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ARTICLE 1: INTERPRETIVE GUIDANCE AND DEFINITIONS

1.1 – GENERAL BYLAW INTERPRETIVE GUIDANCE

A. All references to the Massachusetts General Laws (M.G.L.) are as amended, unless otherwise stated.

B. All references to governmental agencies and positions include successors, unless otherwise stated (e.g. Mass DPW interpreted to mean MassDOT).

C. When the word "including" is used, its meaning shall not be interpreted as "exclusively" or as a limitation, unless otherwise stated.

D. The General Bylaws compute time as proscribed by Section 9.5 of the Charter, "the day of the act or event shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall be extended to the next day which is not a Saturday, Sunday, or legal holiday. When the period of time designated is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall not be included; when the period is 7 days or more, every day shall be counted."

E. Titles, captions, and alphanumeric identifiers are not part of the bylaw, but administrative prerogatives of the Town Clerk and may be amended by the Town Clerk. Also, whole sections of the bylaw may be repositioned by the Town Clerk provided that no substantive changes result.

F. Except for dog regulations, no criminal enforcement or noncriminal disposition for violations of these bylaws shall be commenced after 60 days from the commission thereof.

G. Duties assigned by bylaw are delegable to subordinates, unless otherwise stated.

H. Criminal fines, which are stated as a specific dollar amount, shall mean not to exceed the amount stated.

I. Unless otherwise stated, if any section, subsection, paragraph, sentence, clause, or phrase of any bylaw in Article 3, General Bylaws, is declared unconstitutional or invalid for any reason, the remaining provisions of the bylaw shall not be invalidated.

J. Bylaw preambles and statements of purpose are retained if they are necessary to properly interpret the bylaw. Otherwise, the statements should be removed.

K. Implementation language is removed once implementation has occurred.

L. A capitalized word or phrase in a bylaw shall reference a defined term in Section 1.2 or within individual bylaw. Consistent use of capitalization throughout the bylaw is a best practice for legislative drafting.

M. The singular use of a defined term includes the plural when the context so indicates.

N. These bylaws cannot be viewed in isolation and must be understood as municipal law that may be preempted by provisions of higher laws, including the Amherst Home Rule Charter, the Massachusetts General Laws, the Massachusetts Constitution, federal laws, and the federal Constitution.

1.2 – GENERAL BYLAW DEFINITIONS

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

"Alcoholic Beverage" means liquid, including malt beverage, intended for human consumption as a beverage that contains 0.5% or more of Alcohol by volume at 60 degrees Fahrenheit.

"Charter" means the Amherst Home Rule Charter.

"Code" means, collectively, the Charter, local bylaws, regulations, policies, and locally accepted statutes of the Commonwealth.

"Commonwealth" means the Commonwealth of Massachusetts.

"Town" means the City known as the Town of Amherst.

"Town Bulletin Board", as defined by Section 1.7 of the Charter, means the display in the Town Hall on which the Town Clerk posts official notices of meetings and upon which other official Town notices are posted, the display on the Town's website established and maintained by the Town as its online repository of municipal information, or the display at any other location(s) as may be designated from time to time by the Town Council.

"Town Council" means the legislative body for the Town.

"Town Manager" means the Chief Executive Officer for the Town.

1.3 – DATA BLOCKS

A data block shall be a substantive part of the bylaw with which it is associated and shall state, at the beginning of each bylaw, the monetary fee, the maximum fine (for criminal enforcement), or penalty (for noncriminal disposition) associated with the bylaw. Maximum fines for criminal enforcement may be less than, but shall not exceed, the amount stated in the data block. Non-monetary penalties associated with the bylaw may exist within the text of the bylaw.

ARTICLE 2: ADMINISTRATIVE PROVISIONS

2.1 – CLASSIFICATION OF NEW BYLAWS

Whenever a new bylaw is adopted by the Town Council and becomes effective, the Town Clerk shall assign it a unique alphanumeric identifier in the Code framework next in numerical sequence to the bylaws then in the Code, with a suitable identifying caption. Whenever an existing bylaw is amended or revised, unique alphanumeric identifiers shall, as needed, be added such that its provisions fit appropriately within the framework of the Code. Whenever a bylaw is adopted, amended, or revised, the Town Clerk shall, without further authorization by the Town Council, adjust all cross-references in the Code to coordinate their respective applicability and assure achievement of the legislative intent.

2.2 – VIOLATIONS – CRIMINAL COMPLAINT & NONCRIMINAL DISPOSITION

A. Criminal Complaint

Whoever violates any provisions of Article 3 of the bylaws may be penalized by indictment or criminal complaint brought in a court of competent jurisdiction. The penalty shall be that fixed by bylaw; provided, however, that in no case shall the maximum penalty for each violation, or offense, brought in such manner, be in excess of $300.00 unless authorized by law.

B. Noncriminal Disposition

Whoever violates any provisions of Article 3 of the bylaws, the violation of which is subject to a specific penalty, may be penalized by a noncriminal disposition as provided in M.G.L. c. 40, § 21D, for those provisions which the Town Council has determined are subject to noncriminal disposition, as indicated in the data block. If a government agency, including a board, committee, or department, is named as the enforcing agent it shall mean that agency's designee. The noncriminal 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 Town Council shall first approve, by majority vote, each rule or regulation to be enforced by this procedure.

C. Penalties & Enforcing Person(s)

The penalties for bylaw violations shall be as set forth in the data block that precedes all bylaw provisions for which penalties may be assessed. For noncriminal disposition, and as required by M.G.L. c. 40, § 21D, the data block shall identify the person taking cognizance of a violation of a specific bylaw, rule, or regulation (the "enforcing person") that the enforcing person is empowered to enforce.

D. Each day on which any violation exists shall be deemed to be a separate offense.

2.3 – TOWN FEES AND CHARGES

The Town Clerk shall create and maintain a "Schedule of Fees and Charges" in which shall be set forth and published all fees collected by the Town, which schedule shall include (1) fees as are required by statute to be set from time to time by the Town Council or bylaw, and (2) other fees as the Town is otherwise authorized to establish and amend.

2.4 – PERSONNEL BYLAW

A. Name of Bylaw and Authority

This bylaw shall be known and cited as "The Personnel Bylaw", and is adopted pursuant to the provisions of M.G.L. c. 41, § 108-C, as amended, and consistent with the Charter.

B. 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 Town Manager 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 M.G.L. c. 31, 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.

C. Personnel Board and Town Manager

There shall be a Personnel Board consisting of 5 members, each member to serve for a 3-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 shall be eligible for appointment to the Personnel Board.

Consistent with the authority of the Town Manager to make appointments to multiple member bodies as provided in Section 2.11(b) of the Town Charter, the Town Manager shall appoint the Personnel Board. The Town Manager is encouraged to seek 1 nominee for appointment from the employees covered by this bylaw and 1 nominee for appointment from the Library Trustees. Members of the Personnel Board shall be residents of the Town of Amherst. The Personnel Board shall elect a Chair.

D. Classification of Positions and Pay Scales

The Town Manager shall, following consultation with the Personnel Board, classify all positions in the service of the Town and establish and periodically update, a compensation plan.

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.

In addition to changes to the classification plan initiated by the Town Manager or in such other manner as the Town Manager deems appropriate, the Personnel Board shall recommend changes to the classification plan to the Town Manager for the Town Manager's approval.

The compensation plan shall delineate the levels and steps at which employees shall be compensated for their services. With the exception of appointments made for emergencies, no employee may be appointed to a position not included in the classification plan.

E. Hours of Work

Procedures regarding the hours of work, compensatory time, and overtime shall be established by the Town Manager, following consultation with the Personnel Board.

F. Vacations

All employees covered by the bylaw shall be eligible for vacation according to procedures established by the Town Manager following consultation with the Personnel Board.

G. Sick Leave

Sick leave shall be granted to all benefited employees covered by this bylaw according to procedures established by the Town Manager following consultation with the Personnel Board.

H. Holidays

The Town Manager, following consultation with the Personnel Board, shall establish procedures for the granting of holidays to employees covered by this bylaw. The procedures shall delineate the process to compensate those employees required to work on holidays.

I. Other Leave

Procedures for the granting of other leaves shall be established by the Town Manager, following consultation with the Personnel Board in compliance with federal and Commonwealth regulations. Examples of other leaves include leave for jury service, military leave, family and medical issues, injury, religious observance, bereavement, personal, and leave without compensation.

J. Adoption and Amendment of Personnel Policies

The Town Manager shall accept from any member of the Personnel Board, employee, or resident of Amherst, proposals for adoption or amendment of personnel policies or procedures, and shall forward the same to the Personnel Board for its review. The Personnel Board shall, within 60 days of receipt, consider the proposed policies or procedures and make a recommendation to the Town Manager concerning the proposal including the full text, an explanation, and the anticipated implications, financial or otherwise; provided, however, that failure of the Personnel Board to review the policies or procedures during that period, or a negative recommendation, shall not prohibit the Town Manager from acting thereon after the expiration of the 60-day period.

Policies and procedures, and amendments thereto, approved hereunder shall become effective upon the approval of the Town Manager, unless a later date is specified by the Town Manager. Following the approval of any policies or procedures the Town Manager shall act forthwith to make such updated policies or procedures available to Town employees and the public.

K. Annual Report

The Town Manager shall provide an annual, detailed report to the Town Council concerning any action taken under this bylaw. The report shall include any approved changes in any of the plans or policies addressed herein.

ARTICLE 3: GENERAL BYLAWS

3.1 – STREET NAMES AND NUMBERS

The Planning Board shall approve the names of new streets, which shall avoid similarity or duplication with names of existing streets.

The Building Commissioner, in consultation with the Fire Department, where appropriate, shall assign address numbers to buildings.

3.2 – SPECIAL BOARD OF APPEALS

The board of appeals established under the zoning bylaw shall act as the board of appeals under M.G.L. c. 41, § 81Z, and the provisions of the zoning bylaw for associate members of the board shall be applicable when the board acts under Chapter 41.

3.3 – HUMAN RIGHTS & HUMAN RIGHTS COMMISSION

A. Definitions

"Gender Identity" means all forms of gender identity, including a person's actual, self-identified, or perceived gender, as well as a person's, gender-related self-image, gender-related appearance, or gender-related expression whether or not that gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with a person's sex at birth.

"Genetic Information" means any written or recorded individually identifiable result of a genetic test as defined by this section or explanation of a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes. The term Genetic Information shall not include information pertaining to the abuse of drugs or alcohol, which is derived from tests given for the exclusive purpose of determining the abuse of drugs or alcohol.

B. No person shall be denied any rights guaranteed pursuant to local, Commonwealth, 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, Gender Identity or expression, Genetic Information, or age.

C. There shall be a Human Rights Commission ("the Commission") of 9 Amherst residents broadly representative of the community, appointed to 3-year terms by the Town Manager.

(1) The Commission shall advise the town, provide education and mediation to the community, and review all matters brought to its attention by the Director.

(2) 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.

(3) The Commission shall advise and assist the Town Manager and Director in the achievement of affirmative action/equal opportunity objectives.

(4) The Commission shall conduct and participate in educational activities related to its responsibilities.

D. There shall be a Human Rights Director ("the Director") who shall be appointed by the Town Manager.

(1) The Director shall enforce and carry out the "Human Rights Policy" adopted in this bylaw to its fullest extent.

(2) The Director shall, upon receiving a written complaint from any person or regarding matters pursuant to this bylaw otherwise brought to the Director's 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 on any basis identified in subsection B. The Director shall ascertain the facts concerning the alleged denial of rights in accordance with the procedures to be adopted pursuant to section D(3) of this bylaw. The Director shall coordinate efforts with law enforcement in the investigation, prosecution, and prevention of hate crimes. The Director shall inform the chair and vice-chair or co-chairs of the Commission of all complaints against the Town Manager and Town Council. Complaints against the Town Manager shall also be referred to the Town Council. Complaints against the Town Council shall also be reported to a governmental agency having jurisdiction.

(3) The Director shall, in writing, establish procedures by which investigations shall be conducted. In establishing procedures, the Director shall consider the privacy and other rights of the complainant, respondent, and witnesses in light of the Public Records Law (M.G.L. c. 4, § 7, clause 26, M.G.L. c. 66, , and 950 CMR), the right against self-incrimination, and the right to due process of law. These procedures shall be approved by the Town Manager prior to implementation.

(4) The Director shall, thereafter, make efforts (including conciliation conferences) as the Director deems reasonable and appropriate to resolve, by voluntary action on the part of those persons involved, the situation giving rise to the investigation.

(5) If 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:

a. the Town Manager, who may report to the Town Council;

b. local or Massachusetts State Police on any matter within their jurisdiction, respectively;

c. the Massachusetts Commission Against Discrimination;

d. the Office of the Attorney General;

e. the United States Department of Justice; or

f. any other governmental agency having jurisdiction of the matter in question.

E. Not less than twice per year, the Director, in conjunction with the Town Manager, shall inform the Commission of the Director's activities; and the Commission shall provide input on those activities and other matters of concern to the Commission.

F. The Commission, in conjunction with the Director, shall annually prepare and submit to the Town Manager and Town Council a report on "The State of Human Rights in Amherst" with recommendations it deems appropriate concerning matters within its charge. The Commission shall furthermore, as part of its review function, submit reports and recommendations to the Town Manager or civil rights agencies outside of Amherst, as it may deem appropriate. The reports shall take reasonable precautions to protect the privacy interests of all parties involved.

3.4 – RESPONSIBLE EMPLOYER FOR PUBLIC CONSTRUCTION PROJECTS

A. All bidders and all subcontractors under the bidder for projects subject to M.G.L. c. 149, § 44A, shall comply with all applicable Commonwealth and federal laws, including classification of employees for purposes of eligibility for benefits, payment of and reporting of compliance with prevailing wage obligations, and providing appropriate benefits and insurance coverage for employees.

B. Any bidder or subcontractor under the bidder who fails to comply with any obligations set forth in Paragraph A shall be subject to 1 or more of the following sanctions specified in the contract:

(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; and

(4) any other remedy available in law or in equity.

C. In addition to the sanctions outlined in Paragraph B above, a general bidder or contractor shall, to the extent allowed by law, 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.

3.5 – COMMUNITY PRESERVATION ACT COMMITTEE

A. There shall be a Community Preservation Act Committee ("CPAC"), pursuant to and with the authority granted under M.G.L. c. 44B, § 5 consisting of 9 members.

   Membership shall include 1 member of the Conservation Commission, 1 member of the Historical Commission, 1 member of the Planning Board, 1 member of the Leisure Services and Supplemental Education Commission, 1 member of the Amherst Housing Authority, and 4 residents as designated by the Town Manager.

   The Town Manager shall make all appointments to CPAC.

   The Conservation Commission, Historical Commission, Planning Board, Leisure Services and Supplemental Education Commission, and Amherst Housing Authority shall each nominate a member of their body to serve on CPAC, which the Town Manager shall accept and appoint for a 1-year term. The other 4 members of CPAC shall be appointed for staggered terms of not more than 3 years. Any member may be reappointed.

   The members shall serve without compensation. CPAC shall elect a chair for a 1-year term. CPAC shall not meet or conduct business without the presence of a quorum. A majority of CPAC members shall constitute a quorum. CPAC shall approve its actions by majority vote.

B. CPAC shall study the needs, possibilities, and resources of the Town regarding community preservation. CPAC 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. CPAC shall also consult with and coordinate its recommendations with the Joint Capital Planning Committee. As part of its study, CPAC shall hold 1 or more public informational hearings on the needs, possibilities, and resources of the Town regarding community preservation possibilities and resources, notice of which shall be posted on the Town Bulletin Board and published for each of two weeks preceding a hearing in a newspaper of general circulation in the Town.

C. CPAC's recommendation to the Town Council shall be made at least annually and shall be in accordance with M.G.L. c. 44B.

D. CPAC may include in its recommendation to the Town Council 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.

3.6 – AFFORDABLE HOUSING TRUST

A. There shall be a Board of Trustees ("Trustees") of the Amherst Affordable Housing Trust Fund ("Trust"), composed of 9 members, of whom 1 shall be the Town Manager, and 8 shall be qualified residents who would bring to the Trust relevant personal or professional experience and knowledge in real estate, finance, affordable housing, banking, architecture, social services, or the like. The Town Manager shall appoint the Trustees for staggered terms not to exceed 2 years. Trustees may be reappointed at the discretion of the Town Manager. The Town Manager may remove a Trustee in accordance with Section 9.14 of the Charter.

B. The Trustees are hereby authorized to execute a Declaration of Trust and Certificate of Trust for the Amherst Affordable Housing Trust Fund, to be recorded with the Hampshire County Registry of Deeds and filed with the Hampshire Registry District of the Land Court.

C. The powers of the Trustees, all of which shall be carried on in furtherance of the purposes set forth in M.G.L. c. 44, § 55C, shall include the following:

(1) to accept and receive real property, personal property, or money, by gift, grant, contribution, devise, or transfer from any person, firm, corporation, or other public or private entity, including money, grants of funds, or other property tendered to the Trust in connection with any ordinance or bylaw or any general or special law or any other source, including money from M.G.L. c. 44B (Community Preservation Act); provided, however, that any money received from M.G.L. c. 44B shall be used exclusively for community housing and shall remain subject to all the rules, regulations, and limitations of that chapter when expended by the Trust, and the funds shall be accounted for separately by the Trust; and provided further, that at the end of each fiscal year, the Trust shall ensure that all expenditures of funds received from M.G.L. c. 44B are reported to the Community Preservation Act Committee of the Town for inclusion in the community preservation initiatives report, form CP-3, to the Department of Revenue;

(2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer, or convey any personal, mixed, or real property at public auction or by private contract for consideration and on terms as to credit or otherwise, and to make contracts and enter into an undertaking relative to Trust property as the Trustees deem advisable notwithstanding the length of any lease or contract;

(4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases, grant agreements, and other instruments sealed or unsealed, necessary, proper, or incident to any transaction in which the Trustees engage for the accomplishment of the purposes of the Trust;

(5) to employ advisors and agents, such as accountants, appraisers, and lawyers, as the Trustees deem necessary, notwithstanding administrative and technical support

provided through finance, treasurer/collector, and accounting departments, and that which may be provided by Town staff in various departments, including planning, inspection services, and conservation;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion compensation between income and principal as the Trustees deem advisable;

(7) to apportion receipts and charges between income and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for this purpose, and to create reserves for depreciation depletion or otherwise;

(8) to participate in any reorganization, recapitalization, merger, or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest; and to consent to any contract, lease, mortgage, purchase, or sale of property, by or between any corporation and any other corporation or person;

(9) to deposit any security with any protective reorganization committee, and to delegate to the committee the powers and authority with relation thereto as the Trustees may deem proper and to pay, out of Trust property, the portion of expenses and compensation of the committee as the Trustees may deem necessary and appropriate;

(10) to carry property for accounting purposes other than acquisition date values;

(11) to borrow money on the terms and conditions and from sources as the Trustees deem advisable, and to mortgage or pledge Trust assets as collateral;

(12) to make distributions or divisions of principal in kind;

(13) to comprise, attribute, defend, enforce, release, settle, or otherwise adjust claims in favor of or against the Trust, including claims for taxes; and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation; and, subject to the provisions of this bylaw and M.G.L. c. 44, § 55C, to continue to hold the same for such period of time as the Trustees may deem appropriate;

(14) to manage or improve real property; and to abandon any property which the Trustees determined not to be worth retaining;

(15) to hold all or part of the Trust property uninvested for the purposes and for such time as the Trustees may deem appropriate; and

(16) to extend the time for payment of any obligation to the Trust.

D. These powers shall be subject to the following limitations:

(1) any purchase, sale, lease, exchange, transfer, or conveyance of any interest in real property shall be approved by at least 60% of the appointed members;

(2) the Trustees may incur debt, borrow money, grant mortgages and pledge Trust assets only in an amount not to exceed 80% of the Trust's total assets; and

(3) any debt incurred by the Trustees shall not constitute a pledge of the full faith and credit of the Town; and all documents related to any debt shall contain a statement that the holder of the debt shall have no recourse against the Town, with an acknowledgement of the statement by the holder.

E. The Trustees shall provide for an annual audit of the books and records of the Trust. The audit shall be performed by an independent auditor in accordance with accepted accounting practices. Upon receipt of the audit by the Trustees, a copy shall be provided forthwith to the Town Manager and the Town Council.

F. The Trustees shall consider the state of housing needs in Amherst across the affordability spectrum. It may make recommendations to the Town Manager and the Town Council on the options available to the Town to create new affordable housing to address those needs and to maintain existing affordable housing stock. The Trust may support implementation of these recommendations as appropriate and measure progress toward their fulfillment. The Trustees may also seek regional solutions and support regional efforts to provide permanent affordable housing. As part of this work, the Trust responsibilities include:

(1) developing goals and objectives for addressing the needs identified in Town housing plans and studies;

(2) supporting the availability of a seasonal emergency shelter;

(3) creating, updating, or distributing needed outreach and education materials such as guides for housing information or homelessness resources;

(4) may make recommendations on proposals to the Town Manager, or proposals seeking grants and other funding sources, when the proposals create or support affordable, workforce, or extremely low-income housing; and

(5) report at least annually, or at the request of the Town Manager, on the work of the Trust.

3.7 – LICENSES AND PERMITS: DENIAL REVOCATION OR SUSPENSION FOR FAILURE TO PAY MUNICIPAL TAXES OR CHARGES

A. The Tax Collector shall annually after the close of the fiscal year, and may periodically, 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, and that the party has not filed in good faith a pending application for an abatement of the 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 the 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 14 days after the notice.

The list shall be prima facie evidence for denial, revocation, or suspension of the license or permit to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to a license denial, revocation, or suspension. Any findings made by the licensing authority with respect to a license denial, revocation, or suspension shall be made only for the purposes of a proceeding and shall not be relevant to or introduced in any other proceedings at law, except for any appeal from a 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 the 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 the limitations to the license or permit and the validity of the license shall be conditioned upon the satisfactory compliance with the agreement. Failure to comply with the agreement shall be grounds for the suspension or revocation of the license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

D. The Town Council may waive the 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 the owner's immediate family, as defined in Massachusetts General Laws.

E. This section shall not apply to the following licenses and permits:

(1) open burning, M.G.L. c. 48 § 13;

(2) bicycle permits, M.G.L. c. 85, § 11A;

(3) sales of articles for charitable purposes, M.G.L. c. 101, § 33;

(4) children work permits, M.G.L. c. 149 § 69;

(5) clubs, associations dispensing food or beverage licenses, M.G.L. c. 140, § 21E;

(6) dog licenses, M.G.L. c. 140, § 137;

(7) fishing, hunting, trapping license, M.G.L. c. 131, § 12;

(8) marriage licenses, M.G.L. c. 207, § 28; and

(9) theatrical events, public exhibition permits, M.G.L. c. 140, § 181.

3.8 – LICENSE FEES: INNHOLDERS, COMMON VICTUALLERS, AND LUNCH CARTS

FEES FOR INNHOLDERS, COMMON VICTUALLERS, AND LUNCH CARTS
Fee for innholders license: $50.00
Fee for common victuallers license: $50.00
Fee for lunch carts license: $100.00

The fees for innholders, common victuallers, and lunch carts are as indicated in the above data block.

3.9 – SANCTUARY COMMUNITY

A. This bylaw is enacted under the authority of the Massachusetts Home Rule Amendment (Article 89 of the Articles of Amendment of the Constitution of the Commonwealth) and the police powers of the Town. It affirms that Amherst is a welcoming town and seeks to ensure public safety and trust between law enforcement and all members of our community.

B. Definitions

"Civil Immigration Detainer Request" means a non-mandatory request issued by an authorized federal immigration officer to a local Law Enforcement Official, to maintain custody of an individual once that person is eligible for release from local custody, or to notify the requesting federal immigration office prior to the release of that individual.

"Eligible For Release From Custody" means that the individual may be released from custody because any of the following conditions has occurred:

(1) all criminal charges against the individual have been dropped or dismissed;

(2) the individual has been acquitted of all criminal charges;

(3) the individual has served all the time required for the individual's sentence;

(4) the individual has posted a bail or bond, or has been released on recognizance;

(5) the individual has been referred to pre-trial diversion services;

(6) the individual has been sentenced to an alternative to incarceration, including a rehabilitation facility;

(7) the individual has been released from custody under probation; or

(8) the individual is otherwise eligible for release under Commonwealth or local law.

"ICE Administrative Warrant" means a warrant, notice to appear, removal order, or warrant of deportation issued by a federal immigration officer, not a judicial officer, that does not confer detention authority on a local jurisdiction.

"Law Enforcement Official" means any Town department, or officer or employee of a Town department, authorized to enforce criminal statutes, regulations, or local bylaws; operate jails or maintain custody of individuals in jails; or operate juvenile detention facilities; or maintain custody of individuals in juvenile detention facilities.

C. The provisions of this bylaw define the meaning of "sanctuary community" for the Town.

D. Provisions Relating to Law Enforcement Actions

(1) A Law Enforcement Official shall not initiate an investigation or take law enforcement action on the basis of actual or perceived immigration status, including the initiation of a stop, an apprehension, an arrest, or any other contact.

(2) A Law Enforcement Official shall not detain an individual on the basis of a Civil Immigration Detainer Request or an ICE Administrative Warrant after the individual is Eligible for Release From Custody, including a request pursuant to federal form I-247D, unless ICE has a criminal warrant, issued by a judicial officer, for the individual.

(3) A Law Enforcement Official shall not inquire as to an individual's immigration status unless required by federal law or the law of the Commonwealth.

(4) A Law Enforcement Official shall not respond to an ICE request for notification about the incarceration status or pending release of a person in custody, including a request pursuant to federal form I-247N, and shall not otherwise communicate with ICE about a person who is in its custody, including providing information about the person's release from custody, home address, work address, or phone number.

(5) A Law Enforcement Official may allow motor vehicle operators stopped for a violation and found to be unlicensed a reasonable opportunity to arrange for a properly licensed operator to drive the vehicle, regardless of immigration status, unless the violation is one subject to a statutory or regulatory requirement of vehicle impoundment.

(6) U Visa Certification. In furtherance of the US Victims of Trafficking and Violence Prevention Act, a Town Law Enforcement Official shall consider and sign a U Visa certification request, if an individual is (a) the victim of a qualifying criminal activity, and (b) has been, is being, or will likely be helpful in the investigation/prosecution of that criminal activity. For purposes of determining helpfulness there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. The certification will be provided in a timely manner.

E. To the extent permissible by law, a Town department, or officer or employee of a Town department, shall not perform the functions of an immigration officer, whether pursuant to 8 U.S.C. § 1357(g) or any other law, regulation, or policy, whether formal or informal.

F. No employee or agent of the Town shall cooperate with or enforce any federal program requiring the registration of individuals on the basis of religion, national origin, nationality, citizenship, race, ethnicity, gender, gender identity, sexual orientation, or age. No resources of the Town shall be expended in the enforcement or implementation of a registry or check-in program. This prohibition shall not apply to any government operation or program that confers an immigration benefit, or that temporarily or permanently protects noncitizens from removal.

G. Reporting

Upon written request of 3 registered voters of the Town, the Town Manager shall submit a report to the Town Council, which shall be placed on an agenda of the Town Council within 30 days of the request. The report shall include the following information for the immediately preceding calendar year:

(1) a statistical breakdown of the total number of Civil Immigration Detainer Requests lodged with Town Law Enforcement Officials, organized by the reason(s) given for the request;

(2) the total number of individuals that Town Law Enforcement Officials detained pursuant to Section D;

(3) the total number of individuals transferred to ICE custody; and

(4) the total number of requests received for certification for U Visas, the number approved, the number denied, and the number still pending.

H. Nothing in this bylaw shall prohibit or restrain any law enforcement officer, or any Town employee or agent, from sending to, or receiving from, any local, Commonwealth, or federal agency, information regarding citizenship or immigration status, consistent with 8 U.S.C. § 1373.

3.10 – LIMITATION ON NUMBER OF RECREATIONAL MARIJUANA RETAIL ESTABLISHMENTS

No more than 8 recreational marijuana retail establishments shall be permitted to be located in the Town.

3.11 – PUBLIC SHADE TREES

PENALTIES FOR VIOLATION OF PUBLIC SHADE TREE BYLAW

Criminal Enforcement: $300.00 fine, unless a different amount is established per this regulation

Noncriminal Disposition: $300.00 penalty (enforcement by: Tree Warden or Police Officers)

A. Authorization

Public Shade Trees are protected by M.G.L. c. 87, and regulated by the Amherst Tree Warden.

B. Public Shade Tree Committee ("PSTC") duties

The PSTC shall work to protect and promote Public Shade Trees consistent with the PSTC charge as set forth herein and as approved by the Town Council from time to time, including:

(1) advocating for public trees and educating the public on the importance of street trees;

(2) advising the Tree Warden, at the Warden's request, as to tree removal, replanting and other tree-related topics; and

(3) searching out and designating locations for new plantings and organizing tree plantings, encouraging broad citizen participation.

C. Promulgation of Regulations

The Town Council shall promulgate regulations consistent with law to implement the provisions of this bylaw, including:

(1) establishing a process for applying for authorization to cut or remove Public Shade Trees as that term is defined in the General Laws;

(2) setting penalties for violations of the regulations;

(3) establishing mitigation requirements in the event of a violation thereof, including payment of any related costs incurred by the Town; and

(4) establishing an appeal process.

3.12 – AFTER SCHOOL PROGRAM REVOLVING FUND

There is hereby established in the Town, pursuant to M.G.L. c. 44, §53E½, the following revolving fund:

Revolving Fund	Authorized to Spend Fund	Revenue Source	Use of Fund
After School Program	Department Head of the Leisure Services and Supplemental Education or designee	Program, Tuition, and Administrative fees	Supplies and services, including salaries and benefits of staffing, and related administrative costs for the operation of the After School Program.

Expenditures from the revolving fund shall be subject to the limitation established annually by the Town Council. Any increase shall be authorized in accordance with M.G.L. c.44, §53E½.

3.13 – CONDUCT ON PUBLIC WAYS

PENALTIES FOR VIOLATION OF CONDUCT ON PUBLIC WAYS BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers)

A. No person shall obstruct or impede pedestrian traffic upon any public sidewalk or public pedestrian easement, or obstruct or impede vehicular traffic upon any public street, unless a reservation has been secured in accordance with the provisions of bylaw 3.35 – Parades and Public Meetings.

B. "Personal transportation vehicle" means a device used for human transport that does not require a license to operate, such as a bicycle, sleigh, sled, skis, skates, skateboard, scooter, roller skates, and in-line skates. Automobiles, trucks, busses, motorcycles, and other state-licensed, motor-driven devices are not personal transportation vehicles.

C. No person shall operate a personal transportation vehicle upon any public sidewalk or public pedestrian easement within the downtown general business district or urban renewal project area, except within areas, at times, or under conditions as may be designated by the Town Council.

D. Personal transportation vehicles used by persons with disabilities or for the transport of infants and young children are exempted from the provisions of this section.

E. Persons operating personal transportation vehicles shall:

(1) use proper care at all times;

(2) not travel at a speed or in a manner inconsistent with public safety or convenience under the conditions then existing;

(3) give an audible sign before overtaking and passing any pedestrian;

(4) keep as near to the right hand side as practicable;

(5) yield the right of way to pedestrians when approaching a sidewalk or sidewalk area; and

(6) yield the right of way to vehicles when entering an intersection or a roadway.

3.14 – PARKING AND DELIVERY

A. In accordance with Section 2.14 of the Charter, the Town Council is authorized to promulgate regulations governing the location, time, and duration of parking for all purposes, including 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 leaseholds used or intended for pedestrian or vehicular passage. The Town Council shall have the authority to amend the regulations from time to time and to set penalties for violations. Prohibitions and restrictions under the regulations shall become enforceable upon installation of signs giving notice thereof.

B. Prior to adoption of the regulations and any subsequent amendment thereto, the Town Council shall conduct a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be posted on the Town Bulletin Board for not less than 14 days before the day of the hearing and notice shall also be published in a

newspaper of general circulation in the town once in each of 2 weeks, the first publication to be not less than 14 days before the day of the hearing.

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

3.15 – ACTIVITIES AND AMUSEMENTS

PENALTIES FOR VIOLATING THE ACTIVITIES AND AMUSEMENTS BYLAW

Criminal Enforcement: $200.00 fine

Noncriminal Disposition: $200.00 penalty (enforcement by: Police Officers)

No person shall play at ball or any similar amusement in any street. 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.

3.16 – LITTERING & ILLEGAL DUMPING

PENALTIES FOR VIOLATING THE LITTERING & ILLEGAL DUMPING BYLAW

Criminal Enforcement: $250.00 fine

Noncriminal Disposition: $250.00 penalty (enforcement by: Police Officers, Superintendent of Public Works, Public Health Agents, Health Officers, or Health Director)

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

No person shall place, throw, deposit, or discharge, or cause to be placed, thrown, deposited, or discharged, trash, bottles, cans, refuse, rubbish, garbage, debris, scrap, waste, or other material of any kind on a public way or within 20 yards of a public way, or on any other public land, or in or upon inland waters, as defined in M.G.L. c. 131, § 1, or within 20 yards of such waters, or on property of another, or on lands dedicated for open space purposes, including lands subject to conservation restrictions and agricultural preservation restrictions as defined in M.G.L. c. 184.

3.17 – OPEN CONTAINERS OF ALCOHOL

PENALTIES FOR VIOLATING THE OPEN CONTAINERS OF ALCOHOL BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers)

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, or public property including parking lots, parks, school playgrounds, recreation areas, and conservation areas.

3.18 – TRANSPORTING GARBAGE OR RUBBISH

PENALTIES FOR VIOLATING THE TRANSPORTING GARBAGE OR RUBBISH BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers or Superintendent of Public Works)

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

3.19 – RESIDENTIAL PARKING

PENALTIES FOR VIOLATION OF THE RESIDENTIAL PARKING BYLAW

Criminal Enforcement: $15.00 fine per violation, plus the expense of towing and storage of vehicle if in a "tow zone"

Enforcement pursuant to M.G.L. c. 90, § 20A: $15.00 penalty (enforcement by: Police Officers or Parking Enforcement Officers)

Noncriminal Disposition: $15.00 penalty (enforcement by: Police Officers or Parking Enforcement Officers)

A. The Town Council is 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:

(1) whether a residential neighborhood or area is subject to long-term parking by individuals accessing educational, commercial, or other facilities within the Town; or

(2) whether long-term parking has the effect of depriving residents of the neighborhood or area of adequate parking for themselves or for invitees or guests or of impeding access by emergency or other municipal vehicles.

B. Upon a finding that a neighborhood is subject to long-term parking and the long-term parking has the effect of depriving residents of the neighborhood or area from finding adequate parking or of impeding access by emergency or other municipal vehicles, the Town Council may define the neighborhood or area so affected, and may impose reasonable regulations for parking in the neighborhood or area as defined by the Town Council. Residents of the neighborhood or area shall be notified in writing of the regulations proposed by the Town Council, and a public hearing on the regulations shall be held. The regulations may include issuance of permits to residents of the neighborhood or area for parking by themselves, their invitees, or guests, and issuance of waivers to residents of the neighborhood or area suspending parking meter fees 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 Town Council 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 this bylaw.

3.20 – HANDICAPPED PARKING

PENALTIES FOR VIOLATION OF THE HANDICAPPED PARKING BYLAW

Criminal Enforcement: $200.00 fine

Noncriminal Disposition: $200.00 penalty (enforcement by: Police Officers, Parking Enforcement Officers, or the Disabilities Access Coordinator)

A. It shall be unlawful for any person to leave any vehicle within parking spaces on public or private property that are required, under any provision of federal, Commonwealth, 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 country, or to leave a vehicle in a manner that obstructs a curb ramp designed for use by handicapped persons.

B. Nothing herein shall be construed as prohibiting the removal, in accordance with the provisions of M.G.L. c. 266, § 120D, of any vehicle which is in violation of this bylaw.

3.21 – REGULATIONS RELATING TO ANIMALS

FEES & PENALTIES FOR THE REGULATIONS RELATING TO ANIMALS BYLAW

Dog License Fee: The Town Clerk shall set the dog license fee in accordance with M.G.L. c. 40, § 22F. The fee to obtain a license for a spayed or neutered dog shall not exceed 1/3 the dog license fee set by the Town Clerk.

Livestock or Poultry Application, Registration, and Inspection Fees: The Building Commissioner may set fees in accordance with M.G.L. c. 40, § 22F.

Criminal Enforcement for failure to renew license by June 1 or to obtain a license within 30 days of becoming a resident of the Town: $30.00 fine

Criminal Enforcement for violation of section (B)(2)(c)(1): $15.00 fine

Criminal Enforcement for all other violations: $50.00 fine, plus the cost for care of the animal, if applicable

Noncriminal Disposition: any of the above violations may be enforced with a penalty equal to the maximum criminal fine associated with the violation (enforcement by: Animal Welfare Officer, Health Director, Health Inspector/Sanitarian, or Police Officers)

See Section B(5)-(6) for non-monetary penalties

A. Definitions

"Keeper" means the owner, guardian, or caretaker of an animal.

"Leash Area" means public park, public playground, public building, or public recreational field or facility, a school yard or school recreational field during school hours or after-school hours when an athletic or other event is occurring on school grounds, and the downtown general business district. It does not include dog parks or other areas where dogs are expressly allowed off-leash.

"Neighbors" means property owners, tenants, and residents within 300 feet of the applicant's property.

"Neighboring Properties" means properties within 300 feet of the Keeper's property.

B. Dogs

(1) Licensing

a. A Keeper of a dog 6 months of age or older shall license the dog as required by M.G.L. c. 140, § 137, commencing on April 1 of each year.

b. 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 a stamped self-addressed envelope must accompany an application for a license by mail.

c. No license fee shall be charged for specially trained service dogs, provided a copy of 1 of the following is provided by the applicant: a doctor's prescription, a doctor's letter on office letterhead, a letter from a service dog training program, or a photo ID of the service dog is shown that the dog is currently being/has been trained to assist an individual with a disability in accordance with M.G.L. c. 140, § 139, the Americans with Disabilities Act, and M.G.L. c. 272, § 98a. Application shall be made for a license as provided in this bylaw.

d. No license fee, or part thereof, shall be refunded because of subsequent death, loss, spaying, neutering, removal from the Town, 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.

(2) Regulated Activity

a. It shall be a violation of this bylaw, for which the Keeper shall be liable, if a dog:

1. goes beyond the confines of the Keeper's property unless the dog is held firmly on a leash, or is under the control of its Keeper, subject to restrictions of section B(2)(b);

2. disturbs the peace or quiet or endangers the safety of any person or other animal, by biting, barking, howling, or in any other manner;

3. is unrestrained in violation of an order of the Animal Welfare Officer;

4. frightens, kills, maims, or otherwise injures another's fowl, livestock, or domesticated animal;

5. chases a vehicle on any way open to public travel; or

6. is unlicensed or untagged in violation of state law or this bylaw.

b. Leashing

1. In the absence of any regulation to the contrary, all dogs shall be leashed while in a Leash Area.

2. Any dog found to be unleashed while in a Leash Area, except as allowed by regulation, may be apprehended and confined by the Animal Welfare Officer or a Police Officer.

3. Any dog found to be unleashed while in a Leash Area and not in the presence of its Keeper, except as allowed by regulation, shall be apprehended and confined by the Animal Welfare Officer or a Police Officer. Upon impoundment of a dog in accordance with this subsection or the preceding subsection, the Animal Welfare Officer shall forthwith notify the licensed Keeper of the dog, giving the Keeper a period of 10 days within which to recover the dog.

4. 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 general business district 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.

c. Dog Waste on Public Ways

1. It shall be unlawful for the Keeper of a dog to permit the dog, either willfully or through failure to exercise due care or control of the animal, to excrete any solid waste upon a 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 the Keeper. No violation of this section shall be deemed to have occurred if the Keeper of the offending animal promptly and voluntarily removes the dog waste.

2. This regulation shall not apply to a dog accompanying a person who, by reason of a disability, is physically unable to comply with the requirements of this section.

(3) Humane Conditions and Treatment

a. No Keeper shall subject a dog to cruel conditions at any time. Cruel conditions include:

1. Filthy and dirty confinement conditions, including exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill the dog upon contact, or other circumstances that could cause harm to the dog's physical or emotional health.

2. Taunting, prodding, hitting, harassing, threatening, or otherwise harming a tethered or confined dog.

3. Subjecting the dog to dangerous conditions, including attack by other animals.

b. Chaining or Tethering

1. No dog under the age of 6 months shall be tethered outside for any length of time.

2. A Keeper of a dog that is 6 months of age or older shall not chain or tether the dog to a stationary object, including any structure, dog house, pole, or tree, for longer than 8 total hours in any 24-hour period.

a) Tethering shall not allow the dog to leave the Keeper's property.

b) The tether shall be designed for dogs (e.g., logging chains and other lines or devices not for the purpose of tethering dogs may not be used).

c) No chain or tether shall weigh more than 1/8 of the dog's body weight.

d) Nothing in this section shall be construed as prohibiting a person from walking a dog on a hand-held leash.

c. Outside Confinement

1. A Keeper may confine a dog outside, subject to the restrictions stated elsewhere in this bylaw, only through the use of any of the following 3 methods:

a) Inside a pen or secure enclosure, if the following conditions are met:

1) The pen or secure enclosure has adequate space for exercise with a dimension of at least 100 square feet. Commercial dog kennels with pens intended for the temporary boarding of dogs are exempt from this requirement.

2) The pen or secure enclosure is constructed with chain link or other similar material as determined by the Building Inspector, with all 4 sides enclosed.

3) The minimum height of the fence is adequate to successfully confine the dog.

b) A fully fenced, electronically fenced, or otherwise securely enclosed yard, wherein a dog has the ability to run but is unable to leave the enclosed yard.

c) A trolley system or a tether attached to a pulley on a cable run, if the following conditions are met:

1) Only 1 dog may be tethered to each cable run.

2) The tether shall be attached to a properly fitting collar or harness worn by the dog, with enough room between the collar and the dog's throat through which 2 adult fingers can fit. Choke collars and pinch collars are prohibited for the purposes of tethering a dog to a cable run.

3) There must be a swivel on at least 1 end of the tether to minimize tangling of the tether.

4) The tether and cable run shall each be at least 10 feet in length. The cable shall be mounted at least 4 feet but not more than 7 feet above ground level.

5) The length of the tether from the cable run to the dog's collar or harness shall allow continuous access to clean water and appropriate shelter at all times as described in section (B)(3)(d) of this bylaw. The trolley system or tether shall be of appropriate configuration to confine the dog to the Keeper's property, to prevent the trolley system or tether from extending over an object or an edge that could result in injury or strangulation of the dog, and to prevent the trolley system or tether from becoming tangled with other objects or animals.

2. No person owning or keeping a dog may leave a dog chained, tethered, or otherwise confined outdoors between the hours of 11:00 p.m. and 7:00 a.m.

d. Access to Water and Shelter

1. A person owning or keeping a dog confined outside in accordance with section (B)(3) shall provide the dog with access to clean water and an appropriate shelter, which shall:

a) allow the dog to remain dry and protected from the elements;

b) be fully enclosed on at least 3 sides, roofed, and have a solid floor;

c) include an entrance that is flexible to allow the dog's entry and exit, and sturdy enough to block entry of weather elements;

d) contain clean bedding and be small enough to retain the dog's body heat and large enough to allow the dog to stand, lie down, and turn comfortably;

e) be structurally sound and in good repair; and

f) provide suitable drainage so that water, ice, or waste is not left standing in or around the shelter.

e. Dogs actively engaged in conduct directly related to the business of shepherding or herding cattle or other livestock, or conduct that is directly related to the business of cultivating agricultural products, shall be excepted from sections B(3) if the restraint is reasonably necessary for the safety of the dog.

(4) Complaints

Any person may make a complaint to the Animal Welfare Officer regarding an alleged violation of section B(2)(a) of this bylaw. Upon receipt of a 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 21 days of the issuance of a written order, the officer shall file a report requesting a hearing by a hearing officer appointed by the Town Manager. On receipt of a report and after examination of the complaint, the hearing officer may take actions the officer deems necessary. The Keeper of a dog subject to an order of the hearing officer may, within 10 days, file an appeal in district court.

(5) Impoundment

The Animal Welfare Officer may impound a dog determined to have been involved in a violation of B(2)(a). If the 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. A dog impounded in accordance with this bylaw and unredeemed after 10 days may be disposed of as provided in M.G.L. c. 140, § 151A.

(6) Violations and Penalties

In addition to monetary penalties listed above, the town may set forth remediation requirements and the following conditions shall apply:

a. Failure to satisfy the conditions of the first violation within 10 days of the first violation shall constitute a second offense.

b. Failure to satisfy the conditions of a second violation within 10 days of the second violation shall constitute a third offense.

c. A third violation will subject the violator to impoundment of the dog in the Town's shelter at the Keeper's expense pending compliance with the bylaw, and potential loss of ownership of the dog.

C. Urban Livestock or Poultry

The raising or keeping of livestock or poultry for private purposes shall be permitted and regulated under the provisions of this bylaw and other applicable local and Commonwealth regulations, and the Town's Zoning Bylaw.

(1) Livestock or poultry governed by this bylaw shall be raised and kept in a safe and humane manner, consistent with best agricultural practices, and as required under all applicable Commonwealth and local regulations. Regulations for the raising and keeping of livestock or poultry may be promulgated by the Health Director, following consultation with the Animal Welfare Officer and the Agricultural Commission. The regulations shall be published and otherwise made available to members of the public and prospective registrants.

Best practices shall include the following minimum standards:

a. Enclosure & Shelter. Domesticated fowl and rabbits shall be confined with fencing or other enclosure sufficient to prevent access to the animals by dogs or other predators and shall contain a minimum of 10 square feet of open area per adult animal. An enclosure shall be provided and include a covered, predator-proof shelter or roosting structure (e.g. coop, dovecote, hutch, or shed, as appropriate) that is thoroughly ventilated, of sufficient size to admit free movement of the animals, designed to be easily accessed, cleaned, and maintained by the owners, and at least 2 square feet per animal in size. As appropriate to the species, animals may be required to be shut into the shelter coop at night, from sunset to sunrise.

b. Feed Storage. Feed shall be stored in a secure, rodent-proof and predator-proof container in a manner that will not attract pests.

c. Waste. Accumulated waste shall be stored in a covered container and removed from the property at suitable intervals, or composted on site in a manner that will not attract pests or promote disease. No animal waste may be put into household trash. Keepers must demonstrate a waste management system at the time of inspection.

d. Odors & Noise. Odors from domesticated fowl and rabbits, their waste, compost, or other related substances, shall not be perceptible at the property boundaries. It shall be a violation of these regulations for the Keeper of any animal governed under these regulations to allow the animal(s) to be a nuisance to any Neighbors, from noxious odors, or noise of a loud, persistent, and habitual nature. Complaints shall be to the Health Director.

To the extent not inconsistent with the laws and regulations of the Commonwealth, the Animal Welfare Officer shall interpret and enforce the more stringent local standards as well as those authorized under the law of the Commonwealth.

(2) Conduct of Persons in Control of Animals Other than Dogs on Public Property

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

(3) Registration & Inspections

Prior to acquiring livestock or poultry, the property owner shall register with the Health Department by filing an application describing fully and accurately a proposal to raise and keep livestock or poultry, and registering the property involved. The Health Director may require that applications be made on forms provided by the Amherst Health Department. All registration applications shall be reviewed and approved, denied, or approved with conditions, by the Health Director after consultation with the Animal Welfare Officer. An approved registrant shall thereafter abide by the provisions of the best practices and regulations established hereunder and any specific conditions imposed under the approval, and shall permit annual inspections and other inspections of the premises as may be required by the Animal Welfare Officer under the provisions of M.G.L. c. 129, § 7.

(4) There shall be no reimbursement or pro-rating of application or inspection fees.

(5) Notice

Except as provided for under section C(7), as part of every application made under these regulations, an applicant shall provide a copy of a certified Neighbors list obtained from the Assessor and written notice of the applicant's intent to raise or keep livestock or poultry, to be sent by the Health Department by standard mail to property owners within 300 feet of the property line of the petitioner. The notice shall fully and accurately describe the location and the proposed number and type of animals, as well as all associated structures and facilities. The notice shall also indicate that Neighbors have the right to file with the Health Director written comments in support of or objecting to the application, and shall indicate the deadline for submission of comments.

(6) Administrative Hearing

Where no special permit is required by the Town's Zoning Bylaw for the keeping or raising of animals for which application is also being made under these regulations,

the Health Director shall not act on the application until more than 14 days have passed since the mailing of notice to Neighbors. If at the end of that period the Health Director has received written comments whereby the owners of a majority of the Neighboring Properties have expressed objection to the application, the Health Director shall schedule and hold, within 30 days of the deadline for receiving Neighbors' comment, an administrative hearing for the purpose of taking public testimony regarding the proposal. The Health Director shall give written notice of the time and place of the hearing, not less than 7 days prior to the hearing, to the applicant by certified mail, to Neighbors and parties in interest by mail, by posting with the Town Clerk, and by publication once in a newspaper of local circulation. Failure to hold an administrative hearing within the specified time period shall be considered to constitute a constructive grant of approval of the application.

(7) Exception

No certified Neighbors list, nor any notice to Neighbors, nor an administrative hearing shall be required in those instances where a special permit is required under the Town's Zoning Bylaw for the keeping or raising of animals subject to an application under this bylaw.

(8) Decision

Following the close of an administrative hearing, the Health Director shall, within 5 days, render a decision in writing based upon compliance of the proposal with best practices and any other factors of public health and welfare as the Health Director may deem appropriate. In approving an application, the Health Director may, following consultation with the Animal Welfare Officer, impose reasonable conditions, safeguards, and limitations including conditions above and beyond those specified in the best practices regulations developed under this section,

D. 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.

E. This bylaw is not intended to derogate or limit any powers, rights, or obligations set forth in M.G.L. c. 140.

3.22 – DISCHARGING OF FIREARMS

PENALTIES FOR VIOLATION OF THE DISCHARGING FIREARMS BYLAW

Criminal Enforcement: $200.00 fine

Noncriminal Disposition: $200.00 penalty (enforcement by: Police Officers)

A. In accordance with M.G.L. c. 269, § 12E, no person shall fire or discharge a gun, fowling piece, or other firearm except as otherwise provided in § 12E. To the extent not inconsistent with the law of the Commonwealth, the provisions of this section shall not apply to:

(1) the discharge of shotguns or air-guns; or

(2) the discharge of firearms:

a. in the lawful defense of the person;

b. for the humane dispatch of injured animals;

c. by a person lawfully on a target, trap, or skeet range established for these purposes;

d. by a duly authorized peace officer acting in the proper performance of duty;

e. by a duly authorized military personnel participating in scheduled military exercises;

f. by a person using blank cartridges in theatrical performances or sporting events;

g. by an owner or tenant of land (or if authorized by either, a member of the immediate family or person permanently employed by the owner or tenant) but only upon that land and for the limited purposes of:

1. shooting a bird or other animal found to be damaging or posing the imminent threat of damage to the property; or

2. shooting domestic animals raised as livestock.

B. Notwithstanding the provisions of Sections A(2)(g)(1) and A(2)(g)(2) above, no person shall discharge a gun, fowling piece, shotgun, air-gun, or other firearm, or bow and arrow otherwise permitted under Sections A(2)(g)(1) and A(2)(g)(2) within 150 feet of or in the direction of:

(1) the paved surface of a State Rail Trail; or

(2) the paved parking areas or entrance/exit ramps associated with a State Rail Trail.

C. Loaded guns, fowling pieces, shotguns, air-guns, or other firearms or bows and arrows shall not be carried on or within 150 feet of a State Rail Trail.

3.23 – PEEPING OR PEERING INTO THE PLACE OF HABITATION

PENALTIES FOR VIOLATION OF THE PEEPING OR PEERING INTO THE PLACE OF HABITATION BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: no provision made

Except as otherwise permitted by law, no person upon the property of another shall intentionally peep or peer into the place of habitation of another.

3.24 – UNLAWFUL NOISE

PENALTIES FOR VIOLATION OF THE UNLAWFUL NOISE PROHIBITION BYLAW

Criminal Enforcement: $300.00 fine for each violation.

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers)

A. Unlawful Noise Prohibited

It shall be unlawful for any person to create, assist in creating, continue, or allow to continue, any excessive, unusually loud, disturbing, or injurious noise that annoys, disturbs, injures, or endangers the reasonable quiet, comfort, repose, or the health or safety of others, especially during the hours of 11:00 p.m. and 7:00 a.m. Loud, disturbing, injurious, or unnecessary noise includes:

(1) Acoustically or electronically amplified sound made in a manner or at such volume at any time or place so as to annoy or disturb the reasonable quiet, comfort, or repose of persons who live or work in, or who are otherwise lawfully in, the area.

(2) Yelling, shouting, hooting, whistling, singing, or the making of other loud noise on the public streets, or the making of noise at any time or place so as to annoy or disturb the reasonable quiet, comfort, or repose of persons who live or work in, or who are otherwise lawfully in, the area.

(3) Except as otherwise allowed under the Commonwealth's Zoning Act (M.G.L. c. 40A, § 3) or the Amherst Zoning Bylaw, the keeping of an animal or bird that, by causing frequent or long continued noise, shall disturb the reasonable comfort or repose of any person.

(4) Lawn mowers, leaf blowers, snow blowers, and other similar mechanical devices.

B. Exemptions

This section shall not apply to or be enforced against:

(1) A police or fire vehicle or ambulance while engaged in necessary emergency business.

(2) Necessary excavation in or repairs of bridges, streets, or highways, or public utility installation by or on behalf of the Town, or of a public utility or agency of the Commonwealth of Massachusetts.

(3) Noise caused by agricultural, farm-related, or forestry-related activities, as defined by M.G.L. c. 128, § 1A, including the operation of farm equipment, sawmills, harvesting equipment, and noises from farm animals.

(4) Special events lawfully authorized and in compliance with the conditions of that authorization.

C. Penalties

(1) Each act that either continues or is repeated for more than 1/2 hour after issuance of a written notice of violation shall constitute a separate offense.

(2) If the violation occurs on the premises of a non-owner-occupied rental property, the owner shall also be notified in writing that the violation has occurred.

D. Other Remedies

(1) If the person responsible for an activity that violates Section A cannot be determined, the person in lawful custody or control of the premises, including the owner, lessee, or occupant of the property on which the activity is located, shall be deemed jointly and severally responsible for the violation.

(2) If the person responsible for an activity that violates Section A can be determined, that person may be arrested without a warrant, provided that the violation occurs in the presence or view of an officer authorized to serve criminal process.

3.25 – KEG LICENSING

PENALTIES FOR VIOLATION OF THE KEG LICENSE BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers)

A. Definitions

"Alcoholic Beverage" means the definition in Section 1.2.

"Dispense" means to transfer or exchange Alcoholic Beverages, including pouring and the providing of access to Alcoholic Beverages, whether or not for monetary consideration.

"Keg" means a metal, wooden, plastic, paper, or other container designed to hold 5.5 or more gallons of liquid and actually containing any amount of a malt beverage.

"Keg License" means a special license issued by the Board of License Commissioners to permit the possession of malt beverage in a Keg, and the dispensing of malt beverages from Kegs.

"Licensed Establishment" means a retail establishment holding a license pursuant to M.G.L. c. 138, § 15, that sells Alcoholic Beverages for consumption off of the premises; and an establishment licensed pursuant to M.G.L. c. 138, § 12, that sells Alcoholic Beverages to be consumed on the premises.

"Licensed Activity" means 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, § 14.

"Licensee" means a person, club, partnership, corporation, or other entity licensed under the provisions of M.G.L. c. 138 to sell Alcoholic Beverages, including Malt Beverages.

"Malt Beverage" means an Alcoholic Beverage, including beer, 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 12% of Alcohol by weight, including beer.

"Person" means an individual, firm, association, partnership, corporation, or other combination of persons, and their agents, servants, employees, stockholders, officers, or other persons, or any subsidiary.

B. Requirement of License for Keg Possession

(1) The Board of License Commissioners is authorized to issue Keg Licenses for the possession and dispensing of Malt Beverages in Kegs. The terms and conditions and fees for licenses granted under this section shall be determined by the Board of License Commissioners, as the licensing authority pursuant to this bylaw.

(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 or at a place where a Licensed Activity takes place.

(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.

C. Prohibition

It shall be unlawful for any Person, other than a Licensee at a Licensed Establishment or Licensed Activity, to sell or Dispense a Malt Beverage from a Keg, or to otherwise possess a Keg, unless the Person has been issued a valid Keg License.

3.26 – NUISANCE HOUSE

PENALTIES FOR VIOLATION OF THE NUISANCE HOUSE BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers)

A. Definitions

"Alcohol" means the definition in Section 1.2.

"Alcoholic Beverage" means the definition in Section 1.2.

"Gathering" means a party, crowd, or event, where a group of persons assemble for a social occasion or activity.

"Premises" means a residence or other private property, place, or location, including any commercial or business property.

"Property Owner" means the legal owner of record as listed in the tax assessors' records, or, if known, the owner of record identified in the Registry of Deeds.

"Public Nuisance" means a Gathering of persons on any Premises in a manner which constitutes a violation of law or creates a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood. Unlawful conduct includes excessive noise, excessive pedestrian and vehicular traffic, obstruction of public streets by crowds or vehicles, illegal parking, public urination, the service of Alcohol to Underage Persons, fights, disturbances of the peace, and littering.

"Response Costs" means the costs associated with responses by law enforcement, fire, and other emergency response providers to a Gathering as set forth in a schedule of costs established by the Town Manager.

"Underage Person" means any person under 21 years of age.

B. Consumption of Alcohol by Underage Persons Prohibited in Public Place, Place Open to Public, or Place Not Open to Public

Except as permitted by the law of the Commonwealth, it shall be unlawful for an Underage Person to:

(1) consume an Alcoholic Beverage at a public place or a place open to the public; or

(2) consume an Alcoholic Beverage at a place not open to the public, unless supervised by a parent or legal guardian.

C. Hosting, Permitting, or Allowing a Public Nuisance or Party, Gathering, or Event Where Underage Persons Consuming Alcoholic Beverages Prohibited

(1) It shall be the duty of a person having control of any Premises who knowingly hosts, permits, or allows a Gathering to take all reasonable steps to prevent the consumption of Alcoholic Beverages by an Underage Person. Reasonable steps include controlling access to Alcoholic Beverages, controlling the quantity of Alcoholic Beverages, verifying the age of persons attending the Gathering by inspecting driver's licenses or other government-issued identification cards to ensure that Underage Persons do not consume Alcoholic Beverages, and supervising the activities of Underage Persons.

(2) A Gathering constituting a Public Nuisance may be abated by all reasonable means including an order by the police requiring the Gathering to be disbanded and by citation or arrest under any applicable provision of local or Commonwealth law.

(3) It is unlawful for a person having control of any Premises to knowingly host, permit, or allow a Gathering to take place at the Premises where at least 1 Underage Person consumes an alcoholic beverage, provided that the person having control of the

Premises either knows or should have known that an Underage Person has consumed an alcoholic beverage, but has failed to take all reasonable steps to prevent the consumption of an alcoholic beverage by the Underage Person.

(4) This section shall not apply to conduct involving the use of Alcoholic Beverages that occurs exclusively between an Underage Person and a parent or legal guardian as set forth in M.G.L. c.138, § 34.

(5) This section shall not apply to any Massachusetts Alcoholic Beverages Control Commission licensee at any Premises regulated by the Massachusetts Alcoholic Beverage Control Commission.

D. Mailing of Notice to Property Owner.

Notice of response by police or other local officials to a Gathering shall be mailed by the Police Department to any Property Owner and – as applicable – the rental housing manager or management organization, advising them that the 3rd response on the same Premises within a 1-year period, as measured from the date of the first notice, will result in liability of the owner or rental housing manager or management organization for all penalties associated with the response as more particularly described below.

E. Persons Liable for a First and Second Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a Gathering constituting a Public Nuisance on the Premises, the following persons shall be jointly and severally liable for penalties as set forth above. Response Costs shall also be assessed.

(1) The person or persons residing at, or otherwise in control of, the property where the Gathering took place.

(2) The person or persons who organized or sponsored the Gathering.

(3) Persons attending the Gathering who engage in activity resulting in a Public Nuisance.

F. Persons Liable for a Third and Subsequent Response to a Gathering Constituting a Public Nuisance.

If the police department is required to respond to a Gathering constituting a Public Nuisance on the Premises more than twice in any 1-year period, as measured from the date of the first response, the following persons shall be jointly and severally liable for penalties as set forth above. Response Costs shall also be assessed.

(1) Any person who owns or manages the property where the Gathering constituting the Public Nuisance took place, provided that notice of the first and second responses has been mailed to the owner or manager of the property as set forth herein and the

Gathering occurs at least 14 days after the mailing the second notice. The owner of the property shall not be held responsible for a violation and penalties if the owner is actively trying to evict a tenant from the property. The 1-year time period for violations for a property shall pertain to only those residents occupying the property who have had the prior violation(s). New residents shall start a new 1-year time cycle should the new residents violate the bylaw.

(2) Any persons residing on or otherwise in control of the property where the Gathering took place.

(3) Any persons who organized or sponsored the Gathering.

(4) Any persons attending the Gathering who engaged in any activity resulting in the Public Nuisance.

G. Enforcement

The Town shall additionally seek administrative costs and Response Costs associated with enforcement of Sections B and C, through all remedies or procedures provided by the law of the Commonwealth or local law.

Sections B and C shall not limit the authority of police officers to make arrests for any criminal offense arising out of conduct regulated by Sections B and C, nor shall those sections limit the Town's or the Commonwealth's authority to initiate and prosecute a criminal offense arising out of the same circumstances necessitating the application of Sections B and C.

H. Local Authority

No provision of this bylaw shall apply where prohibited or preempted by the law of the Commonwealth or federal law.

3.27 – BAN OF EPS FOAM IN FOOD ESTABLISHMENTS AND TOWN FACILITIES

PENALTIES FOR VIOLATION OF THE BAN OF EPS FOAM IN FOOD ESTABLISHMENTS AND TOWN FACILITIES BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition for first violation: warning notice to the food establishment which will specify the violation and the appropriate penalties in the event of future violations.
Noncriminal Disposition for second violation: $100.00 penalty (enforcement by: Health Department or Department of Public Works)
Noncriminal Disposition for third, and subsequent, violations: $250.00 penalty (enforcement by: Health Department or Department of Public Works)

See Section D(2) for non-monetary penalties

A. Definitions

"Disposable Food Service Container" means single-use disposable products for serving or transporting prepared, ready-to-consume food or beverages. This includes plates, cups, bowls, trays, and hinged or lidded containers. This definition does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

"Expanded Polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

"Food Establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, as further defined in 105 CMR 590.002. Any establishment requiring a permit to operate in accordance with the State Food Code, 105 CMR 590.000, et. seq., shall be considered a Food Establishment for purposes of this bylaw.

"Polystyrene" means Expanded Polystyrene that is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "Polystyrene" also includes clear or solid polystyrene that is known as "oriented polystyrene".

"Prepared Food" means a food or beverage prepared for consumption on the Food Establishment's premises, using any cooking or food preparation technique. This does not include raw uncooked meat, fish, or eggs unless provided for consumption without further food preparation.

"Town Facility" means a building, structure, land, or park owned or operated by the Town of Amherst, its agents, or departments.

"Town Facility Users" means persons, societies, associations, organizations, or special event promoters who require a permission to use a Town Facility. Town Facility Users also includes concession contracts with the Town, Town-managed concessions, Town-sponsored events, and food services provided at the Town's expense.

B. Prohibitions

(1) Except as provided herein, Food Establishments are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Expanded Polystyrene.

(2) Town Facility Users are prohibited from dispensing Prepared Food to customers in Disposable Food Service Containers made from Expanded Polystyrene.

C. Deferments

(1) Upon written application, the Board of Health, after a public hearing, may defer application of this bylaw for a Food Establishment for a 1-year period, upon a showing by the Food Establishment that the conditions of this bylaw would cause undue hardship. For purposes of this bylaw, an "undue hardship" is a situation unique to the Food Establishment where there are no reasonable alternatives to the use of Expanded Polystyrene Disposable Food Service Containers and compliance with this provision would cause significant economic hardship to that Food Establishment.

(2) A Food Establishment granted a deferment by the Town shall reapply prior to the end of the 1-year exemption period and shall demonstrate continued undue hardship if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed 1 year.

(3) A deferment granted in accordance with this Section may be extended for not more than 1 additional 1-year period, upon written application to the Board of Health at least 2 months prior to the expiration of the 1st deferment period and upon a showing that the circumstances justifying the deferment continue to exist.

(4) A deferment application shall include all information necessary for the Town to make its decision, including documentation showing factual support for the claimed deferment. The Board of Health may require the applicant to provide additional information in order for the Board to determine facts regarding the deferment application.

(5) The Board of Health may approve the deferment application, in whole or in part, with or without conditions, as it shall deem necessary to protect the public health and further the interests of this bylaw.

(6) Deferment decisions are effective immediately and final.

D. Enforcement

(1) The Health Department or its designee shall inquire on an annual basis regarding a Food Establishment's compliance with this bylaw as a condition for renewal of the establishment's food service permit.

(2) The Board of Health, after a hearing conducted in accordance with the procedures set forth in 105 CMR 590.14 and 105 CMR 590.15, may suspend or revoke the food service permit for an establishment failing to comply with this bylaw.

(3) The Health Department or its designee shall have primary responsibility for enforcement of this provision and shall have authority to issue citations for violation(s). The Health Department or its designee shall be authorized to establish regulations or administrative procedures and to take any and all actions reasonable and necessary to further the purposes of this bylaw or to obtain compliance with this bylaw, including inspecting a vendor's premises to verify compliance in accordance with applicable law.

(4) The Health Department may enforce this bylaw or enjoin violations thereof through any lawful process, and the election of a remedy by the Health Department shall not preclude enforcement through other lawful means.

(5) For the first violation, the Health Department or its designee, upon determination that a violation has occurred, shall issue a written warning notice to the Food Establishment which shall specify the violation and the appropriate penalties in the event of future violations.

(6) Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than 1, each condition violated shall constitute a separate offense.

3.28 – SINGLE-USE PLASTIC BAG PROHIBITION

PENALTIES FOR VIOLATION OF THE SINGLE-USE PLASTIC BAG PROHIBITION BYLAW

Criminal Enforcement for first violation: warning notice to the establishment
Criminal Enforcement for second, and subsequent, violations: $100.00 fine

Noncriminal Disposition: the above violations may be enforced with a penalty equal to the maximum criminal fine associated with the violation (enforcement by: Board of Health)

A. Definitions

"Thin-Film Single-Use Plastic Bag" means a bag, typically with plastic handles, with a thickness of 3 mils (thousandths of an inch) or less and intended for single-use transport of purchased products.

B. Use Regulations

(1) Thin-Film Single-Use Plastic Bags shall not be distributed, used, or sold for checkout or other purposes at retail, retail food, or service retail establishments.

(2) Thin-film plastic bags used to contain dry cleaning, newspapers, produce, meat, cheese, bulk foods, wet items, or other similar merchandise, typically without handles, are permissible.

C. Enforcement

(1) The Board of Health or its designee may inquire on an annual basis regarding an establishment's compliance with this bylaw.

(2) Residents of the Town who observe potential violations of this bylaw may file a complaint with the Board of Health or its designee who shall investigate the complaint.

(3) Fines are cumulative and each day or portion thereof shall constitute a separate offense. If more than 1, each condition violated shall constitute a separate offense.

(4) Warnings issued for the first violation shall specify the violation, the appropriate penalties in the event of future violations, and a statement that the retail establishment might be closed if it fails to comply.

D. Deferments

Upon written application from a retail establishment, the Board of Health, after a public hearing, may temporarily defer application of this bylaw for a retail establishment for up to 1 year, upon a showing by the retail establishment that the conditions of this bylaw would cause undue hardship. The Board of Health shall determine whether the hardship of the establishment is cause for a deferment. The establishment shall reapply prior to the end of the exemption period and demonstrate continued undue hardship if it wishes to have the deferment extended. Deferments may only be granted for intervals not to exceed 1 year.

3.29 – CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL

PENALTIES FOR VIOLATION OF THE CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL BYLAW

Criminal Enforcement: $100.00 fine, in addition to any civil penalty imposed under M.G.L. c. 94C, § 32L.

Noncriminal Disposition: $100.00 penalty (enforcement by: Town Manager or Police Officers)

A. No person shall inhale, ingest, or otherwise use or consume marijuana or THC (as defined in M.G.L. c. 94C, § 1) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town, or in or upon any bus or other passenger conveyance operated by a common carrier, or in any place accessible to the public.

B. This bylaw shall not alter or affect the jurisdiction of the Board of Health under the provisions of M.G.L c.111, §31, or any other applicable law, including the regulation of combustion and inhalation of tobacco and non-tobacco products in workplaces and public spaces in the Town.

3.30 – DISTURBING HIGHWAY SURFACE OR CURBING AND CREATING DRIVEWAY ENTRANCES

PENALTIES FOR VIOLATION OF THE DISTURBING HIGHWAY SURFACE OR CURBING AND CREATING DRIVEWAY ENTRANCES BYLAW

Criminal Penalty: $200.00 fine

Noncriminal disposition: $200.00 penalty (enforcement by: Police Officers or Superintendent of Public Works)

No person shall make any excavation in a public way, disturb its curbing or pavement, pave any unpaved portion thereof, or remove earth or gravel therefrom, without first obtaining a written permit from the Town Manager; nor shall any person construct or alter that portion of a driveway lying within a way in the Town over which the public has a right to travel without first securing a permit from the Town Manager.

3.31 – WETLANDS PROTECTION

PENALTIES FOR VIOLATION OF THE WETLANDS PROTECTION BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: no provision made

A. 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 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 (M.G.L. c. 131, § 40) and regulations thereunder (310 CMR 10.00 et seq.).

B. 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: a 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 Section G(4) below (collectively the "resource areas protected by this bylaw"). Resource areas shall be protected whether or not the resource areas border surface waters.

C. Conditional Exceptions

(1) 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.

(2) 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.

(3) 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.

(4) The application and permit required by this bylaw shall not be required for exemptions under the Rivers Act (Chapter 258 of the Acts of 1996) and 310 CMR 10.58.

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

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

(1) Written application shall be filed with the Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include information and plans 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.

(2) 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 (M.G.L. c. 131,§ 40) and regulations (310 CMR 10.00 et seq.).

(3) 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. The Request for Determination (hereafter RFD) shall include information and plans deemed necessary by the Commission.

(4) 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 (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.). The filing fee shall be commensurate with the reasonable expenses incident to the licensing.

(5) 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: 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.

(6) 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.

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

E. Notice and Hearings

(1) 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 certificates of mailing, 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.

(2) 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 the 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) The Commission shall have the authority to continue the hearing to a date certain 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 Section F, below. If the hearing is postponed to an unspecified date, the applicant is responsible for the expense of advertising the rescheduled hearing, the notice to appear 5 business days prior to the hearing, in a newspaper of general circulation in the Town. In addition, the applicant shall send written notice of the rescheduled hearing to any Person who has requested it.

F. Coordination with Other Boards

(1) 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 certificates of mailing, or hand delivery, to the zoning board, planning board, health inspections, town engineer, and building commissioner.

(2) 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.

G. Permits and Conditions

(1) 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 resource areas are present, it shall issue a negative determination.

(2) If the Commission, after a public hearing, determines that the activities that are subject to the permit application, or the land and water uses that 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 that 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.

(3) 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.

(4) 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 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.

(5) 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.

(6) A permit shall expire 3 years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring 5 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 the

work. A permit may be renewed once for an additional 1-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.

(7) 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.

(8) 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 (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.).

(9) No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to the 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.

H. 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 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 (M.G.L. c. 131, § 40) and Regulations (310 CMR 10.00 et seq.) as most recently promulgated shall apply.

I. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw. (For additional definitions, see Section II of the Town of Amherst Wetland Protection Bylaw Regulations.)

"Alter" shall include the following activities when undertaken to, upon, within, or affecting resource areas protected by this bylaw:

(1) Removal, excavation, or dredging of soil, sand, gravel, clay, minerals, or aggregate materials of any kind

(2) Changing of preexisting drainage characteristics, flushing characteristics, sedimentation patterns, flow patterns, or flood retention characteristics

(3) Drainage, or other disturbance of water level or water table

(4) Dumping, discharging, or filling with any material that may degrade water quality

(5) Placing of fill, or removal of material, that would alter elevation

(6) Driving of piles, erection or repair of buildings or structures of any kind

(7) Placing of obstructions or objects in water

(8) Destruction of plant life including cutting of trees

(9) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters

(10) Activities, changes, or work that may cause or tend to contribute to pollution of any body of water or groundwater

(11) Incremental activities that have, or may have, a cumulative adverse impact on the resource areas protected by this bylaw.

"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.

J. Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or Commonwealth 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 1 or both of the methods described below:

(1) 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.

(2) 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.

K. Enforcement

(1) No Person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow these activities, 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.

(2) 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 examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

(3) 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 the violations, or may receive a monetary penalty, or both.

(4) Upon request of the Commission, the Town Manager and the Town Attorney 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.

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

L. 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.

M. Appeals

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

N. Relation to the Wetlands Protection Act

This bylaw is adopted under the Town's Home Rule powers and may in some respects be more stringent than Commonwealth's Wetlands Protection Act (M.G.L. c. 131, § 40) and regulations (310 CMR 10.00 et seq.) thereunder.

O. 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.

P. Effective Date

This bylaw shall become effective as provided in the Town's Home Rule Charter.

3.32 – DEALING IN USED ARTICLES

PENALTIES FOR VIOLATION OF THE DEALING IN USED ARTICLES BYLAW

Criminal Enforcement: $20.00 fine

Noncriminal Disposition: $20.00 penalty (enforcement by: Police Officers)

A. No person shall engage in the business of buying or selling second-hand articles within the Town unless duly licensed by the Board of License Commissioners.

B. The Board of License Commissioners may from time to time make rules and regulations regarding the issuing of licenses, the fees to be paid, and the manner in which the business is to be conducted, as may seem advisable to the Commission, and in accordance with the laws of the Commonwealth and the Charter.

3.33 – REFUSE COLLECTION AND RECYCLABLE MATERIALS

PENALTIES FOR VIOLATION OF THE REFUSE COLLECTION AND RECYCLABLE MATERIALS BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers, the Superintendent of Public Works, or the Transfer Station Crew Supervisor)

A. The Board of Health shall promulgate regulations establishing conditions for the provision of refuse collection service and the separation of recyclable materials for residential, commercial, and institutional structures.

B. 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 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 this authorization shall be disposed of at a properly permitted disposal facility.

3.34 – REGULATION OF SIGNS

[RESERVED]

3.35 – PARADES AND PUBLIC MEETINGS

PENALTIES FOR VIOLATION OF THE PARADES AND PUBLIC MEETINGS BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers)

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 Council which 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 Council shall design an alternative parade route that 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 a reservation, if the activity does not interfere with another event already in progress or previously reserved.

3.36 – SOLICITING

FEES AND PENALTIES OF THE SOLICITING BYLAW

Resident Fee: $10.00 for an annual registration
Nonresident Fee: $5.00 for a 60 day registration

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers)

A. Definitions

"Residence" shall mean and include every separate living unit occupied for residential purposes by 1 or more persons contained within any type of building or structure.

"Soliciting" shall mean seeking to sell or obtain orders door-to-door for the purchase of goods, wares, merchandise, foodstuffs, or services of any kind for consideration; also seeking to sell or obtain subscriptions to books, magazines, periodicals, newspapers, or every other type or kind of publication. This definition shall not include the delivery of newspapers or non-commercial door-to-door activities.

B. Certificate of Registration

Every person desiring to engage in Soliciting, as herein defined, from persons in Residences in Amherst, shall be required to make written application to the police department for a certificate of registration. The 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 E.

C. Application for Certificate of Registration

Application for a certificate of registration shall be made upon a form provided by the Town and filed with the police department at least 10 days prior to Soliciting. The Chief of Police shall keep in the Chief's office an accurate record of every application received and acted upon together with all other information and date(s) pertaining thereto and all certificates of registration issued under the provision of this bylaw. The certificate of registration shall require the following information:

(1) name and physical description of applicants;

(2) home and present business address;

(3) vehicle license number and description;

(4) employer's name and address;

(7) description of matter being solicited; and

(6) length of present employment.

D. Revocation of Certificate

A certificate of registration issued under this bylaw may be revoked by the Chief of Police for cause. Immediately upon revocation, written notice thereof shall be sent by the Police Chief to the holder of the certificate by certified U.S. Mail, addressed to the holder's address as shown on the application. A record of the date of the revocation shall be made upon the original application.

E. Exceptions

Organizations seeking contributions for non-commercial purposes from other than their own members shall notify the Police Department of the number of participants and expected duration of non-commercial activities at least 10 days prior to the start of the solicitation activity. Organizations are required to provide identification for each solicitor. All solicitors 13 years of age or younger shall be required to register with the Police Department 10 days prior to Soliciting. Registration fees shall not be required in these cases.

F. Time Regulation

Soliciting shall only be permitted between the hours of 8:00 AM and 8:00 PM.

G. Laws of the Commonwealth to be Paramount

Nothing in this bylaw shall be construed as conflicting with a license issued under the authority of the Commonwealth of Massachusetts.

3.37 – PAWNBROKERS

The business of a pawnbroker may be conducted subject to M.G.L. c. 140, §§ 70 through 85, inclusive and further subject to the following regulations:

(1) The Board of License Commissioners shall have the discretion to issue a pawnbroker's license after public notice and hearing to any person 18 years of age or older who satisfies the Board as having financial integrity, personal moral character, and a good business reputation.

(2) Each license shall state on its face the rate and interest schedule authorized by the Board of License Commissioners pursuant to M.G.L. c. 140, § 72, and each application shall contain a full and complete statement of the schedule of rates and charges proposed by the applicant.

(3) A failure of an applicant or licensee to comply with this bylaw or the applicable General Laws of the Commonwealth shall be grounds for immediate revocation of a 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 Board of License Commissioners.

(4) The Board of License Commissioners is authorized to establish minimum hours and times of operation as a condition of a pawnbroker's license or any renewal.

(5) Employees of a pawnbroker shall be at least 18 years of age and must receive an identification permit from the Police Chief who may, but is not required to, refuse to grant an identification permit to any person convicted of a crime within the preceding 5 years.

3.38 – OPEN BURNING

PENALTIES FOR VIOLATION OF THE OPEN BURNING BYLAW

Criminal Enforcement: $300.00 fine, plus the cost of suppression

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers, full time Fire Fighters, or the Building Commissioner)

A. Prohibitions

No person shall set, maintain, or increase a fire in the open at any time except pursuant to a permit issued under M.G.L. c. 48, § 13, and in full compliance with the provisions of 310 CMR 7.07.

B. Responsibility

If the person(s) responsible for an activity that violates Section A cannot be determined, the person in lawful custody or control of the premises, including the owner, lessee, or occupant of the property on which the activity is located, shall be deemed responsible for the violation.

3.39 – STREET NUMBERING OF HOUSES

Homeowners shall indicate the street number of the house by figures at 2-1/2 inches high and so located as to be easily seen from the street.

3.40 – SNOW AND ICE

PENALTIES FOR VIOLATION OF THE SNOW AND ICE BYLAW

Criminal Enforcement: $50.00 fine per 24-hour period in which sidewalk snow or ice is not removed or treated, and each instance that snow is deposited in the public way.

Noncriminal Disposition: $50.00 penalty per 24-hour period in which sidewalk snow or ice is not removed or treated and each instance that snow is deposited in the public way (enforcement by: Police Officers)

A. Purpose

It is the express intent of this bylaw to assure safe and convenient access to sidewalks, public ways, and public parking places to all travelers, including those with disabilities or mobility impairments.

B. Removal of Snow and Ice Sidewalks

The owner of real property that abuts a sidewalk shall remove snow or ice, whether by natural accumulation or otherwise, within 24 hours of the end of the precipitation which preceded the accumulation. If the snow or ice has accumulated other than by precipitation, it shall be removed within 24 hours of its accumulation on the sidewalk. In order to comply with this bylaw, sidewalks shall be cleared to the surface, or, where it is impracticable to do so, the sidewalk shall be treated with sand or otherwise.

In addition to the remedies provided above, the Town Manager 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 or ice to be performed and recover from the owner the expense therefore which shall not exceed $500.00. This expense shall constitute a municipal charge lien against the real property as provided in M.G.L. c. 40, § 58.

C. Depositing Snow on Public Ways

No person shall deposit snow or ice on any way, sidewalk, or public parking place.

3.41 – GAS INSPECTOR

PENALTIES FOR VIOLATION OF THE GAS INSPECTOR BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: $300.00 penalty (enforcement by: Police Officers or Building Commissioner)

A. There shall be an Inspector of Gas (the "Inspector") for piping and gas appliances in buildings appointed by the Town Manager and whose duty shall be the enforcement of the rules and regulations adopted in accordance with the provisions of M.G.L. c. 143 and M.G.L. c. 25.

B. The expression "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 and testing of gas fixtures, ranges, refrigerators, stoves, water heaters, house heating boilers, and any other gas using appliances and all attachments and appurtenances. It also includes the maintenance in good and safe condition of the systems, and the making of necessary repairs and changes.

C. No person shall engage in gas fitting in buildings in the town without first obtaining a permit from the Inspector. The Inspector shall require applicants for permits to furnish a description and other information deemed necessary concerning the proposed work, and shall require applicants to pay fees established by the Town Manager.

3.42 – JUNKED VEHICLES

PENALTIES FOR VIOLATION OF THE JUNKED VEHICLES BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers or Building Commissioner)

A. No one in control of real property other than a commercial junkyard or a commercial garage shall allow a junked, abandoned, disassembled, or inoperable motor vehicle to remain thereon for more than 10 days, nor shall anyone allow a motor vehicle to remain on any place or road available for public travel for more than 48 hours. A motor vehicle remaining for the period indicated herein shall be deemed abandoned and may be removed by the police and

disposed of under the provisions of M.G.L. c. 135, relating to unclaimed and abandoned property.

B. Nothing herein shall prohibit the maintenance on private land in an enclosed building of disassembled or inoperable motor vehicles.

C. If a vehicle is located on private property and notice to remove has been given to the property owner or vehicle owner to remove the vehicle, each 10 days that the vehicle remains on the property shall constitute a separate offense.

D. If a vehicle is located on any place or road available for public travel and notice to remove has been given, each 48 hours that the vehicle remains on the property shall constitute a separate offense.

3.43 – USE OF RECREATIONAL VEHICLES NEAR RESIDENCES

PENALTIES FOR VIOLATION OF THE USE OF RECREATIONAL VEHICLES NEAR RESIDENCES BYLAW

Criminal Enforcement: $50.00 fine

Noncriminal Disposition: $50.00 penalty (enforcement by: Police Officers)

No person shall operate a snow vehicle or recreational vehicle (including motorcycles in off-highway operation) within 300 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 the residence. The owner or other person authorized by the owner may give advance authorization to 1 or more individuals by the posting of appropriate notice.

3.44 – TAX INCREMENT FINANCING

The Town Council may authorize the Town Manager to enter into Tax Increment Financing Agreements, and any modifications thereof in accordance with and subject to the requirements of M.G.L. c. 23A and M.G.L. c. 40, § 59, and any regulations promulgated thereunder.

3.45 – EMERGENCY ACCESS

A. Name of Bylaw and Authority

This bylaw shall be known as the Emergency Access Bylaw. It is enacted pursuant to the police powers of the Town 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.

B. Prohibition

No person shall install or maintain on any new or renovated building a supervised fire protection system unless the system is in full compliance with this bylaw or an exception has been obtained in accordance with this bylaw.

C. Installation

(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.

a. The Fire Chief or designee may grant an exception if the facility has on duty security or staff and the Fire Chief or designee is satisfied that the security or staff is able to arrive at the building with access keys in less than 5 minutes.

b. The Fire Chief or 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 satisfied that the alternative entry method provides an equivalent fire response time as contemplated under this bylaw.

(2) The type and style of key vault shall be approved by the Fire Chief or designee.

(3) The key vault shall be installed at the front door or other Fire Department approved access point into the building. The location of the key vault shall be approved by the Fire Department.

(4) Keys or codes for all outside doors, interior doors, mechanical rooms, fire alarm control panels, owner and occupant identification, and 24-hour contact information shall be maintained in the key vault.

D. Operation

(1) The Fire Department may use the keys secured in the key vault to gain access to the protected property for any emergency response.

(2) The Fire Department shall notify the owner or tenant each time the keys secured in the key vault are used.

(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) The owner, tenant, or designated person shall respond to restore fire protection systems to service and to secure the building.

(5) The owner shall ensure the keys are secured in the key vault after termination of the incident.

E. Maintenance

(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.

(2) Annual inspection and maintenance

a. The keys secured in the key vault shall be removed annually and tested for proper operation.

b. Contact information for the owner and occupants shall be updated annually.

c. The key vault lock shall be cleaned and lubricated annually.

e. The owner shall contact the Fire Department and make an appointment for annual inspection and maintenance of the key vault.

f. The owner shall make repairs and replace the key vault or any portion thereof as may be ordered by the Fire Chief or designee.

3.46 – FALSE ALARMS

PENALTIES FOR VIOLATION OF THE FALSE ALARMS BYLAW

Criminal Enforcement for first 3 responses in a 12-month period: warning
Criminal Enforcement for 4th response in a 12-month period: $50.00 fine
Criminal Enforcement for 5th response in a 12-month period: $75.00 fine
Criminal Enforcement for 6th response in a 12-month period: $100.00 fine
Criminal Enforcement for 7th response in a 12-month period: $150.00 fine
Criminal Enforcement for 8th, and subsequent, responses in a 12-month period: $200.00 fine

Noncriminal Disposition: the above violations may be enforced with a penalty equal to the maximum criminal fine associated with the violation (enforcement by: Police Officers)

A. A residence, school, municipal building, or place of business that has an alarm system connected directly to the Police Department or connected indirectly to the Police Department through a private alarm company (each of which will be hereinafter referred to as a

"monitored system"), shall be assessed a penalty for responses by the Police Department to buildings if the response is caused by:

(1) the activation of the monitored system through mechanical failure, malfunction, improper installation, or negligence of the user of an alarm system or of the user's employees or agents; or

(2) the activation of the monitored system requesting, requiring, or resulting in a response on the part of the Police Department when, in fact, there has been no unauthorized intrusion, robbery, burglary, or attempted threat.

B. Activation of a monitored system for the purposes of testing with prior approval by the Police Department, or by an act of God, including power outages, hurricanes, tornadoes, earthquakes, and similar weather or atmospheric disturbances shall not be deemed to be a false alarm.

C. A penalty for violation of this bylaw may be assessed against the owner or tenant of the residence or place of business.

3.47 – RIGHT TO FARM

A. Legislative Purpose and Intent

The purpose and intent of this bylaw is to state with emphasis the Right to Farm accorded to all citizens of the Commonwealth under Article 97 of the Articles of Amendment of the Massachusetts Constitution and all Commonwealth statutes and regulations thereunder, including M.G.L. c. 40A, § 3, Paragraph 1; M.G.L. c. 90, § 9; M.G.L. c. 111, § 125A; and M.G.L. c. 128, § 1A. We the citizens of Amherst restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment"). This General Bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town by allowing agricultural uses and related activities and promoting efficient conflict resolution with abutters and Town agencies.

B. Definitions

"Farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture.

"Farming" or "Agriculture" or their derivatives shall include the following:

(1) farming in all its branches and the cultivation and tillage of the soil;

(2) dairying;

(3) production, cultivation, growing, and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;

(4) growing and harvesting of forest products upon forest land, and any other forestry, lumbering, or tree-growing operations;

(5) raising of livestock including horses;

(6) keeping of horses as a commercial enterprise;

(7) keeping and raising of poultry, swine, cattle, sheep, cavies (such as rabbits), ratites (such as emus, ostriches, and rheas), camelids (such as llamas, alpacas, and camels), and other domesticated animals for food or other purposes, including bees and fur-bearing animals;

(8) production and processing of crops for biofuels for the purpose of generating alternative energy;

(9) operation and transportation of all Farm equipment over roads within the town;

(10) harvest of crops according to generally accepted agricultural practices;

(11) control of pests including insects, weeds, predators, and disease organisms of plants and animals;

(12) tillage, cultivation, and application of manure, fertilizers, and pesticides;

(13) conducting Agriculture-related educational activities;

(14) conducting Farm-based recreational activities, provided that the activities are related to marketing the agricultural output or services of the Farm;

(15) processing and packaging of the agricultural output of the Farm and the operation of a farmer's market or farm stand including signage thereto;

(16) maintenance, repair, or storage of seasonal equipment or apparatus owned or leased by the Farm owner or manager used expressly for the purpose of propagation, processing, land management activities, or sale of the agricultural products;

(17) on-Farm relocation of earth, and the clearing of ground for farming operation including burning brush in accordance with Massachusetts agricultural fire permit regulations (310 CMR 7.07); and

(18) construction and use of Farm structures and facilities for the purpose of: storage of animal wastes, Farm equipment, pesticides, fertilizers, agricultural products; housing of livestock; processing of animal wastes and agricultural products; season extension

or hydroponic production of agricultural products; sale of agricultural products; or use by Farm labor; construction and maintenance of fences; all as permitted by local and Commonwealth building codes and regulations.

C. Right to Farm Declaration

The Right to Farm is hereby recognized to exist with the Town, in recognition of the benefits of Farming to the neighborhood, community, and society in general. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. The benefits and protections of this bylaw are intended to apply exclusively to those agricultural and Farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Bylaw shall be deemed as acquiring any interest in land, or imposing any land use regulation, which is properly the subject of Commonwealth statute, regulation, or local zoning bylaw. This bylaw does not supersede local, Commonwealth, or federal laws or regulations or private covenants.

D. Disclosure Notification to Real Estate Buyers

(1) In order to allow prospective purchasers to make informed decisions prior to a real estate transaction and to promote harmony between farmers and their new neighbors after a transaction, the Town requests selling landholders or their agents and assigns to provide written notice to prospective purchasers substantially as follows:

"It is the policy of the Town of Amherst to conserve, protect, and encourage the maintenance and improvement of agricultural land for the production of food and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers that the property lies within a town where Farming activities occur. Farming activities may include activities that cause noise, dust, and odors. Purchasing or occupying, land within Amherst means that one should expect and accept these conditions as a normal and necessary aspect of living in Amherst."

(2) Written notification may occur in one of several ways including a disclosure form, addendum to a Purchase and Sale Agreement and should include a buyer's acknowledgement that the buyer has received notification.

E. Resolution of Disputes

Any person having a complaint about a Farm or Farming activity or practice is encouraged to seek an amicable solution through resolution directly with the owner or operator of the Farm at issue. The person may also, notwithstanding the pursuit of other available remedies, file a complaint with the Town Manager. The Town Manager shall forward the complaint to the Agricultural Commission, and other board or officer deemed appropriate. The Agricultural Commission shall seek an amicable resolution through facilitating discussion between the

parties, and shall report back to the Town Manager on the outcome within a reasonable time frame.

3.48 – STRETCH ENERGY CODE

A. Adoption

The Town has adopted the provisions of 780 CMR 115.AA (i.e., Appendix 120.AA of the State Building Code or the "Stretch Energy Code") in place of the provisions set forth under 780 CMR 13.00, 34.00, 61.00 and 93.00.

B. Purpose

The purpose of the Stretch Energy Code shall be to provide the Town with a more energy efficient alternative to the base energy code otherwise set forth under the State Building Code.

3.49 – LOCAL HISTORIC DISTRICTS

PENALTIES FOR VIOLATION OF THE LOCAL HISTORIC DISTRICT BYLAW

Criminal Enforcement: $300.00 fine

Noncriminal Disposition: $300.00 penalty (enforcement by: Historic District Commission)

A. The Town has established and may hereafter establish 1 or more Local Historic Districts, to be administered by an Historic District Commission as provided for under M.G.L. c. 40C.

B. Purpose

The purpose of this bylaw is to aid property owners and the Town in the preservation and protection of the distinctive characteristics and architecture of buildings and places significant in the history of the Town, including the maintenance and improvement of their settings and to encourage and support new and innovative building designs and techniques compatible with the existing architecture.

C. Definitions

As used in this bylaw the following terms shall have the following meaning:

"Alteration" or "to Alter" means the act or the fact of rebuilding, reconstruction, restoration, replication, removal, demolition, partial demolition, and other similar activities.

"Building" means a combination of materials forming a shelter for persons, animals, or property.

"Certificate" means a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship as set forth in this bylaw.

"Commission" means the Historic District Commission as established in this bylaw.

"Construction" or "to Construct" means the act or the fact of building, erecting, installing, enlarging, moving, and other similar activities.

"Display Area" means the total surface area of a sign, including all lettering, wording, designs, symbols, background, and frame, but not including any support structure or bracing incidental to the sign. The Display Area of an individual letter sign or irregular shaped sign shall be the area of the smallest rectangle into which the letters or shape will fit. Where sign faces are placed back to back and face in opposite directions, the Display Area shall be defined as the area of one face of the sign.

"District" means a Local Historic District as established in this bylaw consisting of one or more District areas.

"Exterior Architectural Feature" means the portion of the exterior of a Building or structure as is open to view from a public way or ways, including architectural style and general arrangement and setting thereof, the kind and texture of exterior Building materials, and the type and style of windows, doors, lights, Signs, and other appurtenant exterior fixtures.

"Person Aggrieved" means the applicant; an owner of adjoining property; an owner of property within the same District area; an owner of property within 100 feet of the District area; or a charitable corporation in which one of its purposes is the preservation of historic places, structures, Buildings, or Districts.

"Signs" mean any symbol, design, or device used to identify or advertise any place of business, product, activity or person.

"Structure" means a combination of materials other than a Building, including a sign, fence, wall, terrace, walk, or driveway.

"Temporary Building" and "Temporary Structure" – A "Temporary Building" means a Building not to be in existence for a period of more than 2 years; a Temporary Structure means a structure not to be in existence for a period of more than 1 year. The Commission may further limit the time periods set forth herein as it deems appropriate.

D. District

Each District shall consist of one or more District areas as listed in Section M of this bylaw.

E. Commission

(1) Each District shall be overseen by the Commission consisting of 7 members, to be appointed by the Town Manager for staggered terms of 3 years.

(2) The Town Manager is encouraged to include on the Commission, if possible: 1 member from 2 nominees solicited from the Amherst Historical Society; 1 member from 2 nominees solicited from the chapter of the American Institute of Architects covering Amherst; 1 member from 2 nominees of the Board of Realtors covering Amherst; and 1 property owner from within a District area. If within 30 days after submission of a written request for nominees to any of the organizations herein named insufficient nominations have been made, the Town Manager may proceed to make appointments.

(3) The Town Manager may appoint up to 4 alternate members to the Commission. Each alternate member shall have the right to act and vote in the place of 1 regular member should the regular member be absent from a meeting or be unwilling or unable to act or vote. The alternate members shall be appointed for staggered 3-year terms.

(4) Each member and alternate member shall continue to serve in office after the expiration date of the member's term until a successor is duly appointed and sworn.

(5) Meetings of the Commission shall be held in accordance with Section 9.12 of the Charter.

F. Commission Powers and Duties

(1) The Commission shall exercise its powers in administering and regulating the Construction and Alteration of any Structures or Buildings within the District as set forth under the procedures and criteria established in this bylaw. In exercising its powers and duties hereunder, the Commission shall pay due regard to the distinctive characteristics of each Building, Structure, and District area.

(2) The Commission may adopt, and amend, reasonable Rules and Regulations not inconsistent with the provisions of this bylaw or M.G.L. c. 40C, setting forth the forms and procedures it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for Certificates, fees, hearing procedures, and other matters. The Commission shall file a copy of its Rules and Regulations with the Town Clerk.

(3) The Commission, after a public hearing duly posted and advertised at least 14 days in advance on the Town Bulletin Board, may adopt and amend guidelines which set forth the designs for certain Exterior Architectural Features which are, in general, suitable for the issuance of a Certificate. The design guidelines shall not limit the right of an applicant for a Certificate to present other designs to the Commission for approval.

(4) The Commission shall at the beginning of each fiscal year hold an organizational meeting and elect a Chair, a Vice Chair, and a Clerk, and shall file notice of the election with the Town Clerk.

(5) The Commission shall keep a permanent record of its resolutions, transactions, decisions, and determinations, and of the vote of each member participating therein as required by the Open Meeting Law.

(6) The Commission shall undertake educational efforts to explain to the public and property owners the merits and functions of a District.

G. Alterations and Construction Prohibited Without A Certificate

A Certificate shall be required:

(1) before the Town issues a building permit for Construction of a Building or Structure or for Alteration of an Exterior Architectural Feature as visible from a public way within a District;

(2) before the Town issues a demolition permit for demolition or removal of a Building or Structure within a District; and

(3) in all cases when the Construction or Alteration involves a removal of an Exterior Architectural Feature as visible from a public way.

H. Procedures for Review of Applications

(1) Any person who desires to obtain a Certificate from the Commission shall file with the Commission an application for a Certificate of Appropriateness, of Non-Applicability, or of Hardship. The application shall be accompanied by plans, elevations, specifications, material, and other information, including, in the case of demolition or removal, a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the Commission to enable it to make a determination on the application.

(2) The Commission shall determine within 14 days of the filing of an application for a Certificate whether the application involves any Exterior Architectural Features that are within the jurisdiction of the Commission.

(3) If the Commission determines that an application for a Certificate does not involve any Exterior Architectural Features, or involves an Exterior Architectural Feature that is not subject to review by the Commission under the provisions of this bylaw, the Commission shall forthwith issue a Certificate of Non-Applicability.

(4) If the Commission determines that the application involves an Exterior Architectural Feature subject to review under this bylaw, it shall hold a public hearing on the application, except as may otherwise be provided in this bylaw. The Commission

shall hold a public hearing within 45 days from the date of the filing of the application. At least 14 days before the public hearing, public notice shall be given by posting on the Town Bulletin Board. The notice shall identify the time, place, and purpose of the public hearing. Concurrently, a copy of the public notice shall be mailed: (1) to the applicant; (2) to the owners of all adjoining properties and of other properties deemed by the Commission to be materially affected thereby, all as the owners appear on the most recent real estate tax list; (3) to the Planning Board; (4) to any person filing a written request for notice of hearings, to be renewed yearly in December; and (5) to other persons as the Commission shall deem entitled to notice.

A public hearing on an application for a Certificate need not be held if a hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application for a Certificate may be waived by the Commission if the Commission determines that the Exterior Architectural Feature involved, or its category, is so insubstantial in its effect on the District that it may be reviewed by the Commission without a public hearing. If the Commission dispenses with a public hearing on an application for a Certificate, notice of the application shall be given to the owners of all adjoining property and of other property deemed by the Commission to be materially affected thereby as above provided, and 10 days shall elapse after the mailing of the notice before the Commission may act upon the application.

(5) Within 60 days after the filing of an application for a Certificate, or within further time as the applicant may allow in writing, the Commission shall issue a Certificate or a disapproval. In the case of a disapproval of an application for a Certificate, the Commission shall set forth in its disapproval the reasons for the disapproval. The Commission may include in its disapproval specific recommendations for changes in the applicant's proposal with respect to the appropriateness of design, arrangement, texture, material, and similar features which, if made and filed with the Commission in a subsequent application, would make the application acceptable to the Commission.

(6) The concurring vote of a majority of the members of the Commission shall be required to issue a Certificate.

(7) In issuing Certificates, the Commission may, as it deems appropriate, impose certain conditions, and limitations, and may require architectural or plan modifications consistent with the intent and purpose if this bylaw.

(8) If the Commission determines that the Construction or Alteration for which an application for a Certificate of Appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the District, the Commission shall issue a Certificate of Appropriateness.

(9) If the Construction or Alteration for which an application for a Certificate of Appropriateness has been filed shall be determined to be inappropriate and therefore disapproved, or in the event of an application for a Certificate of Hardship, the Commission shall determine whether, owing to conditions especially affecting the

Building or Structure involved, but not affecting the District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether the application may be approved without substantial detriment to the public welfare or to the District and without substantial derogation from the intent and purposes of this bylaw. If the Commission determines that, owing to applicable conditions, failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without substantial detriment or derogation, the Commission shall issue a Certificate of Hardship.

(10) The Commission shall send a copy of its Certificates and disapprovals to the applicant and shall file a copy of its Certificates and disapprovals with the Town Clerk and the Building Commissioner. The date of issuance of a Certificate or disapproval shall be the date of the filing of a copy of the Certificate or disapproval with the Town Clerk.

(11) If the Commission should fail to issue a Certificate or a disapproval within 60 days of the filing of the application for a Certificate, or within further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate of Hardship Due to Failure to Act.

(12) Each Certificate issued by the Commission shall be dated and signed by its Chair or another person designated by the Commission to sign Certificates on its behalf.

(13) A Person Aggrieved by a determination of the Commission may, within 20 days of the issuance of a Certificate or disapproval, file a written request with the Commission for a review by a person or persons of competence and experience in these matters, acting as arbitrator and designated by the Pioneer Valley Planning Commission (PVPC). The finding of the person or persons making the review shall be filed with the Town Clerk within 45 days after the request, and shall be binding on the applicant and the Commission, unless a further appeal is sought in the Superior Court as provided in M.G.L. c. 40C, § 12A. The filing of further appeal shall occur within 20 days after the finding of the arbitrator has been filed with the Town Clerk.

I. Criteria for Determinations

(1) In deliberating on applications for Certificates, the Commission shall consider, among other things: the historic and architectural value and significance of the site, Building, or Structure; the general design, proportions, detailing, mass, arrangement, texture, and material of the Exterior Architectural Features involved; and the relation of Exterior Architectural Features to similar features of Buildings and Structures in the surrounding area. The Commission shall be guided by the purpose of this bylaw to preserve and protect Exterior Architectural Features of the Buildings and Structures in the District as in existence at the time of the bylaw's adoption.

(2) In the case of new Construction or additions to existing Buildings or Structures, the Commission shall consider the appropriateness of the scale, shape, and proportions of the Building or Structure both in relation to the land area upon which the Building or

Structure is situated and in relation to Buildings and Structures in the vicinity. The Commission may, in appropriate cases, impose dimensional and setback requirements in addition to those required by applicable statute or bylaw.

(3) When ruling on applications for Certificates on solar energy systems as defined in M.G.L. c. 40A, § 1A, the Commission shall consider the policy of the Commonwealth of Massachusetts to encourage the use of solar energy systems and to protect solar access.

(4) The Commission shall not consider interior arrangements or architectural features not subject to public view from a public way.

J. Exclusions

(1) The Commission shall exclude from its purview the following:

a. Temporary Buildings, Structures, or Signs subject, however, to conditions pertaining to the duration of existence and use, location, lighting, removal, and similar matters as the Commission may reasonably specify.

b. Terraces, walks, driveways, sidewalks, and similar Structures, provided that the Structure is substantially at grade level.

c. Storm windows and doors, screen windows and doors, and window air conditioners.

d. The color of paint.

e. The color of materials used on roofs.

f. A sign that is:

1. not more than 2 square feet in Display Area;

2. illuminated only indirectly, if at all;

3. the only sign on display at the property; and

4. made of painted wood.

g. The reconstruction, substantially similar in exterior design, of a Building, Structure or Exterior Architectural Feature damaged or destroyed by fire, storm, or other disaster, provided reconstruction is begun within 1 year thereafter and carried forward with due diligence.

(2) Upon request, the Commission shall issue a Certificate of Non-Applicability with respect to Construction or Alteration in any category not subject to review by the Commission in accordance with the above provisions.

(3) Nothing in this bylaw shall be construed to prevent the ordinary maintenance, repair, or replacement of any Exterior Architectural Feature within a District that does not involve a change in design, material, or the outward appearance, nor to prevent landscaping with plants, trees, or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any Construction or Alteration under a permit duly issued prior to the effective date of this bylaw.

K. Categorical Approval

The Commission may determine, after a public hearing, duly advertised and posted at least 14 days in advance on the Town Bulletin Board, that certain categories of Exterior Architectural Features, Structures, or Buildings under certain conditions, may be Constructed or Altered without review by the Commission without causing substantial derogation from the intent and purpose of this bylaw.

L. Enforcement and Penalties

(1) The Commission shall be charged with enforcement of this bylaw, including making determinations as to whether a particular activity constitutes a bylaw violation.

(2) The Commission, upon a written complaint of any resident, or owner of property within the Town, or upon its own initiative, may, with approval of the Town Manager, institute any appropriate action or proceedings in the name of the Town to prevent, correct, restrain, or abate a violation of this bylaw. In the case where the Commission is requested in writing to enforce this bylaw against a person allegedly in violation of this bylaw and the Commission declines to act, the Commission shall notify, in writing, the party requesting enforcement of any action or refusal to act and the reasons therefore, within 21 days of receipt of the request.

M. Historic Districts

(1) Dickinson Local Historic District

The Dickinson Local Historic District shall be a District area under this bylaw. The location and boundaries of the Dickinson Local Historic District are defined and shown on the Local Historic District Map of the Town of Amherst, Sheet 2010-1, dated 2/17/2012, which is a part of this bylaw. Sheet 1 is based on the current land records used by the Town Assessor. The delineation of the District area boundaries is based on the parcel boundaries shown therein, except as otherwise apparent on Sheet 1.

(2) North Prospect-Lincoln-Sunset Historic District

The North Prospect-Lincoln-Sunset Local Historic District shall be a District area

under this bylaw. The location and boundaries of the North Prospect-Lincoln-Sunset Local Historic District are defined and shown on the Local Historic District Map of the Town of Amherst, Sheet 2016-2, dated March 2017, which is a part of this bylaw. This Sheet is based on the current land records used by the Town Assessor. The delineation of the District area boundaries is based on the parcel boundaries shown there in, except as otherwise apparent on the Sheet.

3.50 – RESIDENTIAL RENTAL PROPERTY

FEES AND PENALTIES FOR VIOLATION OF THE RESIDENTIAL RENTAL PROPERTY BYLAW

Fee for registration, permit application, and inspections: determined by the Town Council

Criminal Enforcement: $100.00 fine

Noncriminal Disposition: $100.00 penalty (enforcement by: Town Manager's designee, including the Principal Code Official)

See Section L for non-monetary penalties

A. Purpose

This bylaw is adopted in accordance with the Town of Amherst's Home Rule Authority and the Amherst Master Plan, in furtherance of the following public purposes:

(1) To protect the health, safety, and welfare of tenants and other residents of the Town by monitoring and enhancing compliance with basic life safety and sanitary codes through the registration and permitting of residential rental properties.

(2) To ensure safe and sanitary conditions in the Town's rental housing stock, preventing degradation, and helping to promote preservation of important historic residential buildings and neighborhoods.

(3) To provide clear and accessible guidelines for the operation of rental properties for tenants, owners, landlords, and neighbors, and to extend awareness of related Town bylaws and health regulations related to operation of a rental property and those regulations related to noise, alcohol, and nuisance behaviors.

(4) To establish and assign responsibility for different aspects of rental housing management.

(5) To establish and expand awareness of the requirements for use and maintenance of rental housing exteriors and grounds, including parking requirements.

(6) To ensure awareness of and responsibility for occupancy limits in rental units on the part of property owners, managers, tenants, and neighbors.

(7) To help to stabilize, protect, and enhance the essential characteristics of and quality of life within existing diverse, multi-generational residential neighborhoods for all residents, including families and students, consistent with Amherst's long history as a college community.

B. Definitions

"Code Official" means the Building Commissioner/Zoning Enforcement Officer of the Town, the Health Director, Police Chief, Fire Chief, or their designees or any of the inspectors or officers authorized to enforce the law, regulations, and codes listed under Section C of this bylaw. The specific Code Official in each instance shall be the official duly designated under the relevant statute, bylaw, or regulation.

"Dwelling Unit" means the room or group of rooms within a dwelling used or intended for use by 1 family, as defined by the Zoning Bylaw, or household for living, sleeping, cooking, and eating. Dwelling unit shall also mean a condominium unit.

"Emergency" means events or conditions involving natural disasters, fire, or other threats to the health and safety of the residents of a rental property.

"Occupant" means a person who occupies real property with the consent of the owner as a lessee, tenant at will, licensee, or otherwise.

"Owner" means a Person who alone, or jointly or severally with others:

(1) has legal title to any building, structure, or property subject to this bylaw;

(2) has care, charge, or control of any building, structure, or property in any capacity including agent, executor, administrator, trustee, or guardian of the estate of the holder of legal title;

(3) is a lessor under written agreement;

(4) is the mortgagee in possession; or

(5) is the recognized agent, trustee, or other person with care, charge, or control appointed by the courts.

"Owner-Occupant(s)" means one or more natural persons who, in an individual capacity as distinct from a representative capacity, own(s) a whole or undivided interest in fee simple of certain real property and at least 1 of whom occupies a Dwelling Unit thereon as a principal residence (see definition).

"Person" means an individual, corporation, trust, partnership (including general partnership, limited partnership, and limited liability partnership), and a limited liability company. In addition, any similar entity permitted by law to hold title to real estate shall be deemed a "Person."

"Premises" means any real estate used for residential premises, including apartments, dwellings, Dwelling Units, lodging houses, lodging units, rooming houses, and rooming units.

"Principal Code Official" means the Code Official designated by the Town Manager to oversee and administer the rental program under this bylaw.

"Principal Residence" means the primary residence of an individual, family (as defined in the Zoning Bylaw), or property Owner, i.e., the home where an Owner, and the Owner's family if applicable, resides as a primary dwelling; provided however, that no Person shall hold concurrent rights in more than 1 Principal Residence, as set forth under M.G.L. c. 188, § 1. Regular or periodic interruptions in residency shall not be considered to change the status of principal residency where the interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence which do not affect basic indices of residency. Principal residency shall be determined by the Code Official based upon a preponderance of evidence, including the following indicia of residency and address, as applicable: declaration of homestead; filing of Commonwealth and federal income taxes; voter registration; annual street list; driver's license; motor vehicle registration; mortgage; mailing address; and telephone listing.

"Responsible Party" means a Person responsible for a violation under this bylaw, whether an Owner, Occupant, tenant, local agent, or property manager.

"Responsible Person" means an Owner, Occupant, tenant, local agent, property manager, or other natural person authorized to act as an Owner's agent.

"Rooming Unit" means the room or group of rooms let to an individual or household for use as living and sleeping quarters but not for cooking, whether or not common facilities for cooking are made available; provided, that cooking facilities shall not be deemed common if the facilities can be reached only by passing through any part of the Dwelling Unit or Rooming Unit of another.

C. Registration & Permit Required

Except as provided in Section D below, no Person may rent, or offer to rent, to individuals or households any dwelling unit or any Rooming Unit in a lodging or boarding house operated as a principal zoning use in the Town until the property has been registered and a rental permit therefor has been issued by the Principal Code Official.

D. Enabling Legislation & Regulations

Rental units and Rooming Units regulated hereunder shall comply with all applicable local

bylaws and regulations, as well as all laws and health, building, and fire codes of the Commonwealth. Inspections, enforcement, and other actions taken under these regulations are authorized under those applicable local and Commonwealth laws and regulations.

E. Applicability & Exemptions

Registration and rental permits shall be required of all residential properties containing rented dwelling units or Rooming Units, or offered for that purpose, except for the following:

(1) Lodging Facilities: Hotels, motels, inns, hostels, or bed and breakfasts.

(2) Halfway Houses & Group Homes: Residential facilities authorized and operated under Commonwealth and federal law, congregate, or similar group housing for the elderly or disabled, half-way houses for persons with substance abuse problems, congregate living arrangements for persons with disabilities, or other similar housing facilities operated under license by the Commonwealth of Massachusetts. Notwithstanding, these facilities shall comply with Section G(1)(b) below.

F. Registration & Permitting

(1) Application Process and Requirements

Registration and rental permit applications shall be made on forms approved by the Town, and shall provide information that the Principal Code Official shall deem reasonable and appropriate. Completed applications shall be filed with the office or official identified on the application form approved by the Principal Code Official. Complete rental permit applications shall be reviewed and permits shall be issued within 14 business days from the date of submission. Except as may otherwise be permitted by the Code Official, a rental permit application shall identify the total number of rental units on the property.

Information required as part of a rental permit application shall include:

a. Contact Information & Responsible Persons

Name and current contact information, including mailing address, telephone number, and email address, for the Owner or responsible rental property management entity or Person. Where the rental property Owner(s) or agent does not have a Principal Residence or principal place of business in the Town or within 20 miles of the Town line, and in order to ensure contact in circumstances when the Owner cannot be reached, the Owner shall appoint 1 or more Person(s) who are residents of Amherst to serve as Local Agent(s) for the Owner, authorized to act on the Owner's behalf with regard to the property, but in particular in all matters in response to an Emergency which endangers the property or threatens the welfare of any Person living on the Premises. Notices given to a Local Agent shall be sufficient to satisfy any requirement of notice to

the Owner or the operator. The Owner shall notify the Code Official in writing of any change of Local Agent within 5 days of the change.

b. Compliance Through Self-Certification

Evidence of current compliance with all applicable local zoning and regulations, as well as health, fire, and building codes of the Commonwealth, shall be provided through submission of an Owner's Self-Inspection and Certification Checklist provided by the Town as set forth in Section G below. An Owner or property manager may provide the Town with a single Self-Inspection and Certification Checklist for multiple units provided that the units are on a single property. Where the units represent a portion of the total rental units on the property, the applicant shall propose a schedule of Self-Inspection and Certification for the remaining units for the review and approval of the Code Official.

c. Complete & Accurate Information Required

No incomplete application shall be accepted. It shall be a violation of this bylaw for anyone to knowingly provide false or misleading information on an application and may constitute grounds for monetary and other penalties hereunder. See Sections K and L below.

(2) Renewal

Rental permits shall be valid for a period beginning on July 1 and ending on June 30, regardless of when a permit is applied for or approved and issued. Completed applications for permit renewals shall be submitted and received by June 15 of each calendar year.

(3) Permit Posted

A rental permit shall be conspicuously posted and maintained within the Premises in a common area or area as is necessary to be visible to tenants and inspectors.

(4) Transferability

Rental permits shall be transferable upon a change of ownership, providing that operation of the continued rental use shall be subject to the provisions of the permit and management plan. The new Owner or designated operator of the rental property shall be required to promptly notify the Code Official of the acquisition of the property and to submit for review and approval any proposed changes in the provisions of the permit.

G. Inspections & Complaints

(1) Self-Certification

Owners of rental property governed by this bylaw shall self-inspect and certify their properties as required under this section. Nothing herein shall limit the Town's authority or the authority or discretion of the Code Official to investigate and inspect a property in response to a complaint or for other good cause, or to compel abatement of any violation under this bylaw in a manner consistent with or required by the laws of the Commonwealth.

a. Owner Self-Inspection & Certification

An Owner or local agent shall conduct an annual inspection of the property, using a Self-Certification Checklist provided by the Town. The Owner or agent shall sign the Checklist indicating that the information contained therein is complete and accurate as of the date of the annual inspection, and shall submit the Checklist and any required materials along with an application for annual renewal of the rental permit for the property and unit(s) in question. A false statement or false information provided on the Checklist shall constitute a violation of this bylaw.

b. Subsidized Housing

Where residential rental units are regularly inspected under the requirements of the Commonwealth or federal government, no Self-Inspection and Certification shall be required. Annual certification by the Owner that a rental unit has been inspected in accordance with the law of the Commonwealth or federal law shall be provided to the Town and shall be accepted by the Town as evidence of Self-Inspection as part of any permit application or renewal.

c. Self- Inspections & Access

An Owner shall not be found in violation of the Self-Certification requirements of this bylaw if refused access for an inspection by a tenant or Occupant. However, in this instance, the Owner shall either provide the Town with a signed statement from the tenant or Occupant indicating that the inspection was refused, or the Owner shall provide proof that a request for access was served to the tenant or Occupant and the request was thereafter refused.

d. Lease Terms

Subject to and as limited by the laws of the Commonwealth, a provision requiring tenants to agree to provide reasonable access to the Owner(s) or management company shall be a feature of any lease for a rental unit or property permitted under this bylaw. Where no lease is used, the Owner(s) or the Owner's lawful representatives shall provide documentation demonstrating that all tenants were made aware of the Town rental bylaw and inspection system. All leases shall provide an acknowledgment that all tenants have been made aware of these requirements.

e. Leases Available

Copies of all current, active leases for the subject property or units shall be kept on file with the Owner or manager and shall be made available to the Code Official within 48 hours of any request.

(2) Self-Inspection for Different Circumstances

a. Short-Term Rentals

Dwelling Units on an Owner-Occupied property serving as the Owner's Principal Residence, and that contain not more than 2 units, may be rented under simple registration with the Town without the requirement for a rental permit for a period not to exceed 1 year under the following circumstances:

1. During a pending sale of the property by the Owner-Occupant; or

2. In response to regular or periodic interruptions in residency by the Owner-Occupant, where interruptions are the result of illness, catastrophe, professional or academic scheduling, or other temporary reasons for absence that do not affect basic indicia of residency.

At the end of the 1-year rental period, as calculated from the initial date of the lease or occupancy of the unit(s) by Persons other than the Owner(s), any units shall be registered and a rental permit obtained in compliance with this bylaw.

b. Long-Term Tenancies & Periodic Self-Inspections for Rentals

Rental units which have been leased and occupied continuously by the same tenant(s) for a period of not less than 3 years shall require a Self-Inspection & Certification upon initial registration and thereafter at 3-year intervals. Exceptions shall be that Self-Inspection & Certification shall be required upon any change in tenants or may be required at more frequent intervals at the discretion of the Code Official in response to complaints or other circumstances requiring a Town inspection.

(3) Complaints & Response Process

Upon receipt of a complaint or notice from any Person alleging that the condition of a rental unit or property is in violation of any law or Commonwealth or local requirement, or of any violation of this bylaw, the Code Official shall conduct an inspection of a premise within a reasonable amount of time. Inspections shall be as scheduled by the Code Official.

Inspections of rental properties, buildings, grounds, and rented dwelling or Rooming Units shall be conducted in accordance with all applicable local and Commonwealth

laws, regulations, and codes, in a manner consistent with the laws of the Commonwealth.

Subject to the above limitation, all rental units are subject to inspection upon complaint or request by a tenant. Issuance of a rental permit to an Owner does not preclude a tenant's right to file a complaint with the Town, to which the Town must respond with an inspection in compliance with the provisions of the law of the Commonwealth and regulations promulgated thereunder.

(4) Access to Properties

In accordance with Section G(1)(d), the permit holder shall make a good faith effort to arrange access by authorized Town personnel to any permitted rental property for the purpose of conducting inspections within 24 hours of receiving a request.

H. Tenant Information

The Owner shall be required to distribute to tenants annually, and to each new tenant, an information sheet provided by the Town describing key local regulations: bylaws, including those pertaining to noise, alcohol, and nuisance houses; and Commonwealth laws and codes applying to rental properties. As part of the Registration and Self-Certification process, the Owner shall attest to understanding the provided information and the necessity of compliance with the rules and laws described, as well as distributing it to tenants.

I. Occupancy Limits and Zoning

The maximum number of adult Persons who may occupy a Dwelling Unit or Rooming Unit shall be as determined by the requirements of the Zoning Bylaw and Commonwealth standards for fitness for habitation. The fact that a structure or use may be permitted or authorized under the Zoning Bylaw shall not exempt the structure or use from application of this bylaw or relieve or excuse compliance herewith.

J. Parking

Existing parking, and new or expanded parking on residential rental properties, shall comply with the General Requirements and Design Standards and Landscape Standards of the Parking & Access Regulations of the Zoning Bylaw.

(1) Parking Site Plan

A basic parking site plan, as described below, meeting the requirements of this section shall be developed and submitted as part of any rental permit application. Submission of an existing site plan approved under a land use (zoning) permit and which accurately represents current on-site parking shall meet the requirements of this section.

a. Basic Parking Site Plan Requirements

The parking site plan shall be drawn to scale (1”=20’ preferred), as appropriate to the site. Except as may otherwise be required by the Code Official or under the provisions of the Zoning Bylaw, Town GIS mapping may be used as the base for a site plan developed under this section. The basic parking site plan shall accurately depict the area within which parking is proposed, including:

1. property boundaries;

2. existing driveways and pedestrian walks;

3. dwellings and structures;

4. all existing and proposed on-site parking spaces;

5. existing and proposed landscaped areas;

6. fencing or other barriers or screening; and

7. site features such as trees over 12 inches in diameter (as measured 5 feet above grade), bedrock outcroppings, steep slopes, and other site features as may affect parking locations.

b. Any provision of Section J(1)(a) may be waived or modified by the Code Official for compelling reasons of safety or design.

(2) Review

Existing on-site parking and circulation shall be reviewed by the Code Official for conformance with existing zoning requirements, including parking layout and circulation, paving, parking space dimensions, screening, and, in consultation with the Fire Chief, the sufficiency of circulation and vehicular access for public safety and emergency vehicles.

K. Enforcement Procedures

Except for cases where conditions exist which may endanger or impair the health, or safety and well-being of a Person or Persons occupying the Premises or as may otherwise be provided for by the Massachusetts Sanitary Code, Building Code, Fire Regulations, or other Commonwealth or local law or regulation, the response of Code Officials to potential violations of this bylaw shall include 1 or more of the actions as deemed necessary by the Code Official. Nothing herein shall supersede, alter, or vary the requirements of those codes or the responsibilities of the officials that administer them.

(1) Complaint Filed

Any Person may file a complaint regarding 1 or more violations of this bylaw.

(2) Property Research

The Code Official shall perform a limited initial research of the property to confirm permit history, assessor's information, and other pertinent information. The Code Official may contact the alleged violator, Occupant, or Responsible Party to gather additional information. When appropriate the Code Official shall notify the Owner that a complaint has been filed against the property and that an initial site inspection is anticipated.

(3) Site Inspection

The Code Official shall conduct a site inspection to determine the validity of the complaint and collect any relevant facts of the case.

(4) Notice of Violation or Enforcement Order

After inspecting the site and upon confirming that a violation exists, the Code Official shall inform the Responsible Party or parties in writing of the violation and specify a time period within which to correct the violation. Violations may be cited pursuant to the applicable Commonwealth or local code or regulation.

(5) Follow up Inspection

A follow up inspection shall be conducted upon the expiration of the time specified to correct the violation.

(6) Penalties

The Code Official may elect to impose penalties in instances where:

a. compliance has not been achieved after the Responsible Party or parties have been made aware of the violation and given a reasonable opportunity to come into compliance; or

b. for repeat offenses.

(7) Suspension of Rental Permit

In instances of egregious violations and when all reasonable and practical efforts have been made by the Code Official to gain compliance at a property without result, the Principal Code Official may suspend a rental permit based upon the specific criteria provided in Section L of this bylaw. The permit holder shall have the opportunity to be heard and appeal the decision of the Principal Code Official to impose a suspension in accordance with Section M of this bylaw.

(8) Court Relief

If a violator fails to comply with an Enforcement Order, the Code Official may seek a court order to remedy the violation.

L. Penalties

(1) Suspension

Based on the standard of proof and criteria specified herein the Principal Code Official is authorized to suspend a rental permit. A suspension shall take effect immediately upon the day following the end of the current lease, or upon any termination of the lease prior to that date. The suspension of a rental permit shall be imposed to affect only those units which are the subject of the violation(s) and enforcement action(s). Permits may be suspended if:

a. An Owner or Owner's Agent has knowingly allowed or assisted in allowing violations of this bylaw. The Code Official must collect compelling documentation through an investigation to substantiate this violation and support the recommendation to suspend a permit.

b. An Owner or Owner's Agent repeatedly refuses or neglects to comply with an order of the Code Official. The Code Official must find that the Owner or Agent has not taken action to achieve compliance of the property and that at least 90 days have expired without compliance since the date of receipt of the Enforcement Order. During this time the Code Official shall inform the Owner or their Agent in writing that the permit is subject to suspension. Suspensions shall be as follows:

First Offense – 90 days
Second Offense in a twelve month period – 180 days
Third Offense in a twelve month period – 3 years

(2) Immediate Suspension

In those instances where a rental unit has been condemned or deemed an unsafe structure pursuant to health, building, and fire regulations, the rental permit shall be immediately suspended and shall remain suspended until the property is found to be habitable and in compliance by the appropriate Code Official.

M. Appeals from decision of the Code Official

The Town Manager is hereby authorized to establish and appoint a Rental Appeals Board, and to promulgate regulations for its membership and the conduct of its business.

A decision by the Code Official to suspend a permit may be challenged by the permit holder by filing an appeal to the Rental Appeals Board. All appeals shall be filed within 14 days of the decision and shall be heard within 30 days of filing. All appeals shall be heard at a duly

noticed public hearing and any party filing an appeal shall have the right to be represented by counsel.

A decision of the Rental Appeals Board shall be final. Further relief of a decision by the Rental Appeals Board made under this bylaw shall be reviewable in a court of competent jurisdiction.

3.51 – ZERO ENERGY TOWN BUILDINGS

A. Purpose

This bylaw shall be known as the Town of Amherst Zero Energy Town Buildings Bylaw. It is enacted to help counter and prevent the effects of global climate change. It affirms that the Town is committed to working towards a resilient and carbon-neutral community by incorporating optimal energy efficiency standards, using Renewable Energy, and eliminating nearly all use of Fossil Fuels in new Town Buildings and Building Additions, as provided herein.

B. Definitions

"Architect of Record" means the architect whose professional seal is affixed to the Construction Documents.

"Building" means a structure wholly or partially enclosed within exterior walls and a roof, or within exterior and party walls and a roof, providing services and affording shelter to persons, animals, or property.

"Building Addition" means a new construction attached to an existing Building.

"Buildings and Building Additions" means all new municipal buildings and new municipal building additions built by and for the Town.

"Commissioning" means the process that verifies and documents that the building systems, including all systems related to this bylaw, have been designed, installed, and function according to the Construction Documents.

"Construction Documents" means drawings and specifications sufficient for competitive public bidding in the Commonwealth of Massachusetts.

"Energy Budget" means a document established at the outset of design and updated periodically during design that is based on estimated amounts of energy to be used once the Building is occupied.

“Feasibility Study” means a planning document that confirms and explains the owner’s requirements, identifies and evaluates alternative solutions and sites, recommends and defines solutions, summarizes the proposed scope of work, and provides a cost estimate.

“Fossil Fuels” means fuels from petroleum, natural gas, or coal.

“Peer Review” means review by a third-party reviewer skilled in energy analysis and energy modeling certified as an architect or engineer.

“Photovoltaic Systems” means electrical systems using photovoltaic panels to collect solar energy and convert it to electricity.

“Process Energy” means energy used to transform, for large-scale municipal, not Project, purposes, the biological, chemical, or physical state of sewage, waste, water, or other material, or to move and package it during or after the transformation, including municipal water supply pumping and treatment, municipal sewage treatment, and municipal waste compaction, transfer, recycling, or composting, and similar processes, but not including food preparation, refrigeration, and cooking.

“Project” means a single new construction undertaking by and for the Town and to be constructed at the same time, comprised of new Building(s), new Building Addition(s), associated site work, and Renewable Energy Systems; but not including any Building renovation component of the construction undertaking.

“Re-commissioning” means the process of testing and recommending adjustments to the building systems at least 12 months after the date of occupancy.

“Renewable Energy” means energy from a source that is not depleted when used, such as wind or solar power.

“Renewable Energy Certificate (REC)” means a certificate that represents and conveys the environmental, social, and other non-power qualities of 1 megawatt-hour of renewable electricity generation and can be sold separately from the underlying physical electricity associated with a renewable-based generation source.

“Renewable Energy Systems” means electrical and mechanical systems using Renewable Energy comprising 1 or more of the following: Photovoltaic Systems, Wind Energy Systems, and other systems that generate electricity without the use of Fossil Fuels.

“Schematic Design” means the first of 5 phases of an Architect’s basic services in the planning and construction of a Building or Building Addition.

“Site Energy” means energy consumed at the Building(s), Building Addition(s), and by energy-consuming features of their associated site(s).

"Source Energy" means Site Energy plus the energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil and natural gas; energy losses in thermal combustion in power generation plants; and energy losses in transmission and distribution to the Building or Building Addition.

"Specialized Equipment" means equipment that is essential to a particular function of the Building or Building Addition for its intended function, and is not heating, cooling, ventilation, domestic hot water, lighting, telecommunications, computers, elevators, plug loads, food preparation, refrigeration, or cooking and has no reasonable electrically powered alternative.

"Total Project Cost" means the sum of the direct construction and non-construction costs of a Project, exclusive of site acquisition, demolition, landscaping, and environmental remediation costs. In cases where renovation is also part of the same construction undertaking, non-construction costs, and site-work costs of the undertaking shall be allocated prorated between the renovation and the Project.

"Wind Energy Systems" means systems that collect wind energy and convert it to electricity.

"Zero Energy Capable" means a Project designed based on the Energy Budget, in compliance with the Zero Energy Requirements, incorporating highly efficient standards to minimize the Project's need for energy, and incorporating Renewable Energy Systems with enough capacity to supply the energy needed.

"Zero Energy Ready" means a Project designed to be Zero Energy Capable, but without the inclusion of Renewable Energy Systems.

"Zero Energy Ready Project Cost" means the Total Project Cost minus the purchase and installation cost of the Renewable Energy Systems.

"Zero Energy Requirements" See Section C(1)-C(3) of the bylaw.

C. Zero Energy Requirements

All new Town Buildings and Building Additions shall be conceived, planned, designed, engineered, and Commissioned collaboratively to meet Zero Energy Requirements:

(1) The Project shall be designed to be Zero Energy Capable.

(2) The Project shall be designed to operate without Fossil Fuels except as may be needed for emergency power generators, Process Energy, or Specialized Equipment.

(3) Renewable Energy Systems shall supply at least as much energy, on an annual basis, as is used by the Project for heating, cooling, ventilation, domestic hot water, lighting, telecommunications, computers, elevators, plug loads, food preparation, refrigeration,

cooking, and all other building systems that require energy for operation, except for emergency power generators, Process Energy, or Specialized Equipment.

D. Applicability

(1) This bylaw shall apply to all Projects with a Total Project Cost more than $2,000,000, as determined by the Town Manager, at the completion of the most recent Feasibility Study for the Project and prior to development of the Schematic Design.

(2) For construction undertakings that combine renovation and new addition(s), only the new addition(s) shall constitute the Project for purposes of this bylaw. Monitoring equipment shall be installed to enable separate determination of energy use by the Building and Building Addition(s).

(3) For all Projects to which this bylaw applies, the Town shall design a Zero Energy Capable Project in compliance with this bylaw. If the cost of purchase and installation of the Town owned new and independently measured Renewable Energy Systems for the Project exceeds 10% of the Zero Energy Ready Project Cost (Total Project Cost minus the purchase and installation cost of the Renewable Energy Systems) then the Town shall:

a. proceed with the Zero Energy Capable Project design;

b. include in that design as much of the Renewable Energy Systems for the Project as equals 10% of the Zero Energy Ready Project Cost; and

c. plan to obtain any remaining energy capacity to meet the remaining need by Renewable Energy as long as the per kilowatt hour cost is less than or comparable to the per kilowatt hour cost of utility provided electricity in the first year of the contract. Only in the last circumstance may the Town purchase energy that is not specifically dedicated to the Project.

(4) Renewable Energy Systems not on the Project site or not on the same electric meter as the subject Buildings or Building Additions may be used if insufficient solar or wind exposure is available on the Project site. The renewable energy systems shall be dedicated exclusively to the Project and the energy generated shall be measured independently.

(5) The Town may sell Renewable Energy Certificates.

E. Compliance with this bylaw

Compliance with this bylaw shall be determined by successful completion of all of the following:

(1) Certification by the Architect of Record that the final Construction Documents, if followed, will produce a completed Project that is Zero Energy Capable.

(2) Peer Review confirming that in the opinion of the third-party reviewer, the final Construction Documents, if followed, will produce a completed Project that is Zero Energy Capable.

(3) Completed contracting for Commissioning at a suitable point prior to occupancy, and Re-commissioning at a point 12 months after occupancy. However, the failure to achieve the Zero Energy Requirements at the point of 12-month Re-commissioning shall not affect compliance with this bylaw.

(4) Compliance shall be measured by the projected Site Energy, not Source Energy.

F. Implementation

The Town and the Project end-users shall undertake, on a good faith basis:

(1) To formulate a preliminary Energy Budget for the Project consistent with the Zero Energy Requirements prior to Schematic Design.

(2) To endeavor to operate the Project in accordance with a final Energy Budget for the Project consistent with the Zero Energy Requirements.

(3) To report to the public annually the energy performance of the Project for 10 years from the date of occupancy.

3.52 – COUNCIL ON AGING

There shall be a Council on Aging consisting of 9 members**,** some members of which shall represent those age 60 and over**,** appointed for staggered 3-year terms. A vacancy shall be filled by the Town Manager, who shall take into consideration the recommendation of the Nominating Committee of the Council on Aging. The members shall serve without compensation. The Council on Aging shall elect its own chair for a 1-year term. The Council on Aging shall have the authority granted to it by M.G.L. c. 40, § 8B, and shall coordinate or carry out programs designed to meet the problems of the aging in coordination with programs of the Commonwealth's Department of Elder Affairs. Annual reports, as required by M.G.L. c. 40, § 8B, shall be submitted to the Town Council and the Town Manager.