condition for bidding, agree in writing that they shall comply with the following obligations:

1. The bidder and all subcontractors under the bidder must comply with the obligations established under M.G.L. c. 149 to pay the appropriate lawful prevailing wage rates to their employees.
2. The bidder and all subcontractors under the bidder must maintain and participate in a bona fide apprentice training program as defined by c. 23, 11 H and 11 I for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Industries and must abide by the apprentice to journeymen ratio for each trade prescribed therein the performance of the contract.
3. The bidder and all subcontractors under the bidder must furnish hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by M.G.L. c.149, s.26 in establishing minimum wage rates. The cost of the provision of such benefits shall be treated in accordance with the prevailing wage law.
4. The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all the employees employed on the project in accordance with M.G.L. c. 152.
5. The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding. M.G. L. c 149, 148B

B. All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to M.G.L. c. 149, 44A(2) shall comply with the obligations numbered 1 through 5 as set forth in paragraph A above for the entire duration of their work on the project, and an officer of each such bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

C. Any bidder or subcontractor under the bidder who fails to comply with any of obligations 1 through 5 as set forth in Paragraph A above for any period of time shall be subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the Town in the amount of 5% of the dollar value of the contract.

D. In addition to the sanctions outlined in Paragraph C above, a general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c. 149, 44F.

E. The provisions of this Section shall not apply to construction projects for which the low general bid was less than \$750,000 or to work performed pursuant to subcontracts that are subject to

M.G.L. c.149, s.44F and that were bid for less than \$75,000. These thresholds shall be adjusted every 5 years based on changes in the Consumer Price Index, rounded to the nearest \$5,000.

F. If any provision of this ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall not be affected thereby.

PUBLIC WORKS COMMITTEE

(ATM - May 1, 1989 - Art. 31)

1. There shall be a Public Works Committee of five geographically diverse members appointed by the Board of Selectmen for staggered three year terms. Every effort shall be made to insure that at least one member shall have an engineering background.
2. The purpose of the Public Works Committee shall be:
 - a) To evaluate based on recommendations by the Superintendent of Public Works, the Town Engineer and such other sources as they find appropriate, the town's road, sidewalk, drainage and traffic circulation systems, and to recommend priorities for their maintenance, repair, extension and reconstruction, consistent with the recommendations of the Public Transportation Committee and the Committee on Bicycling; and,
 - b) To conduct public hearings, after notifying abutters in writing, on the need for and the scope of major projects or projects with significant impact proposed by the town or requested by petitioners; however, the committee shall not pre-empt the Scenic Road jurisdiction of the Planning Board conferred by Chapter 40 of the M.G.L.; and,
 - c) To make recommendations to the Town Manager, Board of Selectmen, and the Town Meeting on various aspects of public works projects proposed by the town or requested by petition; and,
 - d) To recommend when it believes necessary the appointment of technical, advisory and/or citizens committees for major projects of which at least one member shall be a member of the Public Works Committee; and,
 - e) To report annually to the town on its activities and on the expenditure of funds allocated to the committee.

COMMUNITY PRESERVATION COMMITTEE

(ATM – April 25, 2001 - Art. 9)

There shall be a community preservation committee, pursuant to and with the authority granted under Section 5, as now or hereafter amended, of Chapter 44B of the Massachusetts General Laws

consisting of nine members. In accordance with Section 5(a) its membership shall include one member of the conservation commission as designated by the commission, one member of the historical commission as designated by the commission, one member of the planning board as designated by the board, one member of the leisure services and supplemental education commission as designated by the commission, and one member of the Amherst Housing Authority as designated by the authority, and four representatives of other town boards or committees or citizens at-large as designated by the Select Board. The Select Board shall make all appointments to the committee. The members of the committee shall be appointed for three year terms except that at the outset three shall be appointed for a one-year term, three for a two-year term and three for a three-year term. Any vacancy shall be filled by the Select Board in accordance with Section 5(a) of Chapter 44B. The members shall serve without compensation. The committee shall elect its own chair and secretary, each for a one-year term. The committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the committee shall constitute a quorum. The committee shall approve its actions by majority vote. Recommendations to the Town Meeting shall include their anticipated costs. The secretary shall keep minutes of its meetings and attend to its correspondence.

The committee shall study the needs, possibilities and resources of the town regarding community preservation. The committee shall consult with the conservation commission, the historical commission, the planning board, the Leisure Services and Supplemental Education Commission in its capacity as park commissioners, and the housing authority. The committee shall also consult with and coordinate its recommendations with the Joint Capital Planning Committee. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

The committee shall make recommendations to the Town Meeting annually for the acquisition, creation and preservation of open space, for the acquisition and preservation of historic resources, for the acquisition, creation and preservation of land for recreational use, for the creation, preservation and support of community housing and for rehabilitation or restoration of such open space, historic resources, land for recreational use and community housing that is acquired or created as provided in the Community Preservation Act. In determining its recommendation to the Town Meeting, the committee shall consider the requirement of the Community Preservation Act that the Town Meeting spend or set aside for later spending not less than 10% of the annual revenues for open space (not including recreational use), not less than 10% for historic resources, and not less than 10% for community housing, or, upon amendment of the Act, such other requirements as may be contained therein. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites.

The committee may include in its recommendation to the Town Meeting a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to

accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

LICENSES AND PERMITS
LOCAL LICENSES AND PERMITS
DENIAL, REVOCATION OR SUSPENSION FOR FAILURE TO PAY
MUNICIPAL TAXES OR CHARGES

(STM - May 21, 1990 - Art. 7)

- a) The Tax Collector shall annually, after the close of the fiscal year, furnish to each department, board, commission or committee ("licensing authority"), that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, ("party"), that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the appellate tax board.
- b) The licensing authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to a licensing authority from the Tax Collector; provided, however, that written notice is given to the party and the Tax Collector, as required by applicable provisions of law, and the party is given a hearing, to be held not earlier than fourteen days after said notice.

Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the licensing authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceedings at law, except for any appeal from such license denial, revocation or suspension. Any license or permit denied, suspended or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as of the date of issuance of said certificate.

- c) Any party shall be given an opportunity to enter into a payment agreement in accordance with applicable Massachusetts General Laws, thereby allowing the licensing authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- d) The Select Board may waive such denial, suspension or revocation if it finds there is not direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his/her immediate family, as defined in Massachusetts General Laws.

This section shall not apply to the following licenses and permits: open burning, bicycle registrations, temporary licenses to sell articles for charitable purposes, hunting and fishing licenses; licenses to organizations to dispense food or beverages to members and guests, animal licenses, marriage licenses, and theatrical exhibitions.

LICENSE FEES

(STM - September 20, 1989 - Art. 6)

Under the authority conferred by Chapter 140, Section 2 of the M.G.L. a fee for licenses granted to innholders at \$50.00 each and a fee for licenses granted to common victuallers at \$50.00 each; and, under the authority conferred by Section 49, establish a fee for licenses granted to persons operating lunch carts at \$100.00 each.

TOWN FEES AND CHARGES

(ATM - May 2, 1983 - Art. 41)

There shall be a fee schedule in which shall be set forth and published all fees collected by the Town, which schedule shall include (1) such fees as are required by statute to be set from time to time by town meeting by ordinance or by-law, and (2) such other fees as the Town is otherwise authorized to establish and amend.

DISPOSITION OF FEES RECEIVED BY TOWN OFFICERS

(ATM - March 20, 1939 - Art. 12)

All town officers are hereby required, in accordance with chapter forty, section twenty-one of the General Laws, to pay into the town treasury all fees received by them by virtue of their office.

PERSONNEL BYLAW

(AMENDED THROUGH SEPTEMBER 1, 1995)

Section 1 - Name of Bylaw and Authority

This Bylaw shall be known and cited as "The Personnel Bylaw", and is hereby adopted pursuant to the provisions of the General Laws, Chapter 41, Section 108-C, and amendments thereof.

Section 2 - Coverage

This Bylaw shall be applicable to all persons in the service of the Town except officials elected by popular vote, the Town Manager, and persons under the direction and control of the School Committee. All persons covered hereby shall receive the rate of pay and be subject to the provisions set forth by the Board of Selectmen on recommendation of the Personnel Board, subject to budgetary considerations and appropriation of funds. Nothing in this Bylaw shall be construed to be in conflict with Chapter 31 of the General Laws relating to Civil Service, or with

Chapter 1078 of the Acts of 1973 relating to Public Employee Collective Bargaining, which shall prevail if there is any conflict.

It shall be the policy of the Town of Amherst to guarantee equal opportunity to all qualified applicants and to all employees with respect to initial appointment, advancement, compensation, and general working conditions without regard to age, race, creed, color, sex, national origin, or physical condition.

Section 3 - Personnel Board and Town Manager

There shall be a Personnel Board consisting of five members, each member to serve for a three-year term, expiring on June 30 of the third fiscal year after their appointment. No person in the employ of or holding an official position in the Town government, except Town Meeting members, shall be eligible for appointment to the Personnel Board.

The Board of Selectmen shall appoint four members of the Personnel Board. For one member, the Board of Selectmen shall receive a nomination for appointment from the employees covered by this by-law. One member of the Personnel Board shall be appointed by the Library Trustees. Members of the Personnel Board must be residents of the Town of Amherst. The Personnel Board shall elect a Chair.

The Personnel Board has the conclusive authority to interpret this Bylaw and to decide all questions relating to its application. The Personnel Board, upon the recommendation of the Town Manager, or on its own motion, with the advice of the Town Manager, shall promulgate procedures deemed necessary for the administration of this Bylaw. Such procedures shall be delineated in the Personnel Procedures Manual.

Section 4 - Classification of Positions and Pay Scales

The classification of positions in the service of the Town, the establishment of a compensation plan; and its periodic updating, is the responsibility of the Board of Selectmen on the recommendation of the Personnel Board. The classification plan shall be based on similarity of duties performed and the responsibilities assumed so that the same qualifications may be reasonably required for, and the same schedule of pay may be equitably applied to, all positions in the same classification.

The Personnel Board shall recommend changes to the classification plan to the Board of Selectmen for their approval.

A compensation plan shall be established by the Board of Selectmen on the recommendation of the Personnel Board. Such compensation plan shall delineate the levels and steps which employees shall be compensated for their services at. With the exception of appointments made for emergencies, no employee may be appointed to a position not included in the classification plan.

Section 5 - Hours of Work

Procedures regarding the hours of work, compensatory time, and overtime shall be established by the Personnel Board.

Section 6 - Vacations

All employees covered by the Bylaw shall be eligible for vacation according to procedures established by the Personnel Board.

Section 7 - Sick Leave

Sick leave shall be granted to all benefited employees covered by this by-law according to procedures established by the Personnel Board.

Section 8 - Holidays

The Personnel Board shall establish procedures for the granting of holidays to employees covered by this Bylaw. Such procedures shall delineate the process to compensate those employees required to work on holidays.

Section 9 - Other Leave

Procedures for the granting of other leaves shall be established by the Personnel Board in compliance with federal and state regulations. Examples of such leaves include, but are not limited to, leave for jury service, military leave, family and medical issues, injury, religious observance, bereavement, personal, and leave without compensation.

Section 10 - Adoption and Amendment of Classification, Compensation and Personnel Policies

Any member of the Personnel Board, the Town Manager, any employee, or any citizen of Amherst may suggest policies or procedures for consideration by the Personnel Board. The Personnel Board shall post an agenda of each meeting. Any recommendations of policy shall contain the text of the proposal, an explanation of the proposal, and the implications, financial or otherwise, of the proposal.

The Personnel Board shall act on any proposals within sixty (60) days of the meeting of the Personnel Board at which the proposal is first introduced for consideration by the Personnel Board. The Personnel Board shall make recommendations to the Board of Selectmen with regard to policies. Policies shall become effective upon the approval of the Board of Selectmen, unless some other date is specified when the Board of Selectmen approves the policy. The Personnel Board shall take action with regard to procedures. Procedures approved by the Personnel Board shall become effective on the date the Personnel Board votes to amend the Procedures Manual, unless some other date is specified when the Personnel Board approves the procedure.

Section 11 - Annual Report

The Board of Selectmen shall provide a detailed report to the Annual Town Meeting. Such report shall include any approved changes in any of the policies listed above.

Section 12 - Severability

Each provision of this Bylaw shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

ARTICLE II
GENERAL REGULATIONS
(ATM - March 20, 1939 - Art. 12)

CONDUCT IN OR ON PUBLIC WAYS AND PLACES
(ATM - March 20, 1939 - Art. 12)

1. **Bicycle Regulations** (STM - April 8, 1946 - Art. 3)

No person shall operate a bicycle at a speed or in a manner which is inconsistent with public safety or convenience under the conditions then existing.

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right of way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right of way to all vehicles approaching on said roadway.

No person shall ride a bicycle upon any public sidewalk or public pedestrian easement within the downtown general business district or urban renewal project area, except upon those ways where vehicular passage by the public is explicitly allowed. When riding on sidewalks outside the downtown general business district, or urban renewal project area, bicyclists shall yield the right of way to pedestrians, use care at all times and give an audible sign before overtaking and passing any pedestrian. If sidewalks are crowded, bicyclists must dismount, or ride in the streets.

The penalty for violation of this section shall be \$20.00 for each violation. This section may be enforced pursuant to the noncriminal disposition method as contained in M.G.L., Chapter 40, Section 21D. Enforcing persons shall be police officers.

2. **Other Non-Motorized Conveyances** (ATM - March 20, 1939 - Art. 12)

In order to protect the public safety, no person shall coast, ride upon or otherwise operate any sleigh, sled, skis, skates, skateboard, roller skates, roller blades or other similar nonmotorized conveyance upon any public sidewalk, public pedestrian easement or street within the downtown general business district or urban renewal project area, except within such areas, at such times or under such conditions as may hereinafter be designated by the select board. All devices used by disabled persons for purposes of personal transportation or used by persons for the transportation of infants and young children are exempted from the provisions of this section.

Persons coasting, coursing, sliding on, riding or otherwise operating any sleigh, sled, skis, skates, skateboard, roller skates, roller blades, or other similar non-motorized conveyance in any of the streets, or upon any sidewalks in this town outside of the downtown general business district and urban renewal project area shall use proper care and shall not travel at a speed or in a manner which is inconsistent with public safety or convenience under the conditions then existing. Persons using such devices on sidewalks shall yield the right-of-way to pedestrians; persons traveling upon streets shall keep as near to the righthand side of the roadway as practicable and shall yield the right-of-way when entering an intersection.

The penalty for violation of this section shall be \$20.00 for each violation. This section may be enforced pursuant to the noncriminal disposition method as contained in M.G.L. Chapter 40, Section 21D. Enforcing persons shall be police officers.

3. **Impeding Traffic** (ATM - March 20, 1939 - Art. 12)

No person shall obstruct or impede pedestrian traffic upon any sidewalk or public pedestrian easement, or obstruct or impede vehicular traffic upon any street in the town, unless reservation therefor has been secured in accordance with the provisions of Article III, Parades and Public Meetings of these by-laws.

Whoever violates this section shall pay a fine of not more than \$50.00 for each violation.

This section may be enforced pursuant to the non-criminal disposition method as contained in M.G.L., Chapter 40, Section 21D. Under this option, the penalty for violation of this section shall be \$50.00 for each violation, enforcing persons shall be police officers.

4. **Parking and Delivery** (STM - April 27, 1992 - Art. 7)

The select board is authorized to promulgate regulations governing the location, time and duration of parking for all purposes, including but not limited to the pickup or delivery of goods, wares and merchandise, repairs, service, waste handling or recycling, within public ways in the town and upon all public rights-of-way, easements and leaseholders used or intended for pedestrian and/or vehicular passage. The select board shall have the authority to amend said regulations from time to time, and to set fines for violations. Prohibitions and restrictions under said regulations shall become effective upon installation of signs giving notice thereof.

Prior to adoption of said regulations and any subsequent amendment thereto, the select board shall conduct a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be posted in a conspicuous place in the town hall for not less than fourteen (14) days before the day of such hearing and said notice shall also be published in a newspaper of general circulation in the town once in each of two weeks, the first publication to be not less than fourteen (14) days before the day of the hearing.

Where proposed regulations or amendments to said regulations apply to easements or leaseholds, owners of the encumbered properties shall be notified of the hearing by mail at least fourteen (14) days prior to the day of the hearing. Further, all reasonable and practicable attempts shall be made to notify business or residential tenants of immediately affected or abutting properties.

5. **Activities and Amusements** (ATM - March 20, 1939 - Art. 12)

No person shall play at ball or any similar amusement in any street of this town. No person or group of persons, while playing at ball or engaging in any amusement or activity in any park or common of this town, shall interfere with another event or activity already in progress or previously reserved.

Whoever violates this section shall pay a fine of not more than \$200.00 for each violation.

6. **Littering** (ATM - March 20, 1939 - Art. 12)

No person shall place or cause to be placed any waste, refuse, boxes, or any other matter in or on any street, park or common of this town.

Whoever violates this section shall pay a fine of not more than \$100.00 for each violation.

7. **Open Containers of Alcohol** (STM - February 26, 1986 - Art. 51)

No person shall consume any alcoholic beverage nor possess or transport any open can, bottle or other container containing any alcoholic beverage outdoors on any town street, sidewalk, way and public property including but not limited to parking lots, parks, school playgrounds, recreation areas, or conservation areas.

Whoever violates this section shall pay a fine of not more than \$50.00 for each violation.

8. **Transporting Garbage or Rubbish** (ATM - March 3, 1947 - Art. 31)

No person shall drive or convey through public ways any vehicle carrying rubbish, garbage, or waste materials of any kind or description, unless said vehicle is so equipped with covering as to prevent the rubbish, garbage or waste materials so carried from falling or being blown from said vehicle.

Whoever violates this section shall pay a fine of not more than \$50.00 for each violation.

9. **Residential Parking** (ATM - April 25, 1994 - Art. 5) (ATM – April 28, 1999 – Art. 42)

SECTION 1. The Town of Amherst hereby declares that because of long-term parking on streets in residential neighborhoods and areas within the Town by individuals accessing educational, commercial and other facilities in the Town, residents of affected areas have been unable to find adequate parking for themselves, their invitees and guests, and, in some cases, access for emergency and other municipal vehicles and services has been impeded.

SECTION 2. The Town of Amherst hereby declares that it is in the best interests of the inhabitants of the Town and the residents of affected neighborhoods and areas that parking on certain streets be regulated by rules and regulations to be promulgated by the Board of Selectmen pursuant to Section III, below, so as to alleviate the inability of residents to park and so as to assure access for emergency and municipal vehicles.

SECTION 3. The Board of Selectmen of the Town of Amherst is hereby authorized and empowered to cause studies and investigations to be made, either on its own initiative or upon request of resident(s) of the Town, to determine a) whether a residential neighborhood or area is subject to long-term parking by individuals accessing educational, commercial or other facilities within the Town and b) whether such long-term parking has the effect of depriving residents of such neighborhood or area of adequate parking for themselves or for invitees or guests and/or of impeding access by emergency and/or other municipal vehicles. Upon a finding that a neighborhood is subject to such long-term parking and such long-term parking has the effect of depriving residents of such neighborhood or area from finding adequate parking and/or of impeding access by emergency and/or other municipal vehicles, the Board of Selectmen may

define the neighborhood or area so affected, and may impose reasonable regulations for parking in such neighborhood or area as defined by the Board of Selectmen. Residents of such neighborhood or area shall be notified in writing of such regulations proposed by the Board of Selectmen, and a public hearing on the regulations shall be held. Such regulations may include, but shall not be limited to, issuance of permits to residents of such neighborhood or area for parking by themselves, their invitees or guests, and issuance of permits to residents of such neighborhood or area suspending parking meter fees and/or time limits for all or part of the day at certain specified parking meters. In addition, in promulgating rules and regulations under this section, the Board of Selectmen may designate a neighborhood or area to be regulated as a "tow zone" in which vehicles parked without a permit in violation of this bylaw may be towed pursuant to the provisions of section IV, below.

SECTION 4. In accordance with the authorization and power granted to the board of Selectmen in paragraph III, above, upon the adoption of any rules or regulations in accordance with paragraph III, the board of Selectmen shall establish penalties for violations of any such rules and regulations, which shall not exceed \$10.00 for each violation. Enforcement of rules and regulations promulgated by the board of Selectmen under Section III shall be pursuant to the provisions of General Laws, Chapter 90, Section 20A. In addition to enforcement through the provisions of General Laws, Chapter 90, Section 20A as set forth above, in any area designated by the Board of Selectmen as a "tow zone" in accordance with the provisions of section 111, above, any vehicle parked in violation of any rule or regulation adopted by the Board of Selectmen may be towed and stored at the sole cost and expense of the owner of such vehicle.

10. Handicapped Parking (ATM - April 24, 1995 - Art. 32) (STM – Oct. 28, 2002 – Art. 13) (STM- Nov. 2, 2005 – Art. 15)

SECTION 1. It shall be unlawful for any person to leave any vehicle within parking spaces on public or private property which are required, under any provision of federal, state or local laws or regulations, to be designated and are clearly marked as reserved for vehicles owned and operated by disabled veterans or handicapped persons, except a vehicle transporting a handicapped person and displaying the special identification plate issued by any state or any Canadian province, or to leave a vehicle in such a manner as to obstruct a curb ramp designed for use by handicapped persons as a means of egress to a street or public way.

SECTION 2. The penalty for violation of this bylaw shall be two hundred dollars; provided, however, that nothing herein shall be construed as prohibiting the removal, in accordance with the provisions of section one hundred and twenty D of chapter two hundred and sixty-six, of any vehicle which is in violation of this bylaw.

SECTION 3. This bylaw shall be enforced by Town of Amherst Police Officers, Parking Enforcement Officers or the Disabilities Access Coordinator. This bylaw may be enforced through the non-criminal disposition method provided in Section 21D of Chapter 40 of the General Laws of the Commonwealth of Massachusetts. For purposes of non-criminal disposition, the enforcing persons shall be those town officials set forth in this section of the bylaw and the specific penalty shall be as provided in Section 2 of this bylaw.

SECTION 4. This bylaw shall be known and referred to as the "Handicapped Parking Bylaw".

ANIMAL WELFARE BYLAW

(ATM – April 24, 2002 Art. 7)

Preamble

The animal welfare regulations are herein established for the purpose of promoting the health, safety, and general welfare of the Town of Amherst and its animals. This bylaw contains standards relating to the treatment, confinement and keeping of dogs; and cat regulations. The intent of this bylaw is to enhance the quality of life of citizens and animals in the Town of Amherst, and to protect the general public from damage that may be caused by unregulated animals.

1. Validity

This bylaw is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. Chapter 140, but is in addition thereto.

2. License Requirement

Any owner/guardian or keeper of a dog six (6) months of age or older shall cause that dog to be licensed as required by M.G.L. Chapter 140, Section 137, commencing on April 1 of each year.

3. License Fee

The fee for every license shall be set by the Town Clerk in accordance with M.G.L. Chapter 40, Section 22F. The fee for a license for any dog that has been neutered or spayed and for which a certificate from a registered veterinarian has been presented to the Town Clerk, shall be set at no more than one-third (1/3) of the fee set by the Town Clerk in accordance with this section. The appropriate license fee, proof of rabies vaccination and neutering/spaying certificate, if any, must be presented to the Town Clerk at the time of application for a license, and, in addition, a stamped self-addressed envelope must accompany an application for a license by mail.

- A. A penalty of thirty dollars (\$30.00) shall be imposed upon all owners/guardians or keepers of dogs failing to renew licenses before June 1 of each year. This penalty shall take effect on June 1 of each year.
- B. No license fee shall be charged for specially trained service animals, provided one of the following: a doctor's prescription, a doctor's letter on office letterhead, a letter from a service animal training program, or a photo ID of said service animal is shown that such an animal is currently being/has been trained to assist an individual with a disability in

accordance with M.G.L. Chapter 140, Section 139, the Americans with Disabilities Act and M.G.L. Chapter 272, Section 98a. Application shall be made for a license as provided in this bylaw, and license tags issued by the Town must be worn by any such service dog.

- C. In accordance with M.G.L. Chapter 140, Section 138, the owner/guardian or keeper of any dog six months old or older who is a new resident of the Town of Amherst shall register said dog within thirty days of taking up residence, subject to a late fine in accordance with Section 3.A.
- D. No license fee will, or part thereof shall, be refunded because of subsequent death, loss, spaying, neutering, removal from the Town of Amherst, or other disposal of the dog for which the license has been issued, nor shall any fee for a license issued to a new resident be prorated.

4. Dog Regulations

- A. It shall be a violation of this bylaw for which the owner/guardian or keeper shall be liable for a dog to:
 - i. go beyond the confines of the owner/guardian's or keeper's property unless the dog is held firmly on a leash, or is under the control of its owner/guardian or keeper, subject to restrictions of Section 5.A.
 - ii. disturb the peace or quiet or endanger the safety of any person or other animal, by biting, barking, howling, or in any other manner
 - iii. be unrestrained in violation of any order of the Select Board or of the Animal Welfare Officer
 - iv. frighten, kill, maim or otherwise injure another's fowl, livestock or domesticated animal
 - v. chase another's vehicle on any way open to public travel
 - vi. be unlicensed or untagged in violation of state law or of this bylaw.

Violation of this subsection may be subject to a penalty of fifty dollars (\$50.00) for each such violation.

- B. Any person may make a complaint to the Animal Welfare Officer regarding an alleged violation of the preceding subsection. Upon receipt of such complaint, the officer shall investigate, and may issue a written order that the dog be temporarily restrained or muzzled, as the officer deems necessary. Within twenty-one days of the issuance of such a written order, the officer shall file a report requesting a Select Board hearing. On receipt of such report and after examination of the complaint, the Select Board may take actions it deems necessary. The owner/guardian or keeper of a dog subject to such an order of the Select Board may within ten days file an appeal in district court.
- C. The Animal Welfare Officer may impound any dog determined by her/him to be involved in a violation of either of the two preceding subsections hereof. If the owner/guardian or keeper can be ascertained by some identification device on the dog, the Animal Welfare Officer shall immediately advise that person of the dog's impoundment, the procedures for reimbursing the animal holding facility, the right to redeem the dog, and licensing procedures if

applicable. Any dog so impounded and unredeemed after 10 days may be disposed of as provided in Chapter 140, Section 151A of the Massachusetts General Laws.

5. Dogs Unleashed

A. No dog shall be permitted to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas. Notwithstanding the prohibitions contained in the preceding sentence, the Conservation Commission, Leisure Service and Supplemental Education Commission, Amherst and Amherst-Pelham Regional School Committees, Select Board or Town Manager may issue regulations which may permit dogs to be unleashed on land controlled by said Commission, Committee, Board or Town Manager.

Violation of this subsection may be subject to a penalty of twenty-five dollars (\$25.00) for each such violation.

B. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst, except as allowed in Section 5.A., may be apprehended and confined by the Animal Welfare Officer and/or a Police Officer.

C. Any dog found to be unleashed while in any public park, public playground, public building, or public recreational field or facility, or in any school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, or in the downtown business areas of the Town of Amherst and not in the presence of its owner/guardian or keeper, except as allowed in Section 5.A., shall be apprehended and confined by the Animal Welfare Officer and/or a Police Officer. Upon impoundment of any dog in accordance with this subsection or the preceding subsection, the Animal Welfare Officer shall notify forthwith the licensed owner/guardian or keeper of said dog, giving the said owner/guardian or keeper a period of ten (10) days within which to recover the dog. For each and every dog picked up by the Animal Welfare Officer or her/his agent there shall be a pickup fee in increasing amounts for each occurrence, not to exceed fifty dollars (\$50.00). Fees, including the daily fee for the care of the dog, are payable by the owner/guardian or keeper before retrieval of the dog shall be allowed.

D. It shall be unlawful for any person to fasten, chain or tie a dog to a stationary object for a period of time in the downtown business area so as to create an unhealthy situation for the animal or a potentially dangerous situation for a pedestrian, as determined by the Animal Welfare Officer.

Violation of this section may be subject to a penalty of twenty-five dollars (\$25.00) for each offense.

- E. The Animal Welfare Officer of the Town of Amherst and/or any Police Officer of said town shall enforce the provisions of this section of the bylaw.

6. Prohibits Dog Waste Excretion on Public Ways

- A. It shall be unlawful for the owner/guardian or keeper having care of a dog to permit such dog, either willfully or through failure to exercise due care or control of such animal, to excrete any solid waste upon any sidewalk, public street or public park, schoolyard or school recreational field, or public recreational areas, or upon any real property other than the real property owned or controlled by such owner/guardian or keeper. No violation of this section shall be deemed to have occurred if the owner/guardian or keeper of the offending animal promptly and voluntarily removes the animal waste.
- B. Violation of this section may be subject to a penalty of fifteen dollars (\$15.00) for each offense.
- C. This regulation shall not apply to a dog accompanying any handicapped person who, by reason of his/her handicap, is physically unable to comply with the requirements of this section.

7. Conduct of Persons in Control of Animals Other than Dogs

Cattle and other animals in the public way. A person who owns or is in control of any goat, sheep, swine, horse, cow, other neat cattle, or fowl, shall not permit such animal to go at large in any of the streets, commons or parks of this town, and shall not drive or lead such animal along or upon any of the sidewalks, parks or commons of this town, except in the case of sidewalks for the purpose of immediately crossing the same. Horses used by the police department shall be excluded from this prohibition.

Violation of this subsection may be subject to a penalty of fifty dollars (\$50.00) for each violation.

8. Frightening Animals

No person by noise, gesture or other means shall maliciously frighten any horse or other domestic animal in any street or public place in this town.

Violation of this subsection may be subject to a penalty of twenty-five dollars (\$25.00) for each violation.

9. Cat Regulations

- A. Cats shall be immunized against rabies and records kept in accordance with M.G.L. Chapter 140, Section 145B.
- B. The Health Director, Town Animal Inspector, Police Officers, and the Animal Welfare Officer shall enforce the provisions of this bylaw.

10. Severability Clause

The provisions of this bylaw shall be deemed severable, so that the invalidity of any one provision of the bylaw shall not affect the validity of another provision, and if any part of this bylaw shall be adjudged unconstitutional, inconsistent with state law, or otherwise invalid, such judgment shall not affect any other valid part of this bylaw.

11. Non-Criminal Disposition

Any enforcing person, as set forth below, taking cognizance of a violation of this bylaw, may, as an alternative to initiating criminal proceedings, enforce this bylaw non-criminally pursuant to M.G.L. Chapter 40, Section 21D. For purposes of this section, the following shall be enforcing persons: Animal Welfare Officer and Police Officer. The specific penalty for violation shall be the amount established in this bylaw.

PROHIBITIONS

1. Discharging of Firearms (STM - March 30, 1981 - Art. 8)

No person shall fire or discharge any gun, fowling piece or other firearm in the Town of Amherst; but to the extent not otherwise prohibited by law, the provisions of this section shall not apply to (A) the discharge of shotguns or air-guns, or (B) the discharge of firearms

1. in the lawful defense of the person, or
2. for the humane dispatch of injured animals, or
3. by any person lawfully on a target, trap or skeet range established for such purposes, or
4. by any duly authorized peace officer acting in the proper performance of duty, or
5. by any duly authorized military personnel participating in scheduled military exercises, or
6. by any person using blank cartridges in theatrical performances or sporting events, or
7. by an owner or tenant of land (or if authorized by either, any member of the immediate family or person permanently employed by such owner or tenant) but only upon such land and for the limited purposes of
 - a) shooting a bird or other animal found to be damaging or posing the imminent threat of damage to the property of such person or persons, and
 - b) shooting domestic animals raised as livestock.

Notwithstanding the provisions of Sections (A) and (B) above, no person shall discharge any gun, fowling piece, shotgun, air-gun, or other firearm or bow-and-arrow otherwise permitted under Sections (A) or (B) within one hundred fifty feet (150') of or in the direction of: (1) the paved surface of the State Rail Trail, or (2) the paved parking areas or entrance/exit ramps

associated with the Rail Trail. Loaded guns, fowling pieces, shotguns, air-guns or other firearms or bows and arrows shall not be carried on or within 150' of the Rail Trail.

There shall be a penalty for breach hereof not exceeding \$200 for each offense.

2. **Entering Property to Commit Certain Acts** (STM - October 24, 1983 - Art. 3)

Except as otherwise permitted by law, any person upon the property of another who shall intentionally peep or peer into the place of habitation of another shall be punished by a fine of up to \$300.00.

3. **Unlawful Noise** (ATM - April 27, 1987 - Art. 50)

Section 1. **Unlawful Noise Prohibited.** It shall be unlawful for any person or persons to create, assist in creating, continue or allow to continue any excessive, unnecessary, or unusually loud noise which either annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others within the town of Amherst. The following acts are declared to be loud, disturbing, injurious, unnecessary and unlawful noises in violation of this section, but this enumeration shall not be exclusive, namely:

- a) Radio, Phonograph, Musical Instruments and Television. The playing of any radio, phonograph, television set, amplified or musical instruments, loudspeakers, tape recorder, or other electronic sound producing devices, in such a manner or with volume at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office or of any persons in the vicinity.
- b) Shouting and Whistling. Yelling, shouting, hooting, whistling, singing, or the making of any other loud noises on the public streets, between the hours of 11: 00 p.m. and 7:00 a.m., or the making of any such noise at any time or place so as to annoy or disturb the reasonable quiet, comfort or repose of persons in any dwelling, hotel, hospital, or other type of residence, or in any office or of any persons in the vicinity.
- c) Animal Noises. The keeping of any animal or bird which, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.
- d) Devices to Attract Attention. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise authorized to engage in such activity.

Section 2. **Exemptions.** None of the terms or prohibitions of the previous section shall apply or be enforced against:

- a) Emergency Vehicles. Any police or fire vehicle or any ambulance while engaged in necessary emergency business.

- b) Highway and Utility Maintenance and Construction. Necessary excavation in or repairs of bridges, streets, or highways, or any public utility installation by or on behalf of the Town, or any public utility or any agency of the State of Massachusetts.
- c) Public Address. The reasonable use of amplifiers or loud speakers for public addresses which are non-commercial in nature.
- d) Noise caused by agricultural, farm-related, or forestry-related activities as defined by M.G.L. Chapter 128, Section 1A, as amended from time to time, including but not limited to the operation of farm equipment, sawmills, harvesting equipment, noises from farm animals, and the like.

Section 3. **Penalties.** The first violation of this By-Law shall be punished by a fine of not less than one hundred dollars (\$100.00). The second violation of this by-law within 12 months after the first violation shall be punished by a fine of not less than two hundred dollars (\$200.00). Further violations within 12 months after the last violation shall be punished by a fine of three hundred dollars (\$300.00). Each such act which either continues or is repeated more than one-half (1/2) hour after issuance of a written notice of violation of this by-law shall be a separate offense and shall be prosecuted as a separate offense. If the violation occurs on the premises of rental property which is a non-resident owner, then the owner must also be notified in writing that the violation has occurred.

Section 4. **Other Remedies.**

- a) If the person or persons responsible for an activity which violates Section 1 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.
- b) If the person or persons responsible for an activity which violates Section 1 can be determined, any person or persons who violate Section 1 of this by-law may be arrested without a warrant, provided that the violation occurs in the presence or view of any officer authorized to serve criminal process.

Section 5. **Severability.** If any provision of this by-law is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, the remaining provisions of the by-law shall not be invalidated.

4. **Advertising of Tobacco Products** (ATM - April 27, 1987 - Art. 53)

No person shall display on or in any bus, taxicab, or any other vehicle used for public transportation within the town of Amherst an advertisement for cigarettes, cigars, pipe tobacco, smokeless tobacco, or other tobacco product.

Whoever violates this section shall pay a fine of \$25.00 per day per vehicle.

5. **Distribution of Free Cigarettes** (ATM - April 27, 1987 - Art. 52)

No person shall, except at full retail price, in or upon any part of the streets, parks, public grounds, public buildings, or other public places within the town of Amherst distribute any products containing tobacco or non-tobacco cigarette products for any commercial purpose.

Whoever violates this section shall pay a fine of not more than \$100.00 for each violation.

6. **Keg Licensing** (STM - May 20, 1991 - Art. 24)

SECTION 1. **Purpose** To protect the health, safety and welfare of its inhabitants, this by-law shall permit the Town of Amherst to regulate the possession of kegs containing malt beverages, and the dispensing of malt beverages from kegs.

SECTION 2. **Definitions**

1. **Licensee**: any person, club, partnership, corporation or other entity licensed under the provisions of M.G.L. c. 138 to sell alcoholic beverages, including malt beverages.

2. **Licensed Establishment**: a retail establishment holding a license pursuant to M.G.L. c. 138 section 15 which sells alcoholic beverages for consumption off of the premises; and an establishment licensed pursuant to M.G.L. c. 138 section 12 which sells alcoholic beverages to be consumed on the premises.

3. **Licensed Activity**: an indoor or outdoor activity or enterprise for which a special license has been issued to a responsible manager, pursuant to M.G.L. c. 138 section 14.

4. **Alcoholic Beverages**: all liquids intended for human consumption as a beverage which contain one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit, including malt beverages.

5. **Malt Beverages**: all alcoholic beverages manufactured or produced by the process of brewing or fermentation of a malt, with or without cereal grains of fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight, including beer.

6. **Keg**: any metal, wooden, plastic, paper or other container designed to hold five and one-half (5.5) or more gallons of liquid and actually containing any amount of a malt beverage.

7. **Person**: an individual, firm, association, partnership, corporation or other combination of persons, and their agents, servants, employees, stockholders, officers or other person or any subsidiary whatsoever.

8. **Sale**: any transfer or exchange of alcoholic beverages in any manner or by any means whatsoever for direct or indirect consideration.

9. **Dispense**: to transfer or exchange alcoholic beverages, including pouring and the providing of access to such beverages, whether or not for monetary consideration.

10. Keg License: a special license issued by the Board of Selectmen of the Town of Amherst to permit the possession of malt beverage in a keg, and the dispensing of malt beverages from kegs, within the Town of Amherst.

SECTION 3. Requirement of License for Keg Possession

1. The Board of Selectmen of the Town of Amherst is authorized to issue keg licenses for the possession and dispensing of malt beverages in kegs within the Town of Amherst. The terms and conditions and fees for licenses granted under this section shall be determined by the Board of Selectmen, as the licensing authority pursuant to this by-law.

2. A keg license shall be required for the possession of a keg containing a malt beverage, and for the dispensing of a malt beverage from a keg, at any place other than a licensed establishment of a licensed activity.

3. A separate keg license shall not be required if the establishment or activity at which malt beverages will be dispensed is licensed pursuant to M.G.L. c. 138.

SECTION 4. Prohibition Within the Town of Amherst, it shall be unlawful for any person other than a licensee at a licensed establishment or activity to sell or dispense a malt beverage from a keg, or to otherwise possess a keg, unless such person has been issued a valid keg license.

SECTION 5. Enforcement This by-law shall be enforced by criminal complaint in the District Court. In the alternative, it may be enforced by the noncriminal disposition process of M.G.L. c. 40 section 21D. For the purpose of noncriminal enforcement, the enforcing persons shall be police officers of the Town of Amherst.

SECTION 6. Penalties Any person who violates Section 4 shall be fined in the amount of \$200 for a first offense and \$300 for a second or subsequent offense.

SECTION 7. Severability If any section, paragraph or provision of this by-law is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this by-law, which shall remain in full force or effect.

PUBLIC WORKS

1. **Disturbing Highway Surface or Curbing** (STM - November 3, 1969 - Art. 17)

No person shall make any excavation in any public way, disturb its curbing or pavement, pave any unpaved portion thereof, or remove earth or gravel therefrom, without first obtaining a written permit therefor from the town manager, and no person who has received such a permit shall violate any restrictions or conditions contained therein.

2. **Driveway Entrance Permits** (STM - November 3, 1969 - Art. 17)

No person shall construct or alter that portion of any driveway lying within a way in town over which the public has a right to travel without first securing a permit therefor from the town manager who shall issue the permit if the proposal conforms generally to the standards of the Massachusetts Department of Public Works as to driveways connecting with state highways; and no person having secured such a permit shall depart from such standards in constructing or altering such driveway entrance.

Whoever violates section 1 and 2 of the foregoing shall pay a fine of not more than \$200.00 for each violation.

FINES AND LIMITATIONS

(ATM - March 20, 1939 - Art. 12)

1. No prosecution for violations pertaining to Article II (except Dog Regulations) shall be commenced after sixty (60) days from the commission thereof.

WETLANDS PROTECTION

(ATM - April 27, 1987 - Art. 54)

(ATM - April 28, 1999 - Art. 30)

I. Purpose

The purpose of this bylaw is to protect the wetlands, water resources, and adjoining land areas in the Town of Amherst by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to the following: public and private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, water pollution prevention, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this bylaw”). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures stricter than those of the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations thereunder (310 CMR 10.00 et seq.).

II. Jurisdiction

Except as permitted by the Conservation Commission or as provided in this bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetland; marsh; wet meadow; bog; swamp; isolated wetland; vernal pool; bank; reservoir; pond; river; perennial stream; intermittent stream; watercourse; water within water bodies; land under water bodies; land subject to flooding or inundation by groundwater, surface water, or storm flowage; and land abutting any of the

aforesaid resource areas as set out in VII.4 below (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters.

III. Conditional Exceptions

The application and permit required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, telephone, telegraph, or other telecommunication services, or sanitary or storm sewers, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.

The application and permit required by this bylaw shall not be required for work performed for normal maintenance or improvement of land which is lawfully in agricultural use at the time the work takes place.

The application and permit required by this bylaw shall not be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission, prior to commencement of the work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The application and permit required by this bylaw shall not be required for exemptions under the Rivers Act (310 CMR 10.58).

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L.c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.) shall not apply under this bylaw.

IV. Applications for Permits (Notice of Intent or NOI) and Requests for Determination (RFD)

Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this bylaw. No activities shall commence without receiving and complying with a permit issued pursuant to this bylaw.

The Commission in an appropriate case may accept as the permit application and plans under this bylaw the Notice of Intent and plans filed under the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.).

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may request in writing a determination from the Commission. Such a Request for Determination (hereafter RFD) shall include information and plans as are deemed necessary by the Commission.

At the time of a permit (NOI) or RFD Application, the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.). The filing fee shall be commensurate with the reasonable expenses incident to the licensing.

Upon receipt of a permit application or RFD, or at any point during the hearing process, the Commission is authorized to require an applicant to pay a fee for the reasonable costs and expenses borne by the Commission for specific expert engineering and other consultant services deemed necessary by the Commission to come to a final decision on the application. This fee is called the "consultant fee." The specific consultant services may include, but are not limited to, performing, or verifying the accuracy of, resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; and researching environmental or land use law.

The Commission may require the payment of the consultant fee at any point in its deliberations prior to a final decision. Any unused portion of the consultant fee shall be returned to the applicant unless the Commission decides at a public meeting that additional services will be required.

The Commission may waive the filing fee, consultant fee, and costs and expenses for a permit application or RFD filed by a government agency.

V. Notice and Hearings

Any person filing a permit application or a RFD with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters to the abutters within 300 feet of the property line of the applicant, including any in another municipality or across a body of water. The notice to abutters shall have enclosed a copy of the permit application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing, and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.

The Commission shall conduct a public hearing on any permit application or RFD, with written notice given at the expense of the applicant, five business days prior to the hearing, in a newspaper of general circulation in the Town of Amherst.

The Commission shall commence the public hearing within 21 days from receipt of a completed permit application or RFD unless an extension is authorized in writing by the applicant.

The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant.

The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.).

The Commission shall have the authority to continue the hearing to a certain date announced at the hearing or to an unspecified date, for reasons stated at the hearing, which may include the anticipated or requested receipt of additional information from the applicant or others deemed necessary by the Commission in its discretion, or comments and recommendations of the boards and officials listed in VI below. If the hearing is postponed to an unspecified date, the applicant is responsible for the expense of advertising the rescheduled hearing, such notice to appear five business days prior to the hearing, in a newspaper of general circulation in the Town of Amherst. In addition, the applicant must send written notice of the rescheduled hearing to any person who has requested it.

VI. Coordination with Other Boards

Any person filing a permit application or RFD with the Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the zoning board, planning board, health inspections, town engineer, and building commissioner. A copy shall be provided in the same manner to the Conservation Commission of the adjoining municipality, if the application or RFD pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. The Commission shall not take final action until the boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing, prior to final action.

VII. Permits and Conditions

The Commission shall have the authority, after a public hearing, to determine whether a specific parcel of land contains or does not contain resource areas protected under this bylaw. If

the Commission finds that no such resource areas are present, it shall issue a negative determination.

If the Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect upon the resource area values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions. The Commission shall take into account the cumulative adverse effects of loss, degradation, isolation, and replication of protected areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

The Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the resource area values protected by this bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

Lands within 200 feet of rivers and within 100 feet of other resource areas, are presumed important to the protection of these resources because activities undertaken in close proximity to resource areas have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission therefore may require that the applicant maintain a strip of continuous, undisturbed vegetative cover within, or in some instances up to the full extent of the 200-foot or 100-foot buffer area, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

To prevent wetlands loss, the Commission shall require applicants to avoid wetlands alteration wherever feasible; shall minimize wetlands alteration; and, where alteration is unavoidable, shall require full mitigation. The Commission may authorize or require replication of wetlands on a two-to-one basis as a form of mitigation, but only with adequate security, professional design, and monitoring to assure success, because of the high likelihood of failure of replication.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission prior to such work. Any permit may be renewed once for an additional one year period, provided that a request for a renewal is received in writing by the

Commission prior to expiration. Notwithstanding the above, a permit may contain requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all owners of the land.

For good cause the Commission may revoke or modify a permit or determination issued under this bylaw after public notice to the holder of the permit or determination, notice to the public and town boards, pursuant to V and VI above, and a public hearing.

The Commission in an appropriate case may combine the permit or determination issued under this bylaw with the Order of Conditions or Determination of Applicability issued under the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.).

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

VIII. Regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw effective when voted and filed with the town clerk. The Commission may amend the rules and regulations after public notice and public hearing. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw. Unless otherwise stated in this bylaw or in the rules and regulations promulgated under this bylaw, the definitions, procedures, and performance standards of the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.) as most recently promulgated shall apply.

IX. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw. (For additional definitions, see Regulations II.)

The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representative, agents, or assigns.

The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

- A. Removal, excavation, or dredging of soil, sand, gravel, clay, minerals, or aggregate materials of any kind

- B. Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage, or other disturbance of water level or water table
- D. Dumping, discharging, or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection or repair of buildings or structures of any kind
- G. Placing of obstructions or objects in water
- H. Destruction of plant life including cutting of trees
- I. Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters
- J. Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater
- K. Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

X. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one or both of the methods described below:

- A. By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Commission, to be released in whole or in part upon issuance of a Certificate of Compliance for work performed pursuant to the permit.
- B. By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

XI. Enforcement

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw.

The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Any person who violates provisions of this bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

Upon request of the Commission, the board of selectmen and the town counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this bylaw, or regulations, permits, or administrative orders issued thereunder, or has failed to obtain the necessary Commission approval, shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the bylaw, regulations, permits, or administrative orders violated shall constitute a separate offense.

XII. Burden of Proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will not have unacceptable significant or cumulative effect upon the resource area values protected by this bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

XIII. Appeals

A decision of the Commission shall be reviewable in accordance with G.L. c. 249 Sec. 4.

XIV. Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. c. 131 Sec. 40) and Regulations (310 CMR 10.00 et seq.) thereunder.

XV. Severability

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

XVI. Effective Date

This revised bylaw goes into effect when approved by the Attorney General and published by the town clerk as set forth in G.L. c. 40 Sec. 32. A project for which the permit was filed or final Order of Conditions was issued prior to that date is subject to the previous bylaw.

ARTICLE III
REGULATION OF PARTICULAR ACTIVITIES AND DEVICES
(ATM - March 20, 1939 - Art. 12)

COLLECTING AND DEALING IN USED ARTICLES
(ATM - March 20, 1939 - Art. 12)

1. No person shall engage in the business of, or go about, picking up or collecting by purchase or otherwise, rags, paper, junk, old metals, or other waste matter, within the limits of the town of Amherst unless he is duly licensed by the selectmen.
2. No person shall engage in the business of buying or selling second-hand articles within the limits of the town of Amherst unless he is duly licensed by the selectmen.
3. The selectmen may from time to time make such rules and regulations regarding the issuing of such licenses, the fees to be paid therefor and the manner in which the business is to be conducted, as may seem advisable to them, and in accordance with the laws of the Commonwealth.
4. Any person violating the provisions of any of the three foregoing sections shall be punished by a fine of not more than twenty dollars each offense.

REFUSE COLLECTION AND RECYCLABLE MATERIALS
(ATM - May 5, 1986 - Art. 50; Amended STM - Apr. 23, 1990, Art. 3)
(Amended STM - October, 1990, Art. 25)

1. Authorized agents of the town's recycling program, so designated by the Town Manager, may pick up material left at curbside in front of any residence in the town in connection with the recycling program. No other person, except for the owner of the residence or a person designated by the owner, may pick up such materials.
2. Any person violating the provisions of the foregoing paragraph shall be punished by a fine of not more than fifty dollars for each offense. In the alternative, the Town may utilize the provisions of General Laws Chapter 40, Section 21D for noncriminal disposition of any violations of the provisions of the foregoing paragraph. For the purposes of noncriminal disposition the penalty for each violation shall be fifty dollars and the enforcing persons shall be Police Officers, the Superintendent of Public Works, and the Sanitary Landfill Crew Supervisor.
3. The Board of Health shall promulgate regulations requiring the provision of refuse collection service and the separation of recyclable materials for every residential, commercial, and institutional structure in the Town. In addition, the Board of Health shall adopt the noncriminal disposition method pursuant to General Laws Chapter 40, Section 21D for any violations of the regulations promulgated pursuant to this paragraph.

4. All municipal solid waste (including but not limited to residential and commercial refuse and construction/demolition waste materials) collected within the corporate limits of the Town of Amherst shall be disposed of at the Town of Amherst Sanitary Landfill; provided that waste materials which are not acceptable for disposal at such landfill shall not be disposed of within the Town of Amherst except at places designated in writing by the Board of Health. All commercial haulers collecting or removing municipal solid waste accumulating within the Town or using the streets and roads of the Town for the purpose of collecting or transporting the same shall be licensed by the Amherst Board of Health. All licenses granted to such private haulers and all contracts of other forms of authorization of duly authorized collectors shall require that all municipal solid waste collected and transported under such authorization shall be disposed of at the Town of Amherst Sanitary Landfill.

**DISPOSAL OF REFUSE, RUBBISH, ETC., ON HIGHWAYS
OR ANY PUBLIC LAND, PRIVATE PROPERTY,
OR IN COASTAL OR INLAND WATERS**

(STM - September 12, 1994 - Art. 2)

Any violation of any provision of M.G.L. Chapter 270, Section 16, may be enforced under the noncriminal disposition procedures as set forth in M.G.L. Chapter 40, Section 21D. Enforcing persons shall be Town of Amherst police officers, superintendent of public works, public health agents, health officers, and health directors. The penalty for violation of Section 16 shall be \$250.00 for each offense. Each day in which the offense shall continue shall constitute a separate offense.

If any provision(s) of this bylaw shall be invalid for any reason said provision(s) shall be deleted and the remainder of the bylaw shall continue in full force and effect.

REGULATION OF SIGNS

(ATM - March 20, 1939 - Art. 12)

1. No person shall erect, maintain or display any sign or other advertising device any part of which extends six inches or more into or over the limits of a public way in this town without a permit in writing therefor from the selectmen. This section does not apply to signs or advertising devices existing at the time of its adoption. Persons violating this section shall be subject to the penalties imposed by the regulations of the selectmen made in accordance with sections eight and nine of chapter eighty-five of the General Laws.

2. Special advertising displays, banners or signs, visible from any highway, public park or reservation, by churches, civic or charitable organizations or for community drives or celebrations may be displayed only on permit from the selectmen, such permits to be good for ten days and to be renewable for not over ten days more at the discretion of the selectmen.

3. Political signs may be displayed only on town-owned public property in the town, subject to the following restrictions:
- a. A political sign may be displayed only on permit from the selectmen; said permit to be good for a maximum of thirty days; except that, upon application to the selectmen, primary or caucus winners may leave their signs in place until the general election, provided the general election occurs within 45 days of the primary or caucus.
 - b. All signs must be removed not later than 7 days after the election the permit was granted for or at the expiration date of the permit, whichever comes first.
 - c. No sign may be larger than 9 square feet in an educational or residential zoning district nor larger than 24 square feet in any other zoning district.
 - d. The issuing of permits for temporary political signs shall be limited as follows:
 - i. In town elections, the selectmen shall issue a permit for not more than 2 signs for each candidate for town meeting membership; the signs may be for the applicant's candidacy only and may be placed only within the precinct in which he is a candidate.
 - ii. For any town-wide office seeker, the selectmen may issue a permit for not more than 10 signs; signs must be for the permittee's candidacy and not more than 3 such signs may be placed in any one precinct.
 - iii. No permit shall be issued by the selectmen without written permission of the immediate resident abutter or, if none, then the abutting property owner.
 - iv. When referendum questions appear on the town election ballot, the selectmen may issue a permit for not more than 1 sign per precinct for each referendum question to any local civic, church, charitable, or political organization that might want to make known its position on said referendum.
 - v. In county, state or national elections, the selectmen may issue a permit to any local political organization for not more than 7 political signs. On referendum questions, the selectmen may issue a permit for not more than 1 sign per precinct for each referendum question to any local civic, church, charitable, or political organization that might want to make known its position on said referendum.
 - e. No permit may be issued for, and no political signs may be placed upon, any town common, park, recreation, conservation, or watershed area; nor shall any partisan political sign be allowed to extend into or over the traveled portion of any public street or highway; nor shall any sign be attached to any tree, or to any pole, building, or structure that has been placed on public property for the use of the general public.
 - f. Permit applicants shall be responsible for any injury or damage sustained by anyone as a result of sign placement
 - g. Before issuing any permit under this section, the selectmen shall be satisfied that construction and placement of signs will not constitute a danger to the public safety.

- h. After issuing any permit under this section, the selectmen may rescind it if the sign, after being placed is not kept in good repair, and, as such, the selectmen are of the opinion that the sign is, or may be dangerous or a potential hazard. If, after notification to the permit recipient, the condition of the sign is not immediately corrected the selectmen may order removal of the sign and take any action necessary to correct the situation.
- i. The selectmen may delegate any or all authority under this section to the building inspector or any other person.

In regard to the issuance of any such permits and the location and character of the matter displayed, the discretion of the selectmen shall be final. Persons erecting or maintaining a display, banner or sign in violation of this section shall pay a fine of not over one hundred dollars. The selectmen may enjoin in any court of competent jurisdiction the erection and maintenance of any display, banner or sign in violation of this section.

PARADES AND PUBLIC MEETINGS

(ATM - March 11, 1970 - Art. 25)

1. A public meeting, parade or other event may be held on any town common or town way on reservation therefor first being secured from the town manager who shall issue it unless the meeting, parade or other event would conflict with another already so reserved, or unless the parade would so interfere with the vehicular traffic as to present a safety hazard. In the latter event, the town manager shall design an alternative parade route which shall adequately achieve the purposes of the paraders. Nothing shall prevent a nominee for elective governmental office speaking to any group, or an informal, spontaneous gathering of less than 75 persons, on any town common, without such reservation, if such activity does not interfere with another event already in progress or previously so reserved. Failure to obtain a reservation for a parade shall be punishable by a fine of not over \$50.00.

SOLICITING

(STM - November 4, 1974 - Art. 2)

1. **Definitions** For the purpose of this by-law, the following words are defined thus:
 - a. "Soliciting" shall mean seeking to sell or obtain orders door-to-door for the purchase of goods, wares, merchandise, foodstuffs, and services of any kind for consideration; also seeking to sell or obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication, but shall not include the weekly or daily house delivery of newspapers.
 - b. "Residence" shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.

c. "Registered Solicitor" shall mean and include any person who has obtained a valid certificate of registration as provided for in this by-law which certificate is in the possession of the solicitor (on his or her person) while engaged in soliciting.

2. **Certificate of Registration** Every person desiring to engage in soliciting as herein defined, from persons in residences in Amherst, is required to make written application to the police department for a certificate of registration. Such certificate shall be carried by the solicitor while engaged in soliciting and must be presented upon request by a police officer or persons being solicited except as hereinafter provided. See Section 6.

3. **Application for Certificate of Registration** Application for a certificate of registration shall be made upon a form provided by the town of Amherst and filed with the police department at least ten days prior to soliciting. The chief of police shall keep in his office an accurate record of every application received and acted upon together with all other information and date pertaining thereto and all certificates of registration issued under the provision of this by-law. The certificate of registration will require the following information:

- a. Name and physical description of applicants
- b. Home and present business address.
- c. Vehicle license number and description.
- d. Employer's name and address.
- e. Description of matter being solicited.
- f. Length of present employment

4. **Fee** Each non-resident registrant shall pay to the collector, town of Amherst, a registration fee of five dollars for the period expiring sixty days after the date of registration. Residents have the option of registering on annual basis for a fee of ten dollars.

5. **Revocation of Certificate** Any certificate of registration issued under this by-law may be removed by the chief of police for cause. Immediately upon revocation, written notice thereof shall be sent by the chief of police to the holder of the certificate by certified U.S. Mail, addressed to the holder's residence address as shown on the application. A record of the date of the revocation will be made upon the original application.

6. **Exceptions** Organizations soliciting funds for charitable purposes from other than their own members must register with the police department ten (10) days prior to the start of any fund raising campaign. Such organizations are required to provide identification for each solicitor. All solicitors thirteen (13) years of age or younger will be required to register with the police department ten(10) days prior to soliciting. Registration fees will not be required in these cases.

7. **Time Regulation** Soliciting as regulated in this by-law will be permitted only between the hours of 9:00 a.m. and 6:00 p.m.

8. **Laws of the Commonwealth to be Paramount** Nothing in this by-law shall be construed as conflicting with any license issued under the authority of the Commonwealth of Massachusetts.

9. **Penalty** Any person violating any of the provisions of this by-law shall, upon conviction in the District Court, be subject to a fine of not more than fifty dollars for each offense.

PAWNBROKERS

(STM - October 27, 1975 - Art. 7)

1. The business of a pawnbroker may be conducted in the town of Amherst subject to Chapter 140, Sections 70 through 85 inclusive of the General Laws of the Commonwealth of Massachusetts as amended and further subject to the following regulations:

a. The selectmen shall have the discretion to issue a pawnbroker's license after public notice and hearing to any person eighteen years of age or older who satisfies the board of financial integrity, personal moral character, and a good business reputation;

b. Each license granted shall state on the face thereof the rate and interest schedule authorized by the selectmen pursuant to Section 72 of Chapter 140 aforesaid and each application shall contain a full and complete statement of the schedule of rates and charges proposed by the applicant;

c. Any failure of an applicant or licensee to comply with this by-law or the applicable General Laws of the Commonwealth shall be grounds for immediate revocation of any license granted hereunder upon proof of the violation and no excuse of neglect or other reason shall operate to restore any license except by the express written approval of the selectmen.

d. The selectmen are authorized to establish minimum hours of operation and times of operation as a condition of a pawnbroker's license or any renewal thereof;

e. All employees of a pawnbroker shall be at least eighteen years of age and must receive an identification permit from the chief of the Amherst police department who may, but is not required to, refuse to grant such an identification permit to any person convicted of a crime within the preceding five years.

APPLICATIONS OF RECOMBINANT DNA TECHNOLOGY

(STM - October 23, 1978 - Art. 14)

1. All research, development and production in the town of Amherst that involves recombinant DNA procedures, must be performed in conformity with the Recombinant DNA Research Guidelines issued by the National Institutes of Health, dated June 1, 1983.
2. Each institution or establishment, proposing to use recombinant DNA procedures in the town of Amherst, shall have a Recombinant DNA Biohazards Committee with the functions specified in the aforementioned NIH guidelines. Said Committees shall include 50 percent of their respective memberships chosen by the selectmen of the town of Amherst. The lists of the town's appointees to the aforementioned committees shall be made public and all meetings of these same committees shall be conducted in accordance with the Open Meeting Law (Chapter 39, Sections 2 A, B and C of the General Laws of the Commonwealth of Massachusetts as amended).
3. Each Recombinant DNA Biohazards Committee shall have the responsibility to ensure that all projects utilizing recombinant DNA procedures at its institution or establishment within the town of Amherst are in conformity with all regulations prescribed by the aforementioned Guidelines, or at the committee's discretion at higher levels of containment. Each institution or establishment, covered by this by-law, is responsible for reporting its compliance with the aforementioned Guidelines to the board of health of the town of Amherst. (Amended from March 30, 1981 special town meeting, Article 7)
4. Each institutional committee shall report the following to the chairman of the board of health:
 - a. Each decision of the respective institutional rDNA committee regarding review and/or approval of rDNA research proposals.
 - b. Each report of the respective institutional rDNA committee regarding review or monitoring of ongoing rDNA research.
 - c. Recognition by an institutional rDNA committee of any violation of applicable NIH guidelines or of conditions and regulations adopted by said institutional committee, or of any accident within a laboratory conducting rDNA research under the jurisdiction of said committee.

Reports under (c) shall be made within 24 hours first by phone and confirmed in writing.

Reports under (a) and (b) shall be made in writing within a reasonable period of time.

The board of health shall assign to one member of each institutional biohazards committee the responsibility for submitting the reports required under (a), (b), and (c) above to the board of health.

Nothing in this section shall affect the obligation of each institution and establishment covered by this by-law from reporting directly to the board of health compliance with guidelines for rDNA research as required by section 3 above.

5. The board of health shall appoint a standing committee on rDNA research from among the public members of the institutional biohazards committees. Each institutional biohazards committee shall have at least one representative on said committee. Members shall serve for terms of one year. The board of health shall appoint a chairman who shall be responsible for reporting committee activities to said board.

The committee on rDNA research shall have the following powers and duties:

- a. The committee shall review violations of this by-law on request of the board of health and shall report its findings and recommendations to said board.
- b. The committee shall keep itself and the board of health informed of y revisions of the Recombinant DNA Guidelines of the National Institutes of Health.
- c. The committee may recommend revisions in this by-law to the board of health and shall review any article on the town warrant that pertains to rDNA research and report its findings and recommendations to the board of health.

6. Violations of this by-law shall subject the violator to a fine of not more than \$200 per day of violation. In addition the facility in which the violation occurs shall be closed by the selectmen upon recommendation by the board of health of the town of Amherst.

OPEN BURNING BYLAW

(STM – October 30, 2006 – Art. 16)

SECTION 1 PURPOSE

This by-law, which regulates open burning within the Town of Amherst, is enacted pursuant to the general police power in order to protect the health, safety and welfare of the inhabitants of the town.

SECTION 2 PROHIBITION

No person shall set, maintain or increase a fire in the open at any time, except pursuant to a permit issued under Mass. Gen. Laws, Ch. 48, sec. 13, and in full compliance with the provisions of 310 CMR 7.07.

SECTION 3 ENFORCEMENT

This by-law shall be enforced by criminal complaint in the District Court. In the alternative, it may be enforced by the non-criminal disposition process as set forth in Mass. Gen. Laws, Ch. 40, sec. 21D. For the purpose of non-criminal disposition, the enforcing persons shall be full

time fire fighters of the Amherst Fire Department, police officers and the building commissioner.

SECTION 4 PENALTY

Whoever violates any provision of section 2 shall be punished by a fine of not more than \$300 plus the cost of suppression. For the purpose of non-criminal disposition, the fine shall be \$300 for each offense.

SECTION 5 RESPONSIBILITY

If the person or persons responsible for an activity which violates Section 2 cannot be determined, the person in lawful custody and/or control of the premises, including but not limited to the owner, lessee or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

SECTION 6 SEVERABILITY

If any section, paragraph or provision of this by-law is held to be invalid or unenforceable, such invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this by-law, which shall remain in full force or effect.

ARTICLE IV
REGULATIONS RELATING TO REAL ESTATE AND REAL ESTATE USERS
(ATM - March 20, 1939 - Art. 12)

STREET NUMBERING OF HOUSES
(ATM - March 20, 1939 - Art. 12)

1. Every owner of a house shall indicate the street number of such house by figures at least two and one-half inches high and so located as to be easily seen from the street. In case any owner refuses or neglects so to indicate the number of his house after a number therefor has been assigned, the selectmen may apply to any court of competent jurisdiction for enforcement of this section.

REMOVAL OF SNOW AND ICE FROM SIDEWALKS
(ATM - March 20, 1939 - Art. 12)
(Replaced - ATM - April 29, 1996 - Art. 29)
(ATM – May 1, 2006 – Art. 8)

1. The owner of any real property that abuts any sidewalk shall remove any and all accumulation, whether natural or otherwise, of snow and/or ice within 24 hours of the end of the precipitation which caused the accumulation. If the snow and/or ice has accumulated other than by precipitation, it shall be removed within 24 hours of its accumulation on such sidewalk. In order to comply with this bylaw, all sidewalks shall be cleared to the surface of the sidewalk, or, where it is impracticable to do so, the sidewalk shall be treated with sand or otherwise. It is the express intent of this bylaw to assure safe and convenient access on sidewalks to all travelers, including those with disabilities and/or mobility impairments, including people who use wheelchairs.

2. Any owner of real property who violates section 1, above, of this bylaw, shall pay a fine of \$10. Each 24-hour period in which snow and/or ice is not removed or treated as provided in section 1, above, shall constitute a separate offense. No prosecution or other proceeding hereunder shall be commenced more than 60 days from the violation. The provisions of this bylaw may be enforced through the non-criminal disposition method as provided in M.G.L. c. 40, § 21D. For the purpose of non-criminal disposition, the following shall be enforcing persons: Police Officers.

3. In addition to the remedies provided in section 2, above, the Select Board in its discretion, may after due notice to the owner of the real property, and an opportunity to be heard, perform or otherwise cause the clearing or treating of snow and/or ice to be performed and recover from said owner the expense therefore which shall not exceed \$500.00. Such expense shall constitute a municipal charge lien against the real property as provided in M.G.L. c. 40, § 58.

DEPOSITING SNOW ON HIGHWAYS

(STM - November 3, 1969 - Art. 19)

1. No person shall remove or cause to be removed snow or ice from any privately owned premises and deposit it on any way, sidewalk or public parking place. Violation of this by-law shall be punished by a fine of not over fifty dollars.

GAS INSPECTOR

(STM - November 16, 1964 - Art. 1)

1. There shall be an inspector of gas piping and gas appliances in buildings who shall be appointed by the town-manager and whose duty shall be the enforcement of the rules and regulations adopted by the board established under Section 12H of Chapter 25 of the General Laws as amended, and any amendments to such rules and regulations that may be adopted from time to time by said board.

2. No person shall engage in gas fitting in buildings in the town without obtaining a permit authorizing such work from the inspector of gas piping and gas appliances in buildings. The said inspector shall require applicants for permits hereunder to furnish such description and information as he deems necessary concerning the proposed work, and he shall require said applicants to pay such fees as the selectmen from time to time may establish.

3. As used in this by-law the words "gas fitting" shall be construed to include the installation, alteration and replacement of a system beyond the gas meter outlet or regulator through which is conveyed or intended to be conveyed fuel gas of any kind, except undiluted liquefied petroleum gas, for power, refrigeration, heating or illuminating purposes including the connection therewith and testing of gas fixtures, ranges, refrigerators, stoves, water heaters, house heating boilers, and any other gas using appliances and all attachments and appurtenances, and the maintenance in good and safe condition of said systems, and the making of necessary repairs and changes.

Whoever violates any provision of this by-law shall, upon conviction thereof, be punished by a fine not exceeding twenty dollars for each offense.

GASOLINE STORAGE

(ATM - May 2, 1977 - Art. 35)

1. The fee for all licenses issued under General Laws, Chapter 148, Section 13 shall be \$10.00, and the fee for any renewal or certificate of registration shall be one-half the amount of the fee for said license. These fees may be changed from time to time by a majority vote of the selectmen.

JUNKED VEHICLES

(ATM - March 4, 1966 - Art. 3)

1. No one in control of real property in town, other than a commercial junkyard or a commercial garage, shall tolerate the remaining thereon for more than ten days of a junked, abandoned, disassembled or inoperable motor vehicle, nor shall anyone allow such a motor vehicle to remain on any place or road available for public travel for more than forty-eight hours. Any such motor vehicle remaining for the period indicated shall be deemed abandoned and may be removed by the police department and disposed of under the provisions of Chapter 135 of the General Laws relating to unclaimed and abandoned property.

Whoever violates any provision of this by-law shall pay a fine of not more than fifty dollars. Each failure to remove the vehicle after written notice from the selectmen to do so to the one in control of real property affected or the registered owner of the vehicle on such place or road, within ten days of the receipt of said notice if on private land, or within forty-eight hours of its receipt if on such a place or road, shall be a separate offense and punishable by a fine of not over fifty dollars. Nothing herein shall prohibit the maintenance on private land in an enclosed building of disassembled or inoperable motor vehicles.

USE OF RECREATIONAL VEHICLES NEAR RESIDENCES

(STM - October 15, 1973 - Art. 15)

1. No person shall operate a snow vehicle or recreational vehicle (including motorcycles in off-highway operation) within three hundred feet of an occupied residence without the permission of the owner or tenant, except in cases of emergency or except directly to depart from or return to such residence. Permission may be given in advance and may be given to an individual or to a club, or by the posting of appropriate permission signs by the owner or a person authorized by him.

Whoever violates this by-law shall pay a fine of not more than fifty dollars.

GUIDEBOOK FOR LANDLORDS/TENANTS

(ATM - April 28, 1980 - Art. 55)

The town shall, during the month of September of every year, mail to each and every rental household and landlord known to the town a single copy of the town publication: A Guide to Understanding Your Rights and Responsibilities as a Landlord or Tenant in the Town of Amherst.

It shall be the responsibility of the Housing Partnership/Fair Housing Committee annually to revise and update, if necessary, the accuracy of the information contained within the guide, and to print sufficient copies of the guide to insure compliance with this by-law.

HOUSING REVIEW BOARD
(STM - February 26, 1986 - Art. 4)

SECTION 1. **Declaration of Emergency** The Town of Amherst, acting by and through its Town Meeting, finds and declares that a serious public emergency exists in the Town of Amherst with respect to availability and quality of the housing of a substantial number of Town residents. This emergency has been caused by the rapid inflation in the costs of new housing construction; by prolonged high interest rates which have retarded new housing construction; by the substantial increase in the Town's student population since 1960; and by increases in residential mortgage rates, which have made home ownership more difficult or impossible, especially for low- and moderate-income families and elderly persons on fixed incomes. The Town of Amherst further finds that because of the continuing critical shortage of rental housing accommodations, abnormally high rents have resulted and, unless residential rents become subject to review and control on a case-by-case basis, such emergency and the further inflationary pressures resulting therefrom will produce serious threats to the public health, safety, and general welfare of the residents of Amherst, particularly the low- and moderate-income families and elderly persons on fixed incomes; and that such emergency should be met by the Town of Amherst immediately with due regard for the rights and responsibilities of the Town of Amherst; and that this by-law is adopted under the provisions of Chapter 72 of the Acts of 1986, as amended.

SECTION 2. **Definitions** The following words or phrases are used in this by-law and shall have the following meanings:

- a) "Rental unit," any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boarding house units, and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of such property.
- b) "Rent," the consideration, including any bonus, benefits, or gratuity demanded or received for or in connection with the use or occupancy of a rental unit or the transfer of a lease of such a rental unit.
- c) "Services," repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator services, window shades and screens, storage, kitchen, bath, and laundry facilities and privileges, janitor services, refuse removal, furnishings, parking, and any other benefit, privilege, or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.
- d) "Landlord," includes an owner, lessor, sub-lessor, assignee, or other person receiving or entitled to receive rent for the use or occupancy of a rental unit, or an agent of any of the foregoing.

- e) "Tenant," includes a sub-tenant, lessee, sub-lessee, or other person entitled to the possession, use, or occupancy of a rental unit.
- f) "Person, " includes an individual, corporation, partnership, association, or any other organized group of persons, a legal successor or representative of the foregoing.
- g) "Petition," a formal written statement on a form approved by the Housing Review Board requesting specific relief and setting forth the relevant facts and reasons therefor.

SECTION 3. Housing Review Board

- a) The Town of Amherst hereby establishes a Housing Review Board, herein referred to as the Board, consistent with the authority conferred by Chapter 72 of the Acts of 1986, as amended.
- b) The Board shall consist of five members who shall be residents of the Town of Amherst. The Board members shall be appointed by the Town Manager and approved by the Board of Selectmen to serve without compensation. Three members shall be appointed to two-year terms and two members shall be appointed to one-year terms. Thereafter, as the terms of the appointed members expire, their successors shall be appointed to serve two-year terms. Vacancies, other than by expiration of terms, shall be filled for the balance of the term by the Town Manager, with the approval of the Board of Selectmen. Every member, unless sooner removed, shall serve until the qualification of a successor.
- c) Three members of the Board shall constitute a quorum.
- d) The Board shall accept petitions as provided herein, on forms approved by the Board, and shall determine: (1) the fair and reasonable net operating income as provided in section four and in accordance with standards set forth therein, and (2) whether the rent level is reasonable in relation to that fair and reasonable net operating income.
- e) The Board shall promulgate rules and regulations for the conduct of its business as are allowed and are consistent with the provisions of this by-law.
- f) The Board shall secure such information and conduct such studies, either directly or through other municipal agencies, and may summons such persons, papers, or documents as it finds necessary for the performance of its duties.
- g) The Board shall have jurisdiction to accomplish the purpose of this by-law over all rental units in the Town of Amherst except:
 - 1) rental units in hotels, motels, inns, and tourist homes which are rented primarily to transient guests for periods of less than fourteen days, and rental units in rooming or boarding houses in which the tenant petitioner has resided for a period of three months or less;

- 2) rental units which a government unit, agency, or authority either owns, operates, regulates, insures the mortgage of, finances, or subsidizes; or rental units with respect to which the application of this by-law would constitute an inconsistency or conflict with any federal or state statute, regulation or other law; or rental units which a governmental unit, agency or authority finances or subsidizes, if the imposition of rent regulation would result in the cancellation or withdrawal, by law, of such financing or subsidy provided that nothing in this paragraph 3(g)(2) shall be construed to exclude any unit from the jurisdiction of the board on the basis that the tenant(s) of such unit receive(s) subsidy from any governmental unit, agency, or authority under the guidelines set forth in the regulations of the relevant governmental unit, agency, or authority; and provided that nothing in this paragraph 3(g)(2) shall be construed to exclude any unit from the jurisdiction of the board where such exclusion will result in the cancellation or withdrawal, by law, of any subsidy provided to the tenant(s) of such unit by any governmental unit, agency, or authority.
 - 3) rental units in any hospital, convent, monastery, asylum, public institution, or college or school dormitory used exclusively for charitable or educational purposes;
 - 4) rental units in nursing homes and rest homes for the aged; and
 - 5) rental units in owner-occupied one-, two-, or three-family dwellings.
- h) The Board shall provide in writing a comprehensive annual report of its activities to the Annual Town Meeting.
 - i) The Board may, on its own motion or upon the request of the landlord or a tenant petitioning the Board, join petitions for a consolidated hearing.
 - j) If the Board shall determine that a rental unit which is before it for decision is comparable to other rental unit or units within the building or complex, it shall have the authority to render decisions which shall apply to said other unit or units by first giving seven days written notice to the landlord and the tenant or tenants of such other unit or units, stating that they have the right to appear and be heard. The Board's decision shall take into adequate account the degree of comparability.

SECTION 4. **Standards**

- a) The Board may regulate or modify rent levels when it has determined the fair and reasonable net operating income as provided in this section and in accordance with standards set forth herein, and has determined that the rent level is not reasonable in relation thereto,
- b) The following factors, which the Board by regulation shall define, shall be considered in determining whether a rent level of a rental unit yields a fair and reasonable net operating income:

- 1) Increases or decreases in property taxes and assessments;
- 2) Unavoidable increases or any decreases in operating and maintenance expenses;
- 3) Capital improvement of the rental unit as distinguished from ordinary repair, replacement, and maintenance-;
- 4) Increases or decreases in living space, services, furniture, furnishings, or equipment;
- 5) Substantial deterioration of the rental unit other than as a result of ordinary wear and tear; and
- 6) Failure to perform ordinary repair, replacement, and maintenance.

The Board shall consider all factors which it deems relevant to its determination of the fair and reasonable net operating income, including but not limited to, those enumerated in this subsection.

- c) The Board shall deny rent increases when it determines that the affected premises do not comply with Chapter Two of the State Sanitary Code, the State Building Code, or any other applicable municipal code, by-law, or state law, regulating the conditions of residential housing accommodations and that the landlord has received notice of such non-compliance and has not, within seven days of receipt of such notice, taken appropriate steps to cause the unit to become compliant with such law.
- d) The Board shall deny a rent increase in any tenancy at will where it finds that the landlord has not served the tenant at will with a written notice to quit including an offer to establish a new tenancy pursuant to Section Twelve of Chapter One hundred and eighty-six of the General Laws.
- e) The Board may allow a rent increase if it determines that the tenant is more than thirty days in arrears in tendering rent, unless such arrears is due to a withholding of rent pursuant to, and in compliance with, the provisions of Section One hundred and twenty-seven L of Chapter One hundred and eleven or Section Eight A of Chapter Two hundred and thirty-nine of the General Laws.

SECTION 5. **Hearings**

- a) Within thirty days of receipt of (1) a petition of a tenant presenting a dispute concerning a rent level in a unit which is not exempt under section three of this by-law, or (2) a petition of a landlord or tenant requesting modification of an order of the Board, the Board shall conduct a hearing to settle said dispute in a fair and equitable manner and to adjust the rent level of the rental unit involved if the rent level is unreasonable in relation to the fair and reasonable net operating income as provided in section four and in accordance with the standards set forth therein.

- b) All parties to any such hearing shall have the right to present evidence to the Board and to be represented by counsel before the Board.
- c) The Board shall allow the landlord in each case a fair and reasonable net operating income, in accordance with standards established in section four.
- d) Every decision of the Board shall be rendered within 28 days of the close of the hearing. The decision shall be in writing, and parties to the proceedings shall be notified of the decision in person or by mail. A copy of the decision shall be filed with the Town Clerk. Notwithstanding the above, failure of the Board to act within the 28 day period specified in this section shall not result in the constructive grant or denial of the relief requested.
- e) Any orders issued by the Board shall remain in effect for a period of one year from the date of filing unless modified by the Board. Orders shall be modified only upon a finding by the Board of a significant change in circumstances or of new evidence which the petitioner could not have reasonably been expected to discover through reasonable diligence at the time of the hearing.

SECTION 6. **Judicial Review**

- a) Any party to the proceeding aggrieved by the action of the Board may file a civil action against the Board in the Northampton Division of the District Court Department of the Trial Court, or in any housing court having jurisdiction, within thirty days of the date on which the decision was filed with the Town Clerk. The court shall review and decide such action pursuant to the standards set forth in paragraph seven of Section Fourteen of Chapter Thirty A of the General Laws.
- b) The Northampton Division of the District Court Department of the Trial Court, or such housing court, shall have jurisdiction to enjoin any violation of this by-law.

SECTION 7. **Civil Remedies**

- a) Any person who demands, accepts, receives, or retains any payment of rent in excess of the amount authorized by the Board during the one-year effective period provided in paragraph 5(e) shall be liable to the person from whom such payment is demanded, accepted, received, or retained for reasonable attorney's fees and costs as determined by the Court, plus liquidated damages in the amount of four hundred dollars (\$400.00).
- b) The Board shall be authorized to seek enforcement of its orders in the Northampton Division of the District Court Department of the Trial Court.

SECTION 8. **Evictions**

- a) Any landlord of residential property within the Town of Amherst which is not exempt under the provisions of section three may not file a Summary Process Complaint against a tenant for a period of one year after the tenant has filed a petition with the Board except pursuant to paragraph (c) of this section.
- b) The filing of a Summary Process Complaint against a tenant within the one year period following the filing of a petition by the tenant with the Board shall create a rebuttable presumption of reprisal within the meaning of Section Eighteen of Chapter One hundred and eighty-six and Section Two A of Chapter Two hundred and thirty-nine of the General Laws.
- c) The presumption of paragraph (b) of this section shall be rebutted only by clear and convincing evidence that the landlord's action was not a reprisal against the tenant and that the landlord had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of the tenant's having filed a petition with the Board.

SECTION 9. **Severability** If any provision of this by-law or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of this by-law and the application of such provision to other persons or circumstances shall not be affected thereby.

CONDOMINIUM AND COOPERATIVE CONVERSION

(STM - March 29, 1984 - Art. 1)

There currently is a severe shortage of rental housing in the Town of Amherst, which shortage has been caused in part by the rapid increase in the population of the town since 1970 resulting from its desirability as a place to live, in part by prolonged high interest rates which have retarded new housing construction, in part by the rapid inflation in the costs of new housing construction, in part by increases in residential mortgage rates, which have made home ownership more difficult or impossible, especially for low and moderate income families or the elderly on fixed incomes.

This severe shortage of rental housing has led to a serious public emergency with respect to the rental housing available to a substantial number of citizens of the Town, which emergency is causing a serious threat to the public health, safety and general welfare of the citizens of the town.

Federal tax laws and other considerations encourage the conversion of rental housing units to condominiums or cooperative conversion in the town would seriously worsen the severe shortage of rental housing in the town, by decreasing the stock of available rental housing, and would worsen the current serious public emergency with respect to rental housing in the Town.

In order to protect the public health, safety and general welfare of the citizens of the town, and to prevent the worsening of the current severe shortage of rental housing in the town, and the public

emergency resulting therefrom, it is necessary to regulate and control the conversion of rental housing to condominium or cooperative housing.

The town enacts this by-law pursuant to the powers and authority possessed by the town under article 2 of the Articles of Amendment to the Constitution of the Commonwealth, as amended by article 89 of said Articles of Amendment, for the purpose of regulating and controlling such conversion.

SECTION 2. Definitions As used in this by-law the following terms shall have the following meanings:

- a) "Board": The Board of Selectmen
- b) "condominium unit": a unit of a condominium, as defined in Chapter 183A of the General Laws.
- c) "cooperative unit": a residential dwelling space in a building owned by a corporation, the shareholders of which have organized on a cooperative basis for the purpose of leasing such dwelling space to themselves.
- d) "condominium conversion": the sale, of a condominium unit in a building, by the owner of said building.
- e) "cooperative conversions": the execution of a lease, of a cooperative unit in a building, with an owner of shares of stock in the corporation which owns the building.

SECTION 3. Applicability This by-law shall apply to all buildings located within the town which contain two or more units of rental housing, whether or not said units are occupied. However, no unit once lawfully converted to a condominium or cooperative, and lawfully occupied by its owner, thereafter shall be governed by this by-law. Notwithstanding section 4(a) hereof, this by-law shall not apply to units as to which master deeds have been filed prior to the effective date of this by-law.

SECTION 4. Regulation

- a) No condominium or cooperative conversion is permitted in the town, except pursuant to a conversion permit granted under subsections 4(b) and 4(c) hereof. No owner of a condominium unit shall occupy a unit in a building owned by said corporation, unless a conversion permit covering said unit has been granted.
- b) When the vacancy rate for rental units in the town exceeds 5 %, a building owner may apply to the Board for a permit to convert said building to condominiums or cooperatives. When the vacancy rate is equal to or lower than 5%, a building owner may not apply for a permit unless the financial or other circumstances are such a prohibition of conversion would constitute unconstitutional confiscation of the owner's property. When such an application is

made, the Board before granting a permit shall be required to make an explicit finding that denial of a permit would constitute such confiscation.

- c) The Board shall consider at least the following factors in determining whether to grant or deny a conversion permit for a building.
 - 1) the impact of the proposed conversion upon the tenants sought to be protected by this by-law, upon the availability of rental housing of comparable type, quality and cost in the town and upon the overall availability of rental housing in the town;
 - 2) the ease or difficulty with which the affected tenants could find alternative rental housing in the town of comparable type, quality and cost;
 - 3) any efforts to mitigate the impact of the proposed conversion upon the affected tenants, including but not limited to, guaranteed rights to remain as tenants for a fixed period, full or partial reimbursement of moving expenses and other costs of finding alternative rental housing, and the procurement by the building owner for the tenants of alternative rental housing in the town of comparable type, quality and cost:
 - 4) the physical condition of the housing involved, and the financial viability of the building maintained as rental housing;
 - 5) whether, for how long, and why a unit or units in the building have been vacant; and
 - 6) the age, financial status, and health of the affected tenants, and the length of their tenancies.
- d) This by-law shall not apply to any property exempted by Chapter 527 of the Acts of 1983.
- e) The Board shall have the power to issue such orders and enact such regulations as it may deem necessary to effectuate the purposes of this by-law, and to prescribe the procedure for filing applications for conversion permits, giving notice of applications, holding public hearings upon applications, and rendering decisions upon applications. The Board may impose a reasonable filing fee for applications.
- f) The Board shall determine the vacancy rate for rental units in the Town, using what source or sources of statistical data it determines to be appropriate.
- g) Tenants of units converted, or to be converted, or proposed to be converted, may not be evicted, for the purpose of permitting renovation or rehabilitation of said units, or for the purpose of permitting occupancy of said units by purchasers, for nine months after the date of application for a conversion permit, or six months after the date of granting of a conversion permit, whichever is longer. It shall be unlawful to commit any acts of harassment against

tenants, to fail to make necessary repairs or provide required services, or to seek unreasonable increases in rents, for or during said period for the purpose of seeking to induce tenants to vacate units.

- h) A tenant shall have the right to first refusal to purchase the unit in which he or she lives.
- i) An application for a conversion permit shall be accompanied by a written plan setting forth an orderly process for the conversion, and a description of the governing process by which the owners' association or cooperative corporation shall exercise its responsibilities during and after the conversion.
- j) An application for a conversion permit shall cover all units in a building; however, the Board may in the exercise of its discretion under subsection 4(c) hereof condition the grant of the conversion permit upon the building owner making special provisions for certain units and the tenants thereof.
- k) No conversion permit shall be granted unless the building has been certified by an independent licensed engineer or architect to meet all applicable building and health codes of the town and commonwealth.

SECTION 5. **Severability** Should any provision hereof, or its application to any person or circumstance, be determined to be invalid, that invalidity shall not affect the validity of any other provision or application hereof.

SECTION 6. **Penalties and Enforcement** Any person who violates this by-law shall be punished by a fine of fifty dollars per offense. Each day during which a unit is illegally converted or occupied and each day after which an illegal conversion takes place, shall constitute a separate offense, and the conversion of multiple units in a building shall constitute multiple offenses. The Board may enforce this by-law in a court of competent jurisdiction, and may obtain appropriate injunctive relief to enforce the by-law in a civil action. Any person aggrieved by a failure to comply with the by-law may enforce its provisions in a civil action for injunctive relief.

SECTION 7. **Effective Date** This by-law shall take effect upon any act by the General Court which shall enable the town to regulate condominium and cooperative conversions and, after review by the Attorney General, to ascertain compliance with that enabling act.

TAX INCREMENT FINANCING (STM – October 27, 2003 – Art. 19)

The Amherst Select Board is authorized to enter into Tax Increment Financing Agreements, and any modifications thereof, in a form acceptable to the Select Board, in accordance with and

subject to the requirements of M.G.L. c. 23A and M.G.L. c.40, s.59, and any regulations promulgated thereunder, as those requirements may, from time to time, be amended.

EMERGENCY ACCESS BYLAW
(STM – October 30, 2006)

AMHERST FIRE DEPARTMENT
Emergency Access Bylaw

1. Name of Bylaw and Authority.
 - 1.1. This bylaw shall be known as the Emergency Access Bylaw. It is enacted pursuant to the police powers of the town of Amherst in order to increase the safety and security of the inhabitants of the town and their property by lessening the response time to alarms in buildings with supervised fire protection systems.
2. Prohibition.
 - 2.1. No person shall install or maintain on any new or renovated building a supervised fire protection system unless such system is in full compliance with this bylaw or an exception has been obtained in accordance with this bylaw.
3. Installation.
 - 3.1. A key vault to provide emergency access for Fire Department units shall be installed on any building, (except single family dwellings) provided with supervised fire protection systems.
 - 3.1.1. The Fire Chief or his designee may grant an exception if the facility has on duty security or staff and the Fire Chief or his designee, in his sole discretion, is satisfied that such security or staff is able to arrive at the building with access keys in less than five minutes.
 - 3.1.2. The Fire Chief or his designee may approve an alternate entry method of emergency access. An application describing the alternative method shall be made to the Fire Chief who may grant an exception if he is satisfied, in his sole discretion, that the alternative entry method provides an equivalent fire response time as contemplated under this bylaw.
 - 3.2. The type and style of key vault shall be approved by the Fire Chief or his designee.
 - 3.3. The key vault shall be installed at the front door or other Fire Department approved access point into the building.
 - 3.4. The location of the key vault shall be approved by the Fire Department. Keys or access codes shall be secured in the key vault including keys or codes for all outside doors, for interior doors and mechanical rooms and fire alarm control panels. Owner and occupant identification and 24-hour contact information shall be maintained in the key box.
4. Operation.
 - 4.1. The Fire Department may use the keys secured in the key vault to gain access to the

- protected property for any emergency response.
- 4.2. The Fire Department shall notify the owner or tenant each time the keys secured in the key vault are used.
 - 4.3. The owner shall file with the Dispatch Center a list of persons who will respond to the building within 15 minutes whenever a fire alarm is activated.
 - 4.4. The owner, tenant or designated person shall respond to restore fire protection systems to service and to secure the building.
 - 4.5. The owner shall ensure the keys are secured in the key vault after termination of the incident.
5. Maintenance.
- 5.1. The keys, codes, identification, and contact information secured in the key vault shall be updated upon change of owner or tenant or upon change of locks, codes, or contacts.
 - 5.2. Annual inspection and maintenance
 - 5.2.1. The keys secured in the key vault shall be removed annually and tested for proper operation.
 - 5.2.2. Contact information for the owner and occupants shall be updated annually.
 - 5.2.3. The key box lock shall be cleaned and lubricated annually.
 - 5.2.4. The owner shall contact the Fire Department and make an appointment for annual inspection and maintenance of the key vault
 - 5.2.5. The owner shall make such repairs and replace the lock box or any portion thereof as may be ordered by the Fire Chief or his designee.

ARTICLE V COUNCIL ON AGING

(STM - January 23, 1967 - Art. 1) (STM – November 2, 2005 – Art. 14)

1. There shall be a council on aging consisting of nine members, some members of which shall represent those age 60 and over, appointed by the town manager for three year terms unless they are completing an unexpired term. Any vacancy shall be filled by the town manager, who will take into consideration the recommendation of the Nominating Committee of the Council on Aging. The members shall serve without compensation. The council shall elect its own chair for a one-year term. A secretary shall record all the proceedings of the meetings and attend to its correspondence. A Senior Center staff member may serve as secretary instead, if needed. Regular meetings of the Council may be held monthly, the date, time and place to be designated by the chair. It shall have the authority granted to it by Section 8B, as now or hereafter amended, of Chapter 40 of the General Laws, and shall coordinate or carry out programs designed to meet the problems of the aging in coordination with programs of the Department of Elder Affairs.

ARTICLE VI
NON-CRIMINAL DISPOSITION OF VIOLATIONS
(ATM - May 2, 1988 - Art. 66)

SECTION 1 (a). **Criminal Complaint** Whoever violates any provisions of Articles II through IV inclusive, of the by-laws of the Town of Amherst may be penalized by indictment or criminal complaint brought in the District Court. The penalty shall be that fixed by by-law; provided, however, that in no case shall the maximum penalty for each violation, or offense, brought in such manner, be in excess of three hundred dollars (\$300.00) unless otherwise allowed by law.

SECTION 1 (b). **Non-Criminal Disposition** Whoever violates any provisions of the Articles II through IV of the by-laws of the Town of Amherst listed below, the violation of which is subject to a specific penalty, may be penalized by a non-criminal disposition as provided in the General Laws, Chapter 40, Section 21D. The non-criminal method for disposition may also be used pursuant to this article for violations of any rule or regulation of any municipal officer, board or department which is subject to a specific penalty provided that the Board of Selectmen first approve, by majority vote, each such rule or regulation to be enforced by this procedure.

The municipal personnel listed for each section shall be enforcing persons for such sections. Each day on which any violation exists shall be deemed to be a separate offense.

ARTICLE II - GENERAL REGULATIONS

CONDUCT IN OR ON PUBLIC WAYS AND PLACES

1. **Bicycle Regulations**
Fine: \$20. 00
Enforcing Person(s): Police Officers
2. **Regulations of Other Non-Motorized Conveyances**
Fine: \$20. 00
Enforcing Person(s): Police Officers
3. **Impeding Traffic**
Fine: \$50.00
Enforcing Person(s): Police Officers
4. **Parking and Delivery Regulations**
Fine: \$
Enforcing Person(s):
5. **Activities and Amusements**
Fine: \$200.00
Enforcing Person(s):
6. **Littering**
Fine: \$100.00
Enforcing Person(s): Police Officers and Superintendent of Public Works
7. **Open Containers of Alcohol**
Fine: \$50.00
Enforcing Person(s): Police Officers
8. **Transporting Garbage or Rubbish**
Fine: \$50.00
Enforcing Person(s): Police Officers and Superintendent of Public Works
10. **Handicapped Parking**
Fine: \$200.00
Enforcing Person(s): Police Officers and Disabilities Access Coordinator

PROHIBITIONS

1. **Discharging of Firearms**
Fine: \$200. 00
Enforcing Person(s): Police Officers

3. **Unlawful Noise**
 Fine: \$100.00 - \$300.00
 Enforcing Person(s): Police Officers
4. **Advertising of Tobacco Products**
 Fine: \$25.00
 Enforcing Person(s): Police Officers
5. **Distribution of Free Cigarettes**
 Fine: \$100.00
 Enforcing Person(s): Police Officers

PUBLIC WORKS

1. **Disturbing Highway Surface or Curbing**
 Fine: \$200.00
 Enforcing Person(s): Police Officers and Superintendent of Public Works
2. **Driveway Entrance Permits**
 Fine: \$200.00
 Enforcing Person(s): Police Officers and Superintendent of Public Works

ARTICLE III - REGULATION OF PARTICULAR ACTIVITIES AND DEVICES

Regulation of Signs

Section 1 through 3, inclusive
 Fine: \$100.00
 Enforcing Person(s): Police Officers and Building Commissioner

Parades and Public Meetings

Section 1
 Fine: \$50.00
 Enforcing Person(s): Police Officers

Soliciting

Sections I through 8, inclusive
 Fine: \$50.00
 Enforcing Person(s): Police Officers

Open Burning By-Law

Sections 1 through 6, inclusive
 Fine: \$300.00
 Enforcing Persons: Full-time Firefighters, Police Officers, and Building Commissioner

**ARTICLE IV - REGULATIONS RELATING TO REAL ESTATE
AND REAL ESTATE USERS
(ATM – May 1, 2006 – Art. 8)**

Removal of Snow and Ice from Sidewalks

Section 1

Fine: \$10.00

Enforcing Person(s): Police Officers and Superintendent of Public Works

Depositing- Snow on Highways

Section 1

Fine: \$100.00

Enforcing Person(s): Police Officers and Superintendent of Public Works

Gas Inspector

Section 2

Fine: \$20. 00

Enforcing Person(s): Police Officers and Building Commissioner

Junked Vehicles

Section 1

Fine: \$50.00

Enforcing Person(s): Police Officers and Building Commissioner

Use of Recreational Vehicles Near Residences

Section 1

Fine: \$50.00

Enforcing Person(s): Police Officers

Any violation of any provision of M.G.L. Chapter 270, Section 16, may be enforced under the non-criminal disposition procedures as set forth in M.G.L. Chapter 40, Section 21D. Enforcing persons shall be Town of Amherst police officers, superintendent of public works, public health agents, health officers, and health directors. The penalty for violation of Section 16 shall be \$250.00 for each offense. Each day in which the offense shall continue shall constitute a separate offense.

If any provision(s) of this bylaw shall be invalid for any reason said provision(s) shall be deleted and the remainder of the bylaw shall continue in full force and effect.

**State Statutes Accepted or Availed
Of By The Town**

- 1881 G.S. Ch. 45, §7 & 8 (See G.L. Ch. 83, §5, 25 & 26): establishing and grading sidewalks. Ch. 114, Acts 1863 (See G.L. Ch. 85, §5): removal of snow and ice from sidewalks. Ch. 302, Acts 1872; Ch. 107, Acts, 1874.
- 1886 P.S. Ch. 27, §64-68 (Ch. 255, Acts 1878, §1-5): manner of electing selectmen and assessors.
- 1891 P.S. Ch. 58: slaughtering inspector. P.S. Ch. 36, Sec. 29 (Ch. 178, Acts 1863, now G.L. Ch. 49, §28): pounds, pound keepers, impounding cattle.
- 1895 *Ch. 186, Acts 1895 (See G.L. Ch. 40, §16-18): street sprinkling.
- 1896 Ch. 417, Acts 1893, §267 & 268 (See G.L. Ch. 41, §2): election of selectmen and assessors.
- 1897 *Ch. 423, Acts 1893, §25 (See G.L. Ch. 41, Sec. 64): fixing compensation of superintendent of streets.
- 1898 Ch. 374, Acts 1895 (See G.L. Ch. 41, §62): a single highway surveyor in exclusive control of repairs; rescinded 1917.
- 1900 Ch. 264, Acts 1890 (See G.L. Ch. 114, §22-26): election of cemetery commissioners.
- 1904 Ch. 40, Acts 1902, §1 & 2 (Now G. L. Ch. 40, Sec. 7): removal of snow and ice from sidewalks.
- 1909 R.L. Ch. 103 (See G.L. 142, §1-6, 11-16): plumbing inspection.
- 1912 Ch. 624, Acts 1910 (See G.L. Ch. 41, §55): town accountant.
- 1913 Ch. 484, Acts 1912: special act for Amherst sewer system construction.
*Ch. 347, Acts 1912 (See G.L. Ch. 40, §63): establishment of a reserve fund.
- 1914 *Ch. 130, Acts 1910 (See G.L. Ch. 39, §16): establishment of finance committee and reserve fund under Ch. 347, Acts 1912 and Ch. 645, Acts 1913 (Now G.L. Ch. 40, §6).
Ch. 807, Acts 1913 (See G.L. Ch. 152, Sec. 69): workmen's compensation.
- 1915 *Ch. 283, Acts 1914 (See G.L. Ch. 41, §70): establishment of planning board.
- 1916 Ch. 284, Acts 1915 (See G.L. Ch. 39, §23): town election on different date from town meeting. Rescinded 1919; see also vote, Art. 11, town meeting March 20, 1939; Rescinded 10/28/68; See also §1 & 5 of Town Meeting Act.
- 1917 *Ch. 835, Acts 1913, §397 (See G.L. Ch. 39, §14): election of moderator.
*G.L. Ch. 41, §21: selectmen put in charge of highways, sidewalks and bridges.
- 1918 R.L. Ch. 28, §1-14 (See G.L. Ch. 45, §2-10): laying out of public parks.
- 1921 *G.L. Ch. 41, §45: establishment of board of trust fund commissioners.
G.L. Ch. 136, §21-25: permitting sports on the Lord's Day.
- 1925 G.L. Ch. 136, §6 & 7: licensing sale of certain items on the Lord's Day.
Ch. 496, Acts 1924, §2 (See G.L. Ch. 94, §120A): additional fees paid by slaughter house licensees.
- 1928 G.L. Ch. 48, §42-44: appointment and duties of chief of fire department.
*G.L. Ch. 143, §6-13: building inspector.
- 1929 Ch. 153, Acts 1929: Amherst Water Company Act amended.
- 1938 Ch. 10, Acts 1936: representative town meeting.
- 1939 G.L. Ch. 243, §3: regulating construction of buildings; rescinded 11/16/64.

- 1941 *G.L. Ch. 41, §91A: selectmen to appoint constables.
G.L. Ch. 40, §42R-42F: segregation of water revenues.
*G.L. Ch. 91, §29 and Ch. 513, Acts 1939: assumption of liability for damages by acts of state department of public works on rivers and streams.
- 1943 G.L. Ch. 41, §38A: tax collector to collect accounts due town. Rescinded April 6, 1943; resumed 1955.
- 1944 G.L. Ch. 54, §103A: absentee voting at town elections.
- 1946 Ch. 723, Acts 1945: establishment of department to aid veterans.
- 1947 *G.L. Ch. 53, §121: town caucus; superseded 1956 on acceptance of Ch. 149, Acts 1955.
- 1949 G.L. Ch. 136, §4B: licensing bowling alleys to operate on the Lord's Day.
*G.L. Ch. 40, §22A: parking meters.
- 1950 Ch. 529, Acts 1949 (G.L. Ch. 166, §32): inspector of wires.
- 1951 G.L. Ch. 41, §81A-81Y: planning board with power over land subdivision.
Ch. 820, Acts 1950: increase of pensions.
*G.L. Ch. 41, §108A: job classification and pay scales.
- 1952 Ch. 781, Acts 1951: increase of pensions.
- 1953 Ch. 537, Acts 1951 (G.L. Ch. 31, §47E): step pay increases for welfare personnel; superseded 1968 by State assumption of welfare.
G.L. Ch. 71, §16-161: regional school district with Pelham.
Ch. 11, Acts 1951: town manager government.
- 1955 G.L. Ch. 40, §6B: appropriations for police and fire uniforms.
G.L. Ch. 40, §38A: tax collector to collect amounts due town.
- 1956 Ch. 149, Acts 1955: nominations procedure in town elections.
*G.L. Ch. 32B: contributory group insurance for town employees.
G.L. Ch. 40, §42G-42I: assessments for laying water pipes; rescinded 1957.
G.L. Ch. 40, §13A: workmen's compensation for town employees.
- 1958 Ch. 427, Acts 1957: increase of pensions for retired policemen.
G.L. Ch. 41, §100A: indemnification of operators of town vehicles.
Ch. 40 1, Acts 1956: indemnification of Civil Defense volunteers operating town vehicles.
- 1959 *G.L. Ch. 121, §26K: housing for elderly persons.
- 1960 Ch. 49, Acts 1959: limiting size of town meeting. G.L. Ch. 40, §8A: establishment of development and industrial commission.
G.L. Ch. 147, §17A: paid holidays for policemen.
- 1961 G.L. Ch. 48, §57A: paid holidays for firemen.
*G.L. Ch. 78, §19A-19C: library aid.
- 1962 G.L. Ch. 40, §22D: tow-away authority.
G.L. Ch. 40, §8C: establishment of conservation commission.
- 1963 G.L. Ch. 90, §18A: regulating pedestrians.
Ch. 403, Acts 1936 (See G.L. Ch. 152, §69): extending workmen's compensation.
*G.L. Ch. 40, §4: appraisal of real estate (revaluation).
- 1964 Ch. 54, Acts 1963: nominations for town offices.
Ch. 478, Acts 1963: increasing certain pensions.
Ch. 48, Acts 1964: special sewer charges.
G.L. Ch. 25, §12H: gas inspector.

- 1966 G.L. Ch. 40B: Lower Pioneer Valley Regional Planning District.
- 1968 G.L. Ch. 40, §42A-42F: water liens on real estate. (Rate change voted 3/4/68).
G.L. Ch. 90, §20C: parking fines.
G.L. Ch. 32B, §9A, 9D, 11B: contributory group insurance (extending benefits).
- 1969 G.L. Ch. 32B, §7A(d), 9E: contributory group insurance (extending benefits).
- 1971 G.L. Ch. 121B: redevelopment authority.
- 1972 G.L. Ch. 32B, §11c: retired teachers group insurance transferred to State.
Ch. 512, Acts 1972: Jones Library.
G.L. Ch. 40, §8D: historical commission.
- 1973 G.L. Ch. 44, §53C: payment of police officers for off-duty work detail.
Ch. 631, Acts 1973: amends §10, Ch. 53 G.L. requiring incumbent town meeting members to file nomination papers.
Ch. 814, Acts 1973: public works, land acquisition for highways.
- 1975 G.L. Ch. 40, §8G: police department, mutual aid programs with other municipalities.
- 1978 G.L. Ch. 44, §53: revolving fund for recreation.
G.L. Ch. 83, 16A-16F: unpaid sewer charges to become lien on real property.
G.L. Ch. 40, §5E: establish & maintain unemployment compensation fund.
G.L. Ch. 148, §26C (as amended by Ch. 962, Acts of 1977): smoke detectors, apartment houses.
- 1979 G.L. Ch. 48, §59A: firefighting aid to other municipalities.
- 1980 Ch. 117, Acts 1980: filling vacancies in Town Meeting membership.
G.L. Ch. 71, §71E: to allow deposit of receipts from Adult Education to revolving account for school use.
G.L. Ch. 40, §4G: increase bid ceiling to \$4,000 for town contracts.
- 1981 G.L. Ch. 90, §20A, 20C, 20D, 20E, and Ch. 351, §121, Acts 1981: parking tickets.
- 1982 Ch. 743, Acts 1981: real estate tax exemptions for elderly.
Ch. 40, §5D: establishment of retirement fund.
- 1983 G.L. Ch. 59, §5(37A): property tax exemption - blind.
G.L. Ch. 59, §5(41B): increased limit, property tax exemption, elderly.
G.L. Ch. 60A (as amended by Ch. 597, Acts 1982): motor vehicle excise tax exemption, ex prisoners of war.
G.L. Ch. 71, §71E: revolving fund, adult & continuing education programs.
G.L. Ch. 59, §5, Clause 37A: increase to \$500.00 the property tax exemption for the blind.
G.L. Ch. 59, §5, Clause 41B: increase minimum income tax assets limits for a \$500.00 property tax exemption for the elderly.
G. L. Ch. 60A (amended by Ch. 597 of the Acts of 1982): exempt motor vehicle tax to former prisoners of war.
G.L. Ch. 71, §71E: establish a revolving fund for adult education and continuing education programs.
Petition General Court/Special Act: establishment of a revolving fund for adult education and continuing education programs.
G.L. Ch. 41, §108L: Police career incentive pay program.
- 1985 G.L. Ch. 188, §13: Professional development grant program.
G.L. Ch. 71, §40: Minimum teacher salary.

- 1986 G.L. Ch. 900, Acts of 1977, §3A, amending Ch.32B: Establish a claims trust fund.
G.L. Ch. 59, §5, Clauses 17D & 41C: Personal Exemption.
G.L. Ch. 41, §41B: Authorize payment of public employees by direct bank credits.
- 1987 G.L. Ch. 40, §39K: Establish enterprise funds for Town's water, sewer & solid waste facilities and operations
- 1988 G.L. Ch. 64G, §3A: Local room occupancy excise 4%.
G.L. Ch. 140, §147A: Allow town to enact by-laws for the regulation of dogs.
G.L. Ch. 40, §58: Municipal charges lien on real estate for unpaid refuse fees.
- 1989 G.L. Ch. 40, §39K: Establish Municipal Golf Course service enterprise fund.
G.L. Ch. 140, §2 also 49d; fee for licenses granted to innholders, common victuallers and lunch carts.
G.L. Ch. 262, §34, Clauses 1-79: Changes to Town Clerk fees.
- 1990 G.L. Ch.653 §40, Acts of 1989: Assessment date change from Jan. 1 to July 1 for inclusion of new growth in the levy.
G.L. Ch. 148, §26E, 26G, 26H, 26I: Smoke detectors, automatic sprinkles.
G.L. Ch. 40, §57: Denial, revocation or suspension of local licenses or permits for failure to pay municipal taxes or charges.
- 1991 G.L. Ch. 59, §57C: Assessment of property taxes on a quarterly basis.
G.L. Ch. 291, Acts of 1990: Enhanced 911 service.
- 1992 G.L. Ch. 40, §22F: Empower the town to fix and retain fees for permits and services.
G.L. Ch. 59, §57B: To bill and collect tax bill for \$50 or less.
G.L. Ch. 59, §17D, 22, 37A, 41C: Maximum exemption increase of 40%.
- 1993 G.L. Ch. 59, §17D, 22, 37A, 41C: Maximum exemption of 100%.
G.L. Ch. 59, §5, Clauses 22, 22A, 22B, 22C, 22D, 22E (Ch. 110, §110 of FY94 State Budget): Reduces from 5 to 1 the number of years a person must have been a Mass. resident to qualify for veteran exemption.
- 1994 Chapter 71, §83, Acts of 1993: Mass. Early Retirement Incentive Program for public school employees belonging to Mass. Teachers' Retirement System.
G.L. Ch. 40, §21D: G.L. Ch. 270, §16: Non-criminal disposition of violations.
G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.
- 1995 G.L. Ch. 59, §5, Cl. 50: Property tax exemption for residential improvements to provide elderly housing.
- 1996 G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.
G.L. Ch. 138, §12: Issuing of Cordial and Liqueurs licenses.
- 1997 Ch. 448, Sec. 2, Acts of 1996. Allow voice vote to stand unless questioned in matters requiring a 2/3 vote by statute.
- 1998 G. L. Ch. 41, Sec. 110A and Ch.4. Sec. 9. Saturday shall be considered legal holidays for the purpose of transacting business with municipal offices.
G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.
- 1999 G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.

- 2000 G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.
G.L. Ch 44, §53F1/2: Establish a Transportation Enterprise Fund.
- 2001 G.L. Ch. 44B, Sections 3-7: Community Preservation Act which establishes a special “Community Preservation Fund”.
- 2001 G.L. Ch. 44B, §5: Establish a Community Preservation Committee.
- 2001 G.L. Ch 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions. Agree to maintain funds on deposit in exchange for banking services.
- 2001 G.L. Ch. 59, Sec. 17D, 22, 37A, and 41C: Maximum exemption of 100 percent.
- 2002 G.L. Ch. 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions pursuant to which the Treasurer agrees to maintain funds on deposit in exchange for banking services.
- 2002 Ch. 73, §4, Acts of 1986: Authorize a maximum additional exemption of up to 100 percent for qualifying taxpayers.
- 2002 G.L. Ch. 59, §5K: Reduction in property tax liability in exchange for volunteer services by persons over age 60.
- 2002 Ch. 184, §51, Acts of 2002: Amend G.L. Ch. 59, §5 (41C), for Fiscal Year 2003, by decreasing the eligibility age for senior tax exemptions and by increasing the exemption amount, the gross receipts limit, the whole estate limit, and the whole estate exclusion.
- 2002 G.L. Ch. 40, §21D: Authorize the non-criminal disposition method of enforcing Town Bylaw, Article II, Handicapped Parking.
- 2003 G.L. Ch. 184, §31: Accept a permanent Affordable Housing Restriction on lots 1 and 7 of Parcels 4 and 7 on Assessor’s Map 21B.
- 2003 G.L. Ch. 40, §8C, Ch. 132A, §11, and Ch. 184: Simmons Property Conservation Restriction.
- 2003 G.L. Ch. 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions pursuant to which the Treasurer agrees to maintain funds on deposit in exchange for banking services.
- 2003 G.L. Ch. 59, §5, Clauses 17D, 22, 37A, and 41C: Authorize a maximum additional exemption of 100 percent.
- 2003 G.L. Ch. 23A, §3A-3H: Designate Economic Opportunity Area (“Atkins Corner EOA”) and Tax Increment Financing Zone for a term of not more than twenty years.
- 2003 G.L. Ch. 23A and Ch. 40, §59: Authorize the Select Board to enter into Tax Increment Financing Agreements.
- 2004 G.L. Ch. 59, §5, Clauses 17D, 22, 37A, or 41C: Authorize a maximum additional exemption of up to 100 percent for qualifying taxpayers.
- 2004 G.L. Ch. 44, §53F: Authorize the Treasurer to enter into written agreements with banking institutions pursuant to which the Treasurer agrees to maintain funds on deposit in exchange for banking services.
- 2004 G.L. Ch. 44, §7(5): Authorize the Treasurer to borrow \$250,000 for Town Center Improvements.
- 2004 G.L. Title XIV, Ch. 90, §16A: Resolution to enforce law pertaining to unnecessary vehicle idling.

- 2004 G.L. Ch. 59, §5 (added by statute 1995, Ch. 181, §1), final paragraph: Increase property tax exemption allowed to certain senior citizens, surviving spouses and minors by amount of the annual cost of living adjustment (COLA).
- 2004 G.L. Ch. 59, §5, Clause 41D: Allow the income and assets certain senior citizens may have to qualify for an exemption to increase by the COLA amount.

*Statutes not accepted but availed of by the town: town meeting vote not required.

AN ACT RELATIVE TO THE AMHERST TOWN GOVERNMENT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- SECTION 1. Chapter 10 of the acts of 1936 is hereby repealed.
- SECTION 2. Chapter 11 of the acts of 1951 is hereby repealed.
- SECTION 3. Chapter 65 of the acts of 1951 is hereby repealed.
- SECTION 4. Sections 6, 7, 8 and 9 of chapter 512 of the acts of 1972 are hereby repealed.
- SECTION 5. Chapter 1088 of the acts of 1973 is hereby repealed.
- SECTION 6. Chapter 404 of the acts of 1998 is hereby repealed.
- SECTION 7. The following shall constitute the charter of the town of Amherst:

AMHERST TOWN GOVERNMENT ACT
As amended by Chapter 263 of the Acts of 2006

1. Election Provisions

1.1 Town government positions to be filled by election

The town shall elect town meeting members, a moderator, members of the select board and school committee, and trustees of the town library. The town shall also elect, on the same ballot, town representatives to the following state or regional authorities: Oliver Smith Will Electors, Redevelopment Authority, Housing Authority and Hampshire Council of Governments. All are subject to any applicable provision of the law. The terms of office of such officers or boards shall not be interrupted.

1.2 Districting

1.21 Advisory board

Every ten (10) years, upon receipt of the final results of the decennial federal census, the select board shall appoint a districting advisory board composed of nine (9) members from diverse geographical areas of the town, plus the town clerk or the town clerk's designee as a non-voting member ex officio.

1.22 Process and reporting

The districting advisory board shall recommend to the select board a division of the territory of the town into not less than five (5) precincts, each of which shall be plainly designated. They shall be so established as to consist of compact and contiguous territory with numbers of inhabitants as nearly equal as feasible, and be bounded as far as possible by the center line of known streets and ways or by other well defined limits.

The districting advisory board shall include in its recommendations to the select board a map or maps of the precincts as established or revised from time to time, with the numbers of inhabitants therein. The select board shall report its decisions on said recommendations to the town clerk, who shall forthwith give written notice thereof to the state secretary, stating the number and designation of the precincts, the number of inhabitants of each precinct and such other information as shall be required by law. Any revision of such precincts shall take effect upon receipt of the approval of the state secretary in writing, after which the town clerk shall notify each household of registered voters of said revisions, and shall also cause to be posted in at least one (1) public place in each precinct a map or description of that precinct, with the names and residences of the registered voters therein.

1.3 Conduct of elections

Meetings of the registered voters of the several precincts for elections, for primaries, and for voting upon any question to be submitted to all registered voters of the town, shall be held on the same day and at the same places within this town as the select board shall in the warrant for such election direct, and the polls shall open at 7:00 a.m. and shall close at 8:00 p.m. The General Laws relating to precinct voting at elections shall apply to all elections and primaries in the town.

1.4 Election of select board members

At each annual election there shall be elected in place of those select board members whose terms are about to expire an equal number of members, each to serve for three (3) years. The select board members shall serve until their successors are elected and qualified. If, for any reason, a vacancy or vacancies occur in the membership of the select board, the remaining members shall call a special town election to fill the vacancy or vacancies for the unexpired term or terms, except if such vacancy or vacancies occur less than ninety (90) days before the annual election and no fewer than three (3) select board members remain in office, the vacancy or vacancies shall remain until such annual election.

1.5 Election of representative town meeting member

1.51 Number of members

The number of elected town meeting members in all precincts shall be equal among the precincts and in each precinct shall be the largest number divisible by three (3) which will cause the total elected membership to be as near two hundred forty (240) as possible.

1.52 Nominations

Nomination of candidates for town meeting member to be elected under this act shall be made by nomination papers which shall bear no political designation; to the name of a candidate for re-election shall be added the words "Candidate for Re-election." Nomination papers shall be signed by at least one (1) registered voter of the precinct in which the candidate resides, and shall be filed with the town clerk at least forty-nine (49) days before the election. No nomination paper shall be valid in respect to any candidate whose written acceptance is not thereon or attached thereto when filed.

1.53 Elections

1.531 Balloting

The registered voters in any precinct affected by any revision of precincts, at the first annual town election following such revision, and conformable to the laws relative to elections not inconsistent with this act, shall elect by ballot the number of registered voters from said revised precinct, other than the officers designated herein as town meeting members ex officio, to be town meeting members of the town.

1.532 Term of office

The first third, in the order of votes received, of members so elected in each precinct shall serve a three(3)-year term, the second third in such order shall serve a two(2)-year term, and the remaining third in such order shall serve a one(1)-year term from the day of the annual town election; and thereafter, except as provided herein, at each annual town election the registered voters of each precinct shall, in like manner, elect for the term of three (3) years, one third (1/3) of the number of elected town meeting members to which such precinct is entitled, and shall at each such election fill for the unexpired term or terms any vacancy or vacancies then existing in the number of elected town meeting members in such precinct.

In case of a tie vote affecting the division into thirds, as aforesaid, the members elected from the precinct at the same election, other than those whose terms of office are affected by such tie vote, shall by ballot determine which members receiving such tie vote shall serve for the longer and which for the shorter term. In the case of a tie vote affecting the election of town meeting members in any precinct otherwise than as to term of office, the members elected from such precinct at the same election shall by ballot

determine which of the candidates receiving such tie vote shall serve as town meeting member from such precinct. The terms of office of all elected town meeting members from every precinct revised as aforesaid shall cease upon the election of their successors as hereinbefore provided.

1.533 Notification

The town clerk shall, after the election of town meeting members, forthwith notify such members by mail of their election.

1.534 Members assuming ex officio status

Any elected town meeting member who becomes by appointment or election one (1) of the officers designated as town meeting members ex officio shall, upon such appointment or election, cease to be an elected town meeting member.

1.54 Term of office of members filling vacancies

Town meeting members elected to fill vacancies between town elections shall serve until the next annual town election.

1.541 Vacancies between election and annual meeting

In the event of a vacancy in the full membership of town meeting following the annual town election, and prior to the annual town meeting of the same year, such vacancy shall be filled by the losing candidate at the same election with the largest number of votes in that precinct who shall serve only until the next annual town election. If there is a tie vote among two (2) or more such candidates, the remaining elected members of the same precinct shall, by ballot, choose from among those tied and the winner shall serve until the next annual town election. In such cases, the town clerk shall call a special meeting of the remaining elected members of such precinct to be held within thirty (30) days following the annual town election, and shall cause to be mailed to every such member a notice specifying the purpose, time and place of the meeting, not less than five (5) days preceding the date scheduled. In the event there are no candidates available to fill the vacancy, the procedures outlined in Section 1.542 shall be followed.

1.542 Vacancies occurring after annual meeting

1.5421 Filled by precinct member elections

In the event of any vacancy in the full number of elected town meeting members from any precinct, the town clerk shall, not less than thirty (30) days prior to the first special town meeting after October 1 but before December 31, mail written notice of such vacancy to the remaining elected members of the precinct and shall publish said notice in a newspaper of general circulation in the town. Nomination papers to fill any vacant seat may be filed by any registered voter of the precinct with the town clerk until the close of business on the eighth (8th) day following the date of publication. The town clerk shall on or before the close of business on the seventh (7th) day thereafter certify the qualified candidates, mailing to the remaining town meeting members in the precinct a copy of such certification together with a written ballot identifying the qualified candidates and the number of vacancies to be filled. The remaining elected town meeting members of the precinct shall, on or before the seventh (7th) day following said mailing, cause their ballots to be delivered to the town clerk in a sealed envelope. On the first business day following said seventh (7th) day the town clerk shall open the envelopes at a duly noticed public meeting and shall certify the election of those with the largest number of votes, ties to be resolved by the town clerk by lot.

1.5422 Filled by precinct member meetings

In the event of any vacancy in the full number of elected town meeting members from any precinct which cannot be filled by means of the above-mentioned procedure, the remaining elected members of the precinct may choose a successor from among the registered voters thereof. Upon petition

therefor, signed by no fewer than ten (10) elected town meeting members from the precinct, or if the entire number of elected town meeting members from said precinct is fewer than eighteen (18), by a majority thereof, notice of any vacancy shall be made promptly to the remaining elected town meeting members from the precinct wherein the vacancy or vacancies exist by the town clerk, who shall call a special meeting of such members for the purpose of filling a vacancy. The town clerk shall cause to be mailed to every such member, not less than five (5) days before the time set for the meeting, a notice specifying the object, time and place of the meeting. At the meeting, a majority of the elected town meeting members from such precinct shall constitute a quorum, and they shall elect from their own number a chair and a clerk. The election to fill such vacancy shall be by ballot and a majority of the votes cast shall be required for a choice. The chair and the clerk shall count the ballots and shall make a certificate of such election and forthwith file the same with the town clerk, together with a written acceptance by the member or members so elected, who shall thereupon be deemed elected and qualified as a town meeting member or members.

1.543 Resignations and removals

A town meeting member may resign by filing a written resignation with the town clerk, and such resignation shall take effect on the date of such filing. A town meeting member ex officio or elected town meeting member who removes from the town shall cease to be a town meeting member, and an elected town meeting member who removes from one (1) precinct to another may serve only until the next annual town election.

2. Representative Town Meeting

2.1 Powers and limits of town meeting

2.11 Powers

The town of Amherst shall have the capacity to act through and be bound by its town meeting members, who shall, when convened from time to time, as herein provided, constitute representative town meetings; the representative town meetings shall exercise exclusively, so far as will conform to the provisions of this act, all powers vested in the municipal corporation.

Action in conformity with all the provisions of law now or hereafter applicable to the transaction of town affairs in town meeting, shall, when taken by a representative town meeting in accordance with the provisions of this act, have the same force and effect as if such action had been taken in a town meeting open to all the voters of the town as organized and conducted before the establishment of representative town government.

2.12 Limits

This act shall not abridge the right of the inhabitants of Amherst to hold general meetings, as that right is secured to them by the constitution of this commonwealth; nor shall this act confer upon any representative town meeting in Amherst the power finally to commit the town to any measure affecting its municipal existence or changing its form of government, without action thereon by the voters of the town at large at an annual town election, using the ballot and voter check list therefor in accordance with the applicable provisions of the General Laws.

2.2 Organization

2.21 Membership

2.211 Members

Any representative town meeting held under the provisions of this act, except as otherwise provided herein, shall be limited to the town meeting members elected by precinct, together with the following members ex officio: the moderator, the members of the select board, the members of the school

committee, the president of the town library trustees, the chair of the finance committee, the town manager, and such other town meeting members ex officio as may be provided for in the bylaws of the town without being subject to section 32 of chapter 40 of the General Laws. Any elected town meeting member who becomes by appointment or election one (1) of the officers designated as town meeting members ex officio shall, upon such appointment or election, cease to be an elected town meeting member.

2.212 No compensation

Town meeting members elected by precinct shall receive no compensation.

2.22 The moderator

The moderator shall be elected by ballot at each annual town election and shall serve as the moderator of all town meetings, except as otherwise provided by law, until a successor is elected and qualified. Nomination for and election of the moderator shall be as in the case of all other elective town officers, and any vacancy in the office of moderator shall be filled by the town meeting members as the first order of business at the next town meeting following the occurrence of the vacancy. If the moderator is absent or must step down due to conflict of interest, a moderator pro tempore shall be elected by the town meeting members.

2.23 Finance committee

There shall be a finance committee consisting of seven (7) members to be appointed by the moderator. It shall be the duty of this committee to investigate all proposals in the articles of the warrant for any town meeting that shall in any way affect the finances of the town and to recommend to the town at the time of said meeting a course of action thereon, and in general to make recommendations to the town in regard to any financial business of the town. It shall have control of the reserve fund of the town and make appropriations therefrom.

2.3 Operations of town meeting

2.31 Notification

The town clerk shall notify the town meeting members of the time and place at which representative town meetings are to be held and the notices shall be sent by mail at least ten (10) days before the meeting.

2.32 Rules and procedures

A majority of the town meeting members shall constitute a quorum for doing business, but a lesser number may organize temporarily and may take a recess or adjourn from time to time, but no town meeting shall adjourn to a date that falls after the next election of town meeting members.

2.33 Public participation

All town meetings shall be public. Subject to such conditions as apply to the members of the representative town meeting, any registered voter of the town who is not a town meeting member may speak at any representative town meeting, but shall not vote. Persons who are not registered voters of the town may, subject to the same conditions, speak at any representative town meeting if the town meeting votes that they may do so.

2.34 Action on the warrant

All articles in the warrant for any town meeting shall be acted on and determined exclusively by town meeting members at a meeting to be held at such time and place as shall be set forth by the select board in the warrant for the meeting, subject to the referendum herein provided for. No article in the warrant of any representative town meeting shall be finally disposed of by a vote to lay upon the table, indefinitely to postpone or to take no action thereunder.

2.4 Referendum

A final vote of any representative town meeting passing or rejecting a measure under any article in the warrant shall not be operative until after the expiration of five (5) days, exclusive of Saturdays, Sundays

and legal holidays, from the dissolution of the meeting. If, within said five (5) days, a petition, signed by registered voters of the town totaling not fewer than five (5) percent of the total number of registered voters of the town which number shall not include the number of inactive voters, containing their names and addresses substantially as they appear on the list of registered voters, is filed with the select board, asking that the question or questions involved in such vote be submitted to the registered voters of the town at large, then the operation of such vote shall be further suspended pending the determination as hereinafter provided. If such petition is not filed within said period of five (5) days, the vote of the representative town meeting shall become effective and operative upon the expiration of said period.

2.41 Excluded measures

The following measures shall not be the subject of a referendum called under the provisions of this section: votes to adjourn; votes authorizing the expenditure of less than twenty thousand dollars; votes appropriating money for the payment of notes or bonds of the town and interest becoming due in the then current financial year; votes for the temporary borrowing of money in anticipation of revenue; votes rejecting proposed zoning bylaw amendments; votes declared by preamble by a two-thirds (2/3) vote of the town meeting members present and voting thereon to be an emergency measure necessary for the immediate preservation of the peace, health, safety or convenience of the town.

2.42 Election procedure

The select board, upon the filing of a petition under this section, shall submit said petition to the registrars of voters who shall within ten (10) days certify the signatures thereon. Within ten (10) days of receipt of written notice of certification of a sufficient number of signatures, the select board shall call a special town election, which shall be held as soon as practicable in accordance with law after the issuing of the call, for the sole purpose of presenting to the registered voters at large the question or questions so involved. The polls shall open at 7:00 a.m. and shall close at 8:00 p.m. All votes upon any question so submitted shall be taken by ballot, and the voter check list shall be used in the several polling places in the same manner as in the election of town officers. No ballots shall be removed or counted before the closing of the polls. The question or questions to be submitted to be voted on at said special town election shall be stated on the ballot in substantially the same language and form in which they were stated when finally presented to the representative town meeting by the moderator, as appears from the records of such town meeting.

2.43 Determination of result

A question put to the voters at large under the provisions of this section shall be determined by a vote of the same proportion of voters voting thereon as would have been required by law had the question been finally determined at a representative town meeting. No action of the representative town meeting shall be reversed unless a number of registered voters equal to at least eighteen (18) percent of all the active registered voters shall so vote. Otherwise the action shall take effect immediately upon the certification by the town clerk of the vote upon the referendum.

2.44 Calculations

To determine the total number of active voters of the town in making calculations required by this section, the town clerk shall use the number of active voters as of the dissolution of the town meeting at which the question proposed to be submitted to voters of the town at large was voted upon by town meeting members. The number of inactive voters at the dissolution of said town meeting shall be excluded from the calculations.

3. The Select Board

3.1 Organization

The five members of the select board shall be elected at large as the town's chief elected officials.

3.2 Powers and duties

The select board shall exercise such powers as are provided to municipalities or to boards of selectmen in the General Laws which have not been superseded by the provisions of this act. It shall be responsible for the general governance of the town. Other powers and duties shall include, but not be limited to those listed below.

3.21 Policy making

The select board shall initiate policy proposals as well as consider and make decisions on policy recommendations brought to it. It shall make guidelines for the manager in preparation of the annual budget proposal. It shall review and make recommendations on the proposed annual budget.

3.22 Appointive

3.221 Town manager

The select board shall appoint the town manager on merit and fitness and shall supervise the manager as provided in section 4.1 of this act.

3.222 Other select board appointments

The select board shall appoint on merit and fitness and may remove for cause, members of the board of appeals, personnel board, election officers, the registrar of voters, except the town clerk, and such members of boards, committees and commissions as are needed or as provided by town bylaws, town meeting action or acts of the general court, with the exception of the finance committee and such regulatory boards, committees and commissions listed in Section 3.223.

3.223 Select board confirmation of appointments

The select board shall confirm appointments by the town manager to the following regulatory boards and commissions: the conservation commission, the board of health, the planning board, and the historical commission.

3.224 Supervision of committees

The select board shall supervise the boards, committees and commissions that they appoint to ensure that the charge is carried out in a timely manner and that meetings are held in conformance with the laws regarding open meetings of governmental bodies.

3.23 Legislative

3.231 Town meeting warrant

The select board shall call and issue warrants for town meeting.

3.232 Recommendations to town meeting

The select board shall make recommendations to town meeting.

3.233 Town meeting actions

The select board shall implement appropriately the actions of town meeting.

3.234 Referendum ballots

The select board shall approve the placement of items on the town's ballot for referendum vote. The select board shall determine by majority vote whether to allow a debt exclusion from or an override of the levy limit. The select board shall frame the question for an override or a debt exclusion.

3.24 Regulatory

3.241 Licenses and permits

The select board shall issue certain licenses and permits as provided by state law and town bylaw.

3.242 Bylaw enforcement

The select board shall oversee appropriately the enforcement of sections of the town bylaws.

3.243 Water and sewer duties

The select board shall serve as the water commission and as the sewer commission.

3.244 Regulation of public ways

The select board shall control and regulate the public ways.

3.25 Financial

3.251 Budget

The select board shall make recommendations to the town on the annual operating budget and the capital program.

3.252 Signing bonds and notes

The select board shall sign all bonds and notes for the borrowing of money.

3.253 Reviewing grants and contracts

The select board shall review all contracts of over one million dollars (\$1,000,000) and all grants with implication of future financial decisions beyond the current fiscal year.

3.254 Encouraging joint financial planning

The select board shall encourage joint financial planning among town, school and library officials.

3.26 Investigative

The select board may, subject to appropriation, employ experts, counsel and other assistants and incur other expenses.

4. The Town Manager

4.1 Appointment of town manager

The select board shall appoint a town manager who shall be a person especially fitted by training and experience to perform the duties of the office and who shall be appointed without regard to political affiliation and in accordance with state and federal anti-discrimination laws and regulations.

The town manager need not be a resident of the town or of this commonwealth when appointed, but shall become a resident of the town within six months or within such time as stipulated in the contract at the time of appointment and remain such while in office. The town manager shall devote full time to the duties of the office and shall therefore not hold any other elective or appointive paid governmental office, nor shall the town manager engage in any other business, unless such actions are approved by the select board. This does not exclude the manager's participation in related professional organizations.

Before entering upon the duties of the office, the town manager shall be sworn to the faithful and impartial performance thereof by the chair of the select board, or by the town clerk, or by a justice of the peace.

4.2 Appointment of a temporary manager

Any vacancy in the office of town manager shall be filled as soon as possible by the select board. Pending the appointment of a town manager or the filling of any vacancy, the select board may appoint a suitable person as temporary town manager to perform all duties of the office.

4.3 Acting town manager

The town manager may designate by letter filed with the select board a qualified officer of the town to perform the duties of manager during the manager's temporary absence. If the manager fails to make such designation, the select board may designate an officer of the town to perform the manager's duties until the manager returns.

4.4 Compensation of the town manager and employment contract

4.41 Compensation of the manager

The town manager shall receive such compensation for services rendered as the select board shall determine.

4.42 Employment contract

The town manager shall enter into a written employment contract with the town for a period not to exceed five years which may be renewed for additional terms. The manager serving when this act takes effect shall continue to be employed under a contract that contains no time limitations.

4.5 The manager's powers of appointment

4.51 Appointment and removal of officers and employees

Except as otherwise provided in this act the town manager shall appoint on merit and fitness and may remove all town officers and employees for whom no other method of selection or removal is provided, except employees of the school department and town library. All appointments and removal of personnel shall be subject to the provisions of state and federal anti-discrimination laws, collective bargaining agreements, the limitations of existing appropriations and the town's personnel policies.

4.52 Initial compensation of employees

The town manager shall fix, subject to collective bargaining agreements, the limitations of existing appropriations and the town's personnel policies, the initial compensation of all appointed town officers and employees, except employees of the school department and the town library in accordance with all applicable provisions of section one hundred and eight A (108A) of chapter forty-one (41) of the General Laws if adopted.

4.53 Appointment of town counsel

The town manager shall have the authority to employ and discharge town counsel.

4.54 Other appointments

The town manager shall appoint, with approval of the select board, members of the planning board, conservation commission, historical commission, and board of health. The town manager shall appoint the assessors and members of boards, committees and commissions as are needed or as provided by town bylaws, town meeting action, or acts of the general court. All appointments to boards, committees and commissions shall be made on merit and fitness. The manager may remove for cause the appointees mentioned in this section.

4.55 Supervision of committees

The town manager shall supervise the boards, committees and commissions that the manager appoints to ensure that the charge is carried out in a timely manner and meetings are held in conformance with the laws regarding open meetings of governmental bodies.

4.6 Administrative powers and duties

The town manager shall be the chief administrative and fiscal officer of all town agencies, other than the schools and the library. In addition to specific powers and duties provided in this act the town manager shall have the general powers and duties enumerated below.

4.61 Administration and reorganization of departments and offices

4.611 Supervision

The town manager shall supervise and direct the efficient and responsible administration of all officers and employees appointed by the town manager and their respective offices and departments, and of all functions for which the town manager is given responsibility by the select board, or under the laws of the commonwealth, this act, and bylaws passed by town meeting.

4.612 Examination of town records

The town manager may without notice examine the records of any office or department under the manager's control and have access to all town books, papers, and electronic records for information necessary for the proper performance of the manager's duties.

4.613 Reorganization

The town manager may, in accordance with the provisions of this act and except as otherwise expressly prohibited by the General Laws reorganize, consolidate or abolish such departments or offices as are under the manager's authority, in whole or in part; establish such new departments or offices as the manager deems necessary; and transfer the duties, powers, and appropriation when incidental to the reorganization of one (1) department or office to another.

4.62 Information and advice to the select board

4.621 Attendance at select board meetings

The town manager shall attend regular meetings of the select board except meetings at which the board considers the manager's salary, formulation of the manager's employment contract, and the manager's removal.

4.622 Ensure records available to select board

The town manager shall ensure that all town offices keep full and complete records which shall be available to the select board, and upon request to others as required by law.

4.623 Advice about needs of the town

The town manager shall keep the select board fully advised as to the needs of the town and shall recommend to the select board for adoption such measures requiring action by them or by the town as deemed necessary or expedient.

4.63 Supervision of town properties

The town manager shall have jurisdiction over the rental, use, maintenance, and repair of all town property except school property and property under the control of the town library trustees. The town manager shall be responsible for the preparation of plans and the supervision of work on existing buildings or on the construction of new buildings other than school buildings and buildings under the control of the library trustees. The town manager shall maintain and repair school buildings if and to the extent that the school committee requests, and the town manager shall maintain and repair buildings under the control of the library trustees if and to the extent that they so request.

4.64 Supplies, contracts and approval of warrants

4.641 Purchase of supplies

The town manager shall purchase all supplies, materials and equipment and shall award all contracts for all departments of the town except the schools and the town library unless, and to the extent that, the school committee or the trustees of the town library may request by signed requisition.

4.642 Approval of warrants

The town manager shall receive all warrants for the payment of town funds in accordance with section fifty-six (56) of chapter forty-one (41) of the General Laws. The approval of any such warrant by the town manager shall be sufficient authority to authorize payment by the town treasurer, but the select board shall approve all warrants in the event of a vacancy in the office of town manager.

4.65 Prosecution of litigation

The town manager shall have authority to prosecute, defend and compromise all litigation to which the town is a party and to employ special counsel whenever in the judgment of the select board it may be necessary.

4.66 Other administrative duties

4.661 Administer provisions of general and special laws

The town manager shall administer either directly or through a person or persons appointed in accordance with this act, all provisions of general and special laws applicable to the town, all bylaws voted by town meeting and all regulations established by the select board.

4.662 Other duties

The town manager shall perform such other duties, consistent with the office, as may be required by state law, the bylaws of the town, or by vote of the select board or of the town meeting.

4.7 Annual review of the town manager

The select board shall conduct an annual review for the purpose of assessing the strengths and weaknesses of the manager's performance.

The review shall be based on a written list of performance criteria developed by the select board. Copies of the criteria with an invitation to submit written comments shall be available to the public in the select board office. After due consideration the select board shall prepare a written report of its evaluation. The report shall be placed in the manager's personnel file and a written summary may be released to the public.

4.8 Review at the end of the contract period

The select board shall conduct an employment review at the end of the contract period to determine if the manager's employment contract should be renewed. In the event of the non-renewal of the manager's employment contract the provisions of Section 4.9 shall apply.

4.9 Removal of the town manager

The select board, by a vote of three (3) or more members of the board, may remove the town manager by the following procedures: At least thirty (30) days before such proposed removal shall become effective, the select board shall file a preliminary written resolution with the town clerk setting forth in detail the specific reasons for the manager's proposed removal, a copy of which resolution shall be delivered to the town manager.

The manager may reply in writing to the resolution and may request a public hearing. If the manager so requests, the select board shall hold a public hearing not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request.

After the public hearing, if any, otherwise at the expiration of thirty (30) days following the filing of the preliminary resolution, and after full consideration, the select board by a vote of three (3) or more members of the board may adopt a final resolution of removal.

In the preliminary resolution, the select board may suspend the manager from duty, but shall in any case cause to be paid to the manager forthwith any unpaid balance of salary due in terms of the contract or salary for the next three (3) calendar months following the filing of the preliminary resolution, whichever is greater.

5. Budgetary Process and Fiscal Management

5.1 Annual operating budget

On or before January 16 of each year, the town manager shall submit to each member of the select board and finance committee a recommendation in writing of the appropriations for the town government for the ensuing fiscal year, showing specifically the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town, and showing specifically the amount recommended to be provided for each fund and department, together with a statement of the expenditures of the town for the same purpose in at least the two (2) preceding years and an estimate of the expenditures for the current year.

The manager shall also submit a statement showing all revenue received by the town in at least the two (2) preceding fiscal years together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year and shall report the probable amount required to be levied and raised by taxation to defray all expenses and liabilities of the town. For the purpose of enabling the town manager to make up the annual estimate of expenditures, all boards, officers and committees of the town shall, upon the manager's written request, furnish all information in their possession, and before November 16 submit to the manager in writing a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

5.2 Capital improvement program

The town manager, with the advice of a joint capital planning committee comprised of representatives from the select board, finance committee, school committee and library trustees, shall develop a capital improvement program to be presented to the select board, finance committee, school committee and library trustees in time to be included in the finance committee report to the next annual town meeting.

SECTION 8. Any reference to the Amherst Representative Town Meeting Act, chapter 10 of the acts of 1936, chapter 65 of the acts of 1951, chapter 1088 of the acts of 1973, and chapter 404 of the acts of 1998, or to the Amherst Town Manager Act, chapter 11 of the acts of 1951, in any statute, law, bylaw, regulation, agreement, contract or other instrument, shall be deemed to refer to the Amherst Town Government Act.

Approved by Acting Governor Jane Swift on December 29, 2001.