

**GENERAL BYLAWS**  
**OF THE**  
**TOWN OF AMHERST**  
**MASSACHUSETTS**



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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**

(Amended 3-30-2020 by the Town Council)

#### **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 of disposition as provided in M.G.L. c. 40, §21D may also be used for violations of any rule or regulation of any municipal officer, board, or department which is subject to a specific penalty.

#### **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 bylaw data block, rule, or regulation 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**

(Rescinded 11-9-2020 by Town Council and replaced with section 3.55)

**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**

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## **FEES FOR INNHOLDERS, COMMON VICTUALLERS, AND LUNCH CARTS**

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**Fee for innholders license: \$50.00**

**Fee for common victuallers license: \$50.00**

**Fee for lunch carts license: \$100.00**

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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

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#### PENALTIES FOR VIOLATION OF PUBLIC SHADE TREE BYLAW

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**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)

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#### 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:

<b>Revolving Fund</b>	<b>Authorized to Spend Fund</b>	<b>Revenue Source</b>	<b>Use of Fund</b>
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

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#### **PENALTIES FOR VIOLATION OF CONDUCT ON PUBLIC WAYS BYLAW**

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**Criminal Enforcement:** \$50.00 fine

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

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- 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**

(RESCINDED 12-13-21 BY TOWN COUNCIL)

### **3.16 – LITTERING & ILLEGAL DUMPING**

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#### **PENALTIES FOR VIOLATING THE LITTERING & ILLEGAL DUMPING BYLAW**

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**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)

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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**

(Amended 3-9-2020 by the Town Council)

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#### **PENALTIES FOR VIOLATING THE OPEN CONTAINERS OF ALCOHOL BYLAW**

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**Criminal Enforcement:** \$300.00 fine

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

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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, unless a permit therefor has previously been secured from the Board of License Commissioners.

### 3.18 – TRANSPORTING GARBAGE OR RUBBISH

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#### PENALTIES FOR VIOLATING THE TRANSPORTING GARBAGE OR RUBBISH BYLAW

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**Criminal Enforcement:** \$50.00 fine

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

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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

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#### PENALTIES FOR VIOLATION OF THE RESIDENTIAL PARKING BYLAW

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**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)

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- 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**

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#### **PENALTIES FOR VIOLATION OF THE HANDICAPPED PARKING BYLAW**

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**Criminal Enforcement:** \$200.00 fine

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

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- 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**

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**FEES & PENALTIES FOR THE REGULATIONS RELATING TO ANIMALS  
BYLAW**

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**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**

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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**

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## PENALTIES FOR VIOLATION OF THE DISCHARGING FIREARMS BYLAW

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**Criminal Enforcement:** \$200.00 fine

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

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- 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

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

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**Criminal Enforcement:** \$300.00 fine

**Noncriminal Disposition:** no provision made

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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

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#### PENALTIES FOR VIOLATION OF THE UNLAWFUL NOISE PROHIBITION BYLAW

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**Criminal Enforcement:** \$300.00 fine for each violation.

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

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#### 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

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#### PENALTIES FOR VIOLATION OF THE KEG LICENSE BYLAW

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**Criminal Enforcement:** \$300.00 fine

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

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#### 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**

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**PENALTIES FOR VIOLATION OF THE NUISANCE HOUSE BYLAW**

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**Criminal Enforcement:** \$300.00 fine

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

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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

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

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**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**

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## 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**

(Amended 10-5-2020 by the Town Council)

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

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**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)

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#### A. Purpose

The primary purpose of this bylaw is to reduce the negative effects of single-use plastic bags on the environment, reduce contamination of plastic bags in residential recycling streams, and, most importantly, to encourage consumers to bring reusable bags while shopping, eliminating the environmental impacts of any single-use bags.

#### B. Definitions

"Biodegradable bag" means a bag that: a) contains no polymers derived from fossil fuels and b) is intended for single use and will decompose in a natural setting at a rate comparable to other biodegradable materials such as paper, leaves, and food waste.

“Compostable bag” means a bag that a) meets the ASTM D6400 standard for compostable plastic and b) is able to be municipally or industrially composted. “ASTM D6400 standard”



means the testing standard developed by the American Society for Testing and Materials used to determine the ability of a material to be composted.

“Recyclable Paper Bag” means a bag that: a) is 100% recyclable overall b) contains a minimum of 30% post-consumer recycled content and c) displays the words “Recyclable” or “Please Recycle” on the outside of the bag.

"Reusable bag" means a bag that is specifically designed for multiple use and is made of thick plastic, cloth, fabric or other durable materials.

“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. 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. 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) If any retail establishment provides a checkout bag to customers, the bag shall comply with the requirements of being either a recyclable paper bag, a compostable bag, a biodegradable bag, or a reusable bag.

#### D. 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.

### **3.29 – CONSUMPTION OF MARIJUANA OR TETRAHYDROCANNABINOL**

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**PENALTIES FOR VIOLATION OF THE CONSUMPTION OF MARIJUANA  
OR TETRAHYDROCANNABINOL BYLAW**

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**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)

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- 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**

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

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**Criminal Penalty:** \$200.00 fine

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

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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

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#### PENALTIES FOR VIOLATION OF THE WETLANDS PROTECTION BYLAW

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**Criminal Enforcement:** \$300.00 fine

**Noncriminal Disposition:** no provision made

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#### 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**

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**PENALTIES FOR VIOLATION OF THE DEALING IN USED ARTICLES BYLAW**

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**Criminal Enforcement:** \$20.00 fine

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

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- 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**

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**PENALTIES FOR VIOLATION OF THE REFUSE COLLECTION AND  
RECYCLABLE MATERIALS BYLAW**

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**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)

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- 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**

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**PENALTIES FOR VIOLATION OF THE PARADES AND PUBLIC MEETINGS  
BYLAW**

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**Criminal Enforcement:** \$50.00 fine

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

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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

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#### FEES AND PENALTIES OF THE SOLICITING BYLAW

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**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)

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#### 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

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#### **PENALTIES FOR VIOLATION OF THE OPEN BURNING BYLAW**

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**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)

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#### 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

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#### PENALTIES FOR VIOLATION OF THE SNOW AND ICE BYLAW

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**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)

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#### 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**

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**PENALTIES FOR VIOLATION OF THE GAS INSPECTOR BYLAW**

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**Criminal Enforcement:** \$300.00 fine

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

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- 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**

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**PENALTIES FOR VIOLATION OF THE JUNKED VEHICLES BYLAW**

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**Criminal Enforcement:** \$50.00 fine

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

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- 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**

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

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**Criminal Enforcement:** \$50.00 fine

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

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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**

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## PENALTIES FOR VIOLATION OF THE FALSE ALARMS BYLAW

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**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)

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- 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**



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## PENALTIES FOR VIOLATION OF THE LOCAL HISTORIC DISTRICT BYLAW

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**Criminal Enforcement:** \$300.00 fine

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

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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**



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**FEES AND PENALTIES FOR VIOLATION OF THE RESIDENTIAL RENTAL  
PROPERTY BYLAW**

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**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**

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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.

### **3.53 – PERCENT FOR ART**

(Voted 9-21-2020 by the Town Council)

#### Section 1: Purpose

The purpose of this bylaw is to promote the enjoyment of the arts by increasing the quantity and quality of public art in Amherst, thereby expanding the value and use of public buildings,



facilities and spaces, and contributing to the Town's cultural vitality and economic well-being.

Therefore, this bylaw establishes a funding program to ensure that public art is acquired, created, and otherwise made available in Amherst. It authorizes an allocation for public art of an amount equal to one-half percent (0.5%) of the capital costs of any eligible Town construction project budgeted at a minimum of \$1,000,000.

## Section 2: Definitions

For the purposes of this bylaw, the following words shall have the following meanings:

"Public Art Commission" means the Commission established by the Town in 1990.

"Public art/public artwork" means permanent art projects that are an integral part of a public building, facility or space. Such art may include, but shall not be limited to, paintings, sculpture, engravings, carvings, frescoes, stained glass, mobiles, murals, collages, mosaics, bas-reliefs, tapestries, photographs, drawings, and landscape items, including the artistic placement of natural materials or manmade fountains or other functional art objects.

The public artwork shall be located at, within or upon the site of the building, facility or space associated with the construction project, so long as the public artwork is accessible to the public.

"Public buildings, facilities and spaces" means publicly accessible structures, infrastructure, parks, and landscapes.

"Construction project" means any capital project paid for in full or in part by the Town through its own eligible funds to construct or remodel any public building, facility or space, or any portion thereof, within the corporate limits of the Town and with respect to the construction of which bidding is required under State law.

"Eligible funds" means the funds for construction projects from the Town's General Fund, including any funds to be borrowed that will be repaid from the General Fund; funds raised by grants if permissible under the terms of the grant; or funds provided by taxation, including those funded pursuant to a debt exclusion.

"Percent for Art Advisory Committee" means a group temporarily appointed by the Town Manager for one or more construction projects in consultation with the Public Art Commission. This Committee shall include a majority of professionals who work in the arts in fields such as production, education, criticism, administration, fund raising, curating, and collecting, who are well-respected and knowledgeable regarding visual art. The Committee shall also include key stakeholders, including but not limited to users of the proposed building, neighbors of the project and other members of the public.

## Section 3: Funding

All eligible funds for construction projects budgeted at \$1,000,000 or greater shall include an amount equal to one-half percent (0.5%) of the total eligible, estimated costs of such projects, as determined by the Town Manager or designee, for public art. This calculation shall be made no later than when funding for the construction of this project is voted by Town Council, and shall be voted as a separate line-item of the project. If estimated project costs rise after the designated percent for art is determined, the amount designated as a percent for art will not increase; but if estimated project costs decrease, the amount will be recalculated based on the lower estimated project costs, provided that a contract for art work has not already been executed.

Copies of all estimated project costs shall be delivered to the Public Art Commission as soon as possible during the planning stages of the project in order to include an artist as part of the construction project team. The estimates shall include all construction costs, architectural and engineering fees, and site work expenses.

Funds appropriated for this purpose may be used for design services of artists, for the selection, acquisition, purchase, commissioning, installation and display of public art, and other incidental and related costs. Any money authorized for a particular public artwork that has not been spent by the end of the third fiscal year following such authorization, or by the end of the fifth fiscal year upon special approval by the Town Council, shall, at the end of that fiscal year, revert to its original funding source.

The following are excluded from this source of funding: elements that are designed or designated by a construction project's architect or landscape architect, as opposed to an artist commissioned for this purpose; and mass-produced art objects of standard design such as playground equipment or fountains.

Following consultation with the Town Manager, the Town Council may, by majority vote, lower or eliminate the percentage for art on any qualifying construction project.

#### Section 4: Public Art Ownership

Ownership of artwork selected in accordance with this bylaw shall transfer to the Town of Amherst upon final installation and in accordance with any applicable contract executed between the Town and the artist or other legal entity responsible for providing such art. In addition to any other terms and conditions that may be established by contract, the public art project artist or other legal entity responsible for providing such art, shall provide and maintain insurance coverage for such purposes and in such amounts as required by the Town, with the Town named as an additional insured or the equivalent, for the duration of the creation, fabrication and installation of the artwork.

Any decision concerning deaccessioning shall be made by the Public Art Commission in consultation with the Town Manager. Any funds generated from such deaccession shall be treated as General Fund revenue.

#### Section 5: Responsibilities

The Percent for Art program shall be administered by the Public Art Commission, under the supervision of the Town Manager, with the assistance of a Percent for Art Advisory Committee.

The Public Art Commission's responsibilities include:

- (1) Working with the Town Manager to develop a plan and appropriate guidelines to manage such projects, which may include: recommendations for prioritizing the creation and placement of artwork in public buildings, facilities and spaces around Town; establishing general guidelines for the selection of artists and public artworks; meetings with relevant Town departments in coordination with the Town Manager, nonprofit organizations, and members of the public; and public hearings.
- (2) Developing criteria for the selection of such projects, including, but not limited to: artistic quality, originality, context and feasibility; public opinion; the diversity of artists regarding race, gender identity and cultural background; and the relationship of the artist to Amherst and the surrounding area.
- (3) Developing recommendations for the location of such projects and the location within individual public buildings, facilities and spaces where they shall be placed or created, subject to approval of the Town Manager.
- (4) Giving due consideration to maintenance requirements of such projects, including structural and surface soundness, resistance to theft, vandalism and weathering, and the anticipated cost of ongoing maintenance and/or repair.
- (5) Advising the Town Manager with respect to soliciting proposals for review and selecting such projects with the assistance of a Percent for Art Advisory Committee and in consultation with the construction project architect and manager and appropriate Town officials and agencies. The final decision on the public artwork shall be made after public hearing by majority vote of the Public Art Commission, following input from a Percent for Art Advisory Committee and consultation with the Town Manager and other appropriate Town officials.
- (6) Advising the Town Manager, within the amounts appropriated and available therefor, as to the establishment of budgets for such projects, including materials, fees and other reasonably contemplated items of expense in the acquisition, development, creation, and implementation of such projects.
- (7) Working with the Town Manager, monitoring in partnership with the appropriate Town department(s), the installation of such projects and coordination between the artist, and the construction project architect and manager.
- (8) Working with the construction project manager with the goal of avoiding any delays related to the public artwork. The Town Manager, following consultation with the

Public Art Commission (other than in circumstances of an emergency nature) may terminate construction of the public artwork if it is facing significant delays for other reasons consistent with law.

(9) Recommending to the Town Manager dispersal of Percent for Art funds in coordination with the appropriate Town authority or designee(s) for such projects.

(10) Establishing and maintaining records applicable to such projects in coordination with Town staff.

(11) Recommending to the Town Manager procedures to be followed by other departments for the maintenance and preservation of such projects.

The Town of Amherst's responsibilities include:

Providing the Public Art Commission with administrative and technical support as appropriate to implement this bylaw.

### **3.54 – WAGE AND TIP THEFT**

(Voted 11-9-2020 by the Town Council)

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#### **PENALTIES FOR VIOLATION OF THE WAGE AND TIP THEFT BYLAW**

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**Noncriminal Disposition for first violation:** warning notice to the Employer which will specify the violation and the appropriate penalties in the event of future violations. (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

**Noncriminal Disposition for second, and subsequent violations:** \$300 per violation (enforcement by: Board of License Commissioners, Human Rights Director, or Police Department)

**See Section G.4 for non-monetary penalties**

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#### A. Purpose

The purpose of this Bylaw is to ensure that Employers operating in the Town of Amherst comply with state and federal wage and tip laws and to require Employers to notify Employees in writing of their rights.

#### B. Definitions

“Administrative Citation” means a civil citation issued by the attorney general pursuant to M.G.L. Ch. 149 Sec. 27C, a civil citation issued by the Department of Labor pursuant to

29 U.S.C. Sec. 201 et seq. and/or 29 C.F.R. Sec. 578, any other civil citation for violation of M.G.L. Ch. 149 or c. 151 and/or 29 U.S.C. Sec. 201 et seq. issued by any other federal, state, or local administrative agency, or penalties, fines, or findings of violations of Amherst’s Wage and Tip Theft, Responsible Employer, or Tax Relief Bylaws.

“Adverse Action” means denying a job or promotion; demoting, terminating, or failing to rehire after a seasonal interruption of work; threatening, penalizing, retaliating, or engaging in unfair immigration practices; filing a false report with a government agency; changing an Employee’s status to a non-Employee; or otherwise discriminating against any person for any reason prohibited by this Bylaw. “Adverse Action” for an Employee may involve any aspect of employment, including pay, work hours, responsibilities, or other material change in the terms and conditions of employment.

“Compensation” means payment owed to an Employee by reason of employment including, but not limited to, salaries, wages, Tips, overtime, commissions, Piece Rate, bonuses, rest breaks, promised or legislated paid leave, and reimbursement for Employer expenses. For reimbursement of Employer expenses, and Employer shall indemnify the Employee for all necessary expenditures or losses incurred by the Employee in direct consequence of the discharge of the Employee’s duties, or of the Employee’s obedience to the directions of the Employer, even though unlawful, unless the Employee, at the time of obeying the directions, believed them to be unlawful.

“Employ” means to suffer or permit to work.

“Employee” means any individual who performs services for and under the control and direction of an Employer for wages or other remuneration, including but not limited to fulltime Employees, part-time Employees, and temporary workers. An Employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged Employer.

“Employer” means any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work:

- a. in the Town of Amherst;
- b. under a contract to which the Town of Amherst or one of its Departments is signatory;
- c. under an agreement with the Town for tax relief; or
- d. who otherwise maintains a commercial presence in the Town of Amherst.

“Front Pay” means the Compensation the Employee would earn or would have earned if reinstated to the Employee’s former position.

“Pay Day” means a specific day or date established by the Employer on which wages are paid for hours worked during a Pay Period.

“Payment Interval” means the amount of time between established Pay Days. A Payment Interval may be daily, weekly, bi-weekly, semi-monthly, or monthly.

“Pay Period” means a defined time frame for which an Employee will receive a paycheck. A Pay Period may be daily, weekly, bi-weekly, semi-monthly, or monthly.

“Piece Rate” means a price paid per unit of work.

“Respondent” means an Employer or person who is alleged or found to have committed a violation of this Bylaw.

“Successor” means any person to whom an Employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the Employer’s business, a major part of the property or interest, whether real or personal, tangible or intangible, of the Employer’s business. For purposes of this definition, “person” means an individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, corporation, business trust, partnership, limited liability partnership, company, joint stock company, limited liability company, association, joint venture, or any other legal or commercial entity.

“Tip” means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the Employee receiving the Tip.

“Town” means the City known as the Town of Amherst.

### C. Town Human Rights Director Requirements and Responsibilities

- (1) On a biannual basis, the Town Human Rights Director shall review Wage and Tip Theft complaints filed with the Town or with the Attorney General, of which the Director is aware, and provide advice to the Town Manager on the implementation and effectiveness of the Wage and Tip Theft Bylaw.
- (2) The Town Human Rights Director shall coordinate any response to complaints filed that is required by the Bylaw or otherwise allowed by law.
- (3) The Town Human Rights Director may offer referrals to appropriate state agencies to Employees affected by wage and tip theft in Amherst.
- (4) The Town Human Rights Director, working with the Human Rights Commission, may offer education and guidance to Employees and Employers regarding wage and tip theft in Amherst and elsewhere.

- (5) The Town Human Rights Director, working with the Human Rights Commission, shall publish an annual report detailing:
  - a. The number of wage and tip theft complaints received by the Town and the actions taken in response to such complaints, including how many complaints resulted in findings of violations, where available;
  - b. Civil and criminal judgments issued by the state and federal courts, Administrative Citations, and final administrative orders, including but not limited to Debarments, against Employers operating in the Town of Amherst pursuant to M.G.L. Ch. 149 and M.G.L. Ch. 151, if known; and
  - c. Any recommendations for revision of the Wage and Tip Theft Bylaw.
- (6) On a biannual basis, the Town Human Rights Director shall request to meet with the Office of the Attorney General concerning the rate, type, and scope of complaints involving Employers operating in the Town and the role of the Town, including coordination, with respect to issues of wage and tip theft in the Town.

#### D. Notice and Posting Requirements

- (1) The Town shall create and distribute or otherwise make available to all Employers a Wage and Tip Theft Bylaw Rights Poster giving notice of the rights afforded by federal and state Law, as well as this Bylaw. To the extent possible, the Town shall build on posters in multiple languages that are available from the Attorney General's office.
  - a. The Wage and Tip Theft Bylaw Rights Poster shall give notice of:
    1. The right to be paid all Compensation owed by reason of employment on an established regular Pay Day at no longer than monthly intervals as guaranteed under the terms of this Bylaw;
    2. The right to be protected from retaliation for exercising in good faith the rights protected by this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation;
    3. The right to file a worker's compensation claim; and
    4. The right to file a complaint with the Town or Attorney General or bring a civil action for violation of the requirements of this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation including an Employer's failure to pay all Compensation owed by reason of employment, and an Employer or other person's retaliation against an Employee or other person for engaging in an activity protected by this Bylaw.

- b. Employers shall display the Wage and Tip Theft Bylaw Rights Poster in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in a conspicuous and accessible place at every workplace or job site where any of their Employees work. If display of the Wage and Tip Theft Bylaw Rights Poster is not feasible, including situations when the Employee works remotely or does not have a regular workplace or job site, Employers shall provide the Wage and Tip Theft Bylaw Rights Poster on an individual basis, in English, Spanish, and any language spoken by at least one-third of Employees at the workplace in physical or electronic format.
- (2) The Town shall create and distribute or otherwise make available a model Notice of Employment Information, which shall be used by an Employer and shall include but not be limited to the items below.
- a. An Employer's written or electronic Notice of Employment Information shall include the following items:
    - 1. Name of Employer and any trade ("doing business as") names used by the Employer;
    - 2. Physical address of the Employer's main office or principal place of business and, if different, a mailing address;
    - 3. Telephone number and, if applicable, email address of the Employer;
    - 4. Employee's rate or rates of pay, and, if applicable, eligibility to earn an overtime rate or rates of pay;
    - 5. Employer's Tip policy, with an explanation of any Tip sharing, pooling, or allocation policies;
    - 6. Pay basis (e.g. hour, work shift, day, week, commission);
    - 7. Employee's established Pay Day;
    - 8. A written good faith estimate of the Employee's work schedule including the median number of hours the Employee can expect to work each work week, and whether the Employee will be expected to work on-call shifts.
  - b. Employers shall give written or electronic Notice of Employment Information to Employees in English, Spanish, and any language spoken by at least one-third of Employees at the workplace.
  - c. Employers shall give this written or electronic Notice of Employment Information to Employees at time of hire and, for those Employees who work for the



Employer as of the effective date of this Bylaw, within 90 days of the effective date of this Bylaw.

- d. Employers shall revise the written or electronic Notice of Employment Information before any change to the employment information contained in the Notice of Employment, or as soon as practicable for retroactive changes to such employment information. For the written or electronic good faith estimate of the Employee's work schedule in Subsection 2.a.8. above, the Employer is required to revise the notice once every year and when there is a significant change to the work schedule due to changes in the Employee's availability or to the Employer's business needs.
  - e. Failure to give this written or electronic Notice of Employment Information shall be a violation of this Bylaw and, should a complaint relative to Compensation be filed by an Employee with the Attorney General or other appropriate state or federal agency, the Town shall provide certified copies of any findings of violation to such agency.
- (3) On each Pay Day, Employers shall give written or electronic notice to each Employee containing the following information:
- a. All hours worked with regular and overtime hours shown separately;
  - b. All rates of pay whether paid on hourly, salary, commission, Piece Rate or combination thereof, or other basis during the Pay Period. Workers paid on rate other than hourly or salary are entitled to a detailed printed accounting of commissions, Piece Rate or other methods of payment earned during the Pay Period;
  - c. Tip Compensation;
  - d. Pay basis (e.g. hour, shift, day, week, commission);
  - e. Gross wages; and
  - f. Itemized list of all deductions for that Pay Period.

#### E. Employer records

- (1) Each Employer shall maintain payroll records that document each Employee's name, address, date of birth if under 18 years of age, occupation, dates of employment, rate or rates of pay, time of day and day of the week that each Employee's work week begins, hours worked each day and each work week, total daily or weekly earnings at straight-time rate, total overtime earnings for weeks in which overtime was worked, date of payment and the dates of Pay Period covered, total payment for each Pay Period, total Tips for each Pay Period if applicable, all additions or deductions for

each Pay Period and a record of the additions or deductions from pay. Such records shall be retained for a period of 3 years from the date of the applicable Pay Period, or for such longer period required by law.

- (2) If, following a request from the Town to produce such records, an Employer fails to make the same available, the Town may report the same to the Attorney General and may take whatever additional action as may be necessary and appropriate under this Bylaw.

#### F. Retaliation Prohibited

- (1) In accordance with law, no Employer or any other person shall interfere with, restrain, deny, or attempt to deny the exercise of any right protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.
- (2) In accordance with law, no Employer or any other person shall take any Adverse Action against any person because the person has exercised in good faith the rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation. Such rights include but are not limited to:
  - a. The right to make inquiries about the rights protected under law relative to wages and hours;
  - b. The right to inform others about their rights under state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
  - c. The right to file a worker's compensation claim;
  - d. The right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of state and federal law relative to compensation, and their right to notice of these rights under this Bylaw;
  - e. The right to file an oral or written complaint with the Town for a violation of this Bylaw or with the Attorney General's Office or to bring a civil action for an alleged violation of M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation;
  - f. The right to cooperate with the Town in its investigations of complaints filed under this Bylaw;
  - g. The right to testify in a proceeding under or related to this Bylaw; and
  - h. The right to oppose any policy, practice, or act that is unlawful under M.G.L. Ch.

149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.

- (3) No Employer or any other person shall communicate to a person exercising rights protected under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation directly or indirectly the willingness to inform a government Employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an Employee or a family member of the Employee to a federal, state, or local agency because the Employee has exercised a right under this Bylaw, M.G.L. Ch. 149, M.G.L. Ch. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation.
- (4) Standard of proof. A finding by the Attorney General of retaliation under state or federal law shall be sufficient to show retaliation under this Bylaw.
- (5) The protections afforded under this Bylaw shall apply to any person who mistakenly but in good faith alleges violations of this Bylaw.

#### G. Enforcement, Violations, and Penalties

- (1) The Board of License Commissioners and the Town Human Rights Director 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.
- (2) The Town Human Rights Director and the Police Department shall have the power to investigate violations of Section D of this Bylaw, and, to the extent consistent with law, with Section E and F of this Bylaw, pursuant to their own initiative or upon receipt of a report or complaint filed by an Employee or any other person.
- (3) Filing and Receipt of Complaints:
  - a. Any complaint or other communication about a violation of this Bylaw, if the complainant decides to file with the Town, shall be filed with the Town Human Rights Director. The Town Human Rights Director shall notify the Town of Amherst Procurement Officer, the Board of License Commissioners, Amherst Police Chief, and the Attorney General's Office of the complaint, as appropriate.
  - b. A complaint or other communication to the Human Rights Director about a violation of this Bylaw or state or federal laws regulating the payment of Compensation shall be deemed sufficiently filed, regardless of whether the complaint or communication makes explicit reference to the Bylaw.
  - c. The Town shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person

reporting the violation. However, with the authorization of such person or when otherwise required by law, the Town may disclose the Employee's or person's name and identifying information as necessary to enforce this Bylaw or for other appropriate purposes.

(4) Additional Penalties

- a. The Town may enforce this Bylaw or enjoin violations thereof through any lawful process, and the election of a remedy by the Town shall not preclude enforcement through other lawful means.
- b. The Board of License Commissioners may, after notice and a hearing, deny, revoke, or suspend any license or permit, including renewals and transfers, of any party who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation, should said Board determine that the actions of the party are inconsistent with the terms or conditions of any license or permit.
- c. The Board of License Commissioners may require any licensee or prospective licensee who has been found in violation of this Bylaw or has been subject to a criminal or civil judgment, Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation to provide a wage bond. Wage bonds shall be fixed as follows:
  1. For the first year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 3 times the amount imposed upon the judgment for wage law violation.
  2. For the second year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount of 2 times the amount imposed upon the judgment for wage law violation.
  3. For the third year that a licensee is subject to a wage bond, the licensee shall obtain a bond in the amount imposed upon the judgment for wage law violation.
  4. No bond may be required after the third year provided that the licensee is not subject to further judgment for wage law violation. Any new violation shall cause the 3-year clock to reset, and the bond may be imposed as provided in this Subsection C.
- d. Prospective licensees shall disclose any criminal or civil judgment,

Administrative Citation, final administrative determination order, or debarment resulting from the violation of M.G.L. c. 149, M.G.L. 151, 29 U.S.C. 201 et seq., or any other state or federal laws regulating the payment of Compensation for wage law violation within the preceding 3 years, and, if so, said prospective licensees may be required to comply with the provisions of Subsection C, above, based upon the year in which the judgment was imposed, be subject to additional reporting requirements or other conditions to ensure that Employees are properly compensated for their work in accordance with law.

#### H. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any sanctions imposed hereunder, applicable to any Employer shall also be applicable to, and effective against, any successor Employer that (1) has at least 1 of the same principals or officers as the prior Employer; and (2) is engaged in the same or equivalent trade or activity as the prior Employer.

#### I. Other legal requirements

- (1) This Bylaw defines requirements for Employer notification to Employees performing work within Town limits concerning Compensation and claims with respect thereto and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for more stringent requirements with respect to Compensation obligations. Nothing in this Bylaw shall be interpreted or applied so as to create any power or duty in conflict with federal or state law, and such laws shall supersede any inconsistent provisions set forth herein. This Bylaw shall not be construed to preclude any person aggrieved from seeking judicial review of any final decision or order made under this Bylaw.
- (2) Each day or portion thereof a violation of this bylaw exists shall constitute a separate offense. If more than 1 provision of this bylaw is violated, each condition violated or Employee aggrieved shall constitute a separate offense.
- (3) Each provision of this Bylaw shall be construed as separate to the extent that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

### **3.55 – RESPONSIBLE EMPLOYER: PUBLIC CONSTRUCTION CONTRACTS AND AGREEMENTS FOR TAX RELIEF**

(Voted 11-9-2020 by the Town Council)

#### A. Purpose

The purpose of this Bylaw is to ensure that the Town of Amherst awards contracts for goods and services and public construction and grants tax relief agreements only to responsible contractors and sponsors who certify their compliance with wage and hour laws and to

provide a means of enforcement through written contracts at the outset of awards and appropriate remedies.

## B. Definitions

"Amherst Resident" means any person domiciled in Amherst, in accordance with the Amherst Home Rule Charter, Sec. 1.7.

"Contractor" means:

- a. any bidder or proposer;
- b. any person that has furnished or seeks to furnish supplies or services under a contract with a public agency or with a person under a contract with a public agency.
- c. construction manager;
- d. general contractor, other lead or prime contractor, or any entity functioning in any such general contractor capacity;
- e. Subcontractor, as defined by this Bylaw.

"Sponsor" means the recipient of Tax Relief.

"Subcontractor" means:

- a. any person who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than a subcontractor.
- b. Trade contractor;
- c. A subcontractor not subject to M.G.L. Ch. 149 Sec. 44F, and any other contractor, subcontractor of any tier, or other person that is engaged to perform construction work under the bidder or contractor for projects subject to M.G.L. Ch. 149 Sec. 44A(2) or M.G.L. Ch. 30 Sec.39M proposers or contractor under M.G.L. Ch. 149A.

"Person of Color" means:

- a. African-American - All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
- b. Hispanic - All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

- c. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands;
- d. Indigenous, American Indian or Native American - All persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization; or
- e. Eskimo or Aleut - All persons having origins in the original peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.

“Tax Relief” means any form of tax relief granted by the Town under a Tax Incentive Financing (“TIF”) Agreement (M.G.L. Ch. 40 Sec. 59), or pursuant to any other provision of law or regulation authorizing the Town to grant tax relief. Tax Relief, as defined, shall not include relief granted under M.G.L. Ch. 59 Sec. 5.

“Veteran” means a person who has served in any branch of the United States Armed Forces and was not dishonorably discharged.

### C. Municipal Construction Contracts

- (1) Whenever the Town of Amherst is procuring construction services subject to the provisions of M.G.L. Ch. 149, Ch. 149A, or Ch. 30 Sec. 39M, Sections B, C.2, C.3, C.4, C.5, C.6, and C.7 of this Bylaw shall be incorporated into the procurement documents and shall be made part of the specifications and contract. Any person, company, or corporation shall acknowledge, in writing, receipt of the requirements and obligations set forth in this Bylaw with their bid or proposal.
- (2) As a condition for bidding or subcontracting, all Contractors shall verify under oath and in writing at the time of bidding, submittal in response to an RFP, or prior to entering into a contract or subcontract at any tier that they comply with the following conditions for bidding or subcontracting, and, for the duration of the project, shall comply with the following obligations:
  - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years.
  - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws.

- c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage included with the Contractor's submitted bid, application process, or prior to commencing any work, to be maintained as a public record.
- d. The Contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification).
- e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages.
- f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority and any other applicable law relating to health and hospitalization.
- g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and are equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties.
- h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not possible or practicable under the particular circumstances applicable to the Contractor, and submit documentation detailing efforts to meet these requirements.
- i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing workforce hiring commitments in Sections C.2.g and C.2.h above.
- j. The Contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of



each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a weekly basis with the certified payrolls and shall be a public record.

- k. The Contractor shall submit weekly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes each employee's full name, address, identifying number, gender and whether the person is a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.
- (3) A proposal or bid submitted by any Contractor that does not certify compliance with the requirements and obligations set forth in Section C.2. of this Bylaw for bidding shall be rejected.
  - (4) No subcontract for work outside the scope of M.G.L. Ch. 149 Sec. 44F shall be awarded to a Subcontractor that does not comply with the requirements and obligations set forth in Section C.2. of this Bylaw, except as otherwise provided by law.
  - (5) All Contractors who obtain contracts on projects subject to M.G.L. Ch. 149 Sec. 44A(2), Ch. 149A, or Ch. 30 Sec. 39M shall comply with each of the requirements and obligations set forth in this Bylaw for the entire duration of their work on the project, and an officer of each separate Contractor shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
  - (6) Any Contractor that fails to comply with any one of obligations set forth in this Bylaw for any period of time shall, at the sole discretion of the Town, and in accord with any applicable contract, be subject to 1 or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the Town in the amount of 5% of the dollar value of the contract.
  - (7) In addition to the remedies outlined in Section C.6 above, a Contractor, to the extent consistent with law and terms of the contract with the Town, shall be equally liable for the violations of its Subcontractors except for violations arising from work performed pursuant to subcontracts that are subject to M.G.L. Ch. 149 Sec. 44F. Any Contractor or Subcontractor that has been determined by the Town or by any court or agency to have violated any of the obligations set forth in this Bylaw shall, to the extent consistent with law, be barred from performing any work on any future projects for 6 months for a first violation, 3 years for a second violation, and permanently for a third violation.

#### D. Requirements for The Grant of Tax Relief

- (1) In addition to any other conditions that may be required in connection with Tax Relief granted by the Town, each Tax Relief Agreement (“Agreement”) entered into between the Town and the Sponsor shall be subject to and shall include, to the extent consistent with law, the definitions set forth in Section B. and the mandatory conditions set forth in Sections D.2., D.3., and E. below.
- (2) It shall be a special and material condition of this Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement (hereinafter, collectively and individually, the "Contractor") on the property that is the subject of the Agreement shall comply with the following qualifications and conditions at all times during their performance of work on the property:
  - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years;
  - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;
  - c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage to the Town with the Contractor’s submitted bid, application, or prior to commencing any work, to be maintained as a public record;
  - d. The Contractor shall properly classify employees as employees rather than independent contractors using applicable federal and state law and shall treat them accordingly for purposes of prevailing wages and overtime, workers’ compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification);
  - e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages;
  - f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by

Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;

- g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties;
- h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not possible or practicable under the particular circumstances applicable to the Contractor and submit documentation to the Town detailing efforts to meet these requirements;
- i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing compliance with these requirements;
- j. The Contractor shall make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a monthly basis with the certified payrolls and shall be a public record;
- k. The Contractor shall submit to the Town monthly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes the employees full name, address, identifying number, gender and whether they are a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears; and
- l. The Sponsor shall provide the Town with a list of all the expected Contractors to work on the project prior to the start of any work on the property subject to the Agreements. The list shall include the name of the primary contact of each Contractor, the Contractor's address, and the Contractor's phone number or email address. The signatory to the Agreement shall provide the Town with an updated

list within 14 days of any additional or replacement Contractors performing work on the project and a final all-inclusive list to the Town within 30 days of the conclusion of the project.

- (3) When seeking Tax Relief granted by the Town, the Sponsor shall certify as part of the request or application process that any Contractor or Subcontractor previously determined by the Town or by any court or agency to have violated any of the requirements set forth in Sections C., D.2., and E. of this Bylaw for the previous 5 years shall not be hired to perform work on the project.

#### E. Noncompliance and Complaints – Grant of Tax Relief

- (1) If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of the foregoing qualifications and conditions with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any certification by the state was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice by the Town to the Sponsor, and the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement. Where required, the Town shall petition the appropriate state agency or body for revocation of the certification or approval of the grant of Tax Relief and, upon notice of revocation, the tax relief provided by this Agreement shall be terminated, and, to the extent consistent with law, the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement.
- (2) In the event the Sponsor challenges the Town's efforts to invoke the forfeiture/clawback provisions of this Agreement or to obtain revocation by the state, or challenges any decision to revoke any certification or approval of the grant of Tax Relief by the state, the Sponsor shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under the Agreement while any such challenge remains pending. The Sponsor shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The Sponsor shall promptly provide to the Town documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the Sponsor is unsuccessful in its challenge, the funds in the account shall be paid to the Town. The Sponsor's obligations under this subsection shall be judicially enforceable. It is the intent of the parties to this Agreement that Amherst Residents are third party beneficiaries of this Agreement, and that it may be enforced in a civil proceeding brought by not less than 10 taxable inhabitants.

#### F. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any remedies imposed herein, that are applicable to any Contractor or Sponsor shall also be applicable to, and effective against, any successor Contractor or Sponsor that (1) has at least 1 of the same principals or officers as the prior

Contractor or Sponsor; and (2) is engaged in the same or equivalent trade or activity as the prior Contractor or Sponsor.

### **3.56 – PROHIBITING THE USE OF WILD AND EXOTIC ANIMALS IN TRAVELING SHOWS AND CIRCUSES**

(Voted 11-16-2020 by the Town Council)

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#### **PENALTIES FOR VIOLATION OF THE PROHIBITING THE USE OF WILD AND EXOTIC ANIMALS IN TRAVELING SHOWS AND CIRCUSES BYLAW**

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**Criminal Enforcement for Violation:** \$150 - \$300 fine per animal per day

**Noncriminal Disposition:** \$300 fine per animal per day (enforcement by: Police Department, Animal Welfare Officer)

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#### A. Purpose

It is the intent of the Amherst Town Council to protect the public against hazards that Wild and Exotic Animals used in Traveling Shows and Circuses pose to society and to protect Wild and Exotic Animals from cruel and inhumane treatment.

#### B. Definitions

For the purpose of this Bylaw only, the following words and terms shall be deemed to mean and to be construed as follows:

“Circus” means a class C licensee that is licensed under the Animal Welfare Act (7 USC Section 2131 et seq.) and its subsequent amendments, regulations, and standards adopted pursuant to the Act, that offers performances by live animals, clowns and/or acrobats.

“Person” means an individual, partnership, corporation, joint venture, association, trust, estate, or any legal entity, and any officer, member, shareholder, director, employee, agent or representative of these.

“Traveling Show” means any mobile or stationary act or exhibition, Circus, public show, trade show, photographic opportunity, carnival, city or county fair, ride, parade, race, performance, or similar undertaking incorporating Wild or Exotic Animals wherein the animals are taken from their permanent residence and required to walk or travel for any distance.

“Wild or Exotic Animal” means any or all of the following orders and families, whether born in the wild or in captivity, and also any or all of their hybrids, including hybrids with domestic species. The animals listed in parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:

- a. Non-human primates and prosimians (such as chimpanzees, baboons, monkeys, etc.)  
– All species.

- b. Felidae (such as lions, tigers, cougars, leopards, ocelots, servals, etc.) – All species except domestic cats.
- c. Canidae (such as wolves, coyotes, etc.) – All species except domestic dogs.
- d. Ursidae (such as bears) – All species.
- e. Marsupialia (such as kangaroos, etc.) – All species.
- f. Proboscidae (such as elephants) – All species.
- g. Crocodilia (such as crocodiles, alligators, etc.) – All species.
- h. Artiodactyla (such as hippopotamuses, giraffes, camels, etc.) – All species except domestic cattle, swine, sheep, goats, llamas, or alpacas.
- i. Perissodactyla (such as zebras, rhinos, and tapirs) – All species except domestic horses, donkeys or mules.
- j. Struthioniformes (such as ostriches) – All species.
- k. Casuariiformes (such as emus) – All species.
- l. Pinnipeds (such as sea lions) – All species.

“Wildlife Sanctuary” means a 501 (c)(3) organization described in Section 170 (b)(1)(A)(vi) Internal Revenue Code 1986, and its subsequent amendments where:

- a. No commercial trade in animals occurs (including, but not limited to, sale of animals, animal parts, by-products, offspring, photographic opportunities or public events for financial profit, or any other entertainment purposes);
- b. No propagation of animals occurs in the facility; and
- c. No unescorted public visitation is allowed; no direct contact between the public and wild animals is allowed; animals are not taken from the sanctuary or enclosures for exhibition.

### C. Prohibition

It shall be unlawful for any Person to conduct, sponsor, walk, exhibit, or operate a Traveling Show or Circus that includes live Wild or Exotic Animals on any public or private land within the Town of Amherst, MA.

### D. Exceptions

The provisions of this Bylaw shall not apply to:

- (1) Institutions accredited by the Association of Zoos and Aquariums;
- (2) Any Wildlife Sanctuary as defined under this Bylaw;
- (3) An exhibition that takes place at a non-mobile, permanent institution or other fixed facility, provided that the covered animal is not transported to such location for the purpose of such exhibition; or
- (4) Any demonstrations or exhibitions by a college or university for bona fide educational or research purposes, and not for amusement or entertainment purposes.

### **3.57 – STORMWATER MANAGEMENT BYLAW**

(Voted 5-4-2021 by the Town Council)

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#### **PENALTIES FOR VIOLATION OF STORMWATER MANAGEMENT BYLAW**

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##### **Criminal Enforcement:**

- \$300 fine

##### **Noncriminal Disposition:**

- First Violation: Warning
- Second Violation: \$100 penalty
- Third Violation: \$200 penalty
- Fourth and subsequent violations: \$300 penalty
- Enforcement by Police Officers or Superintendent of Public Works

##### **See Section G for non-monetary penalties**

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##### **A. Purpose & Authority**

The purpose of this Bylaw is to protect the public health, safety, environment and general welfare of the Town by establishing requirements and procedures to manage stormwater Runoff, promote groundwater Recharge, and to prevent water pollution from new Development and Redevelopment. Increased and contaminated stormwater Runoff associated with developed land uses and the accompanying increase in Impervious surface, along with construction Site Runoff are major causes of impairment of water quality and flow in ponds, streams, rivers, wetlands and groundwater. The objectives of this Bylaw are:

- (1) Establish decision-making processes surrounding land Development activities that protect the integrity of the watershed and preserve the health of water resources;

- (2) Require that new Development, Redevelopment and all land conversion activities maintain the after-development Runoff characteristics as equal to or less than the Pre-Development Runoff characteristics in order to reduce flooding, stream bank erosion, siltation, Nonpoint Source Pollution, property damage, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establish minimum Post-Development Stormwater Management standards and design criteria for the regulation and control of stormwater Runoff quantity and quality; establish minimum design criteria for the protection of properties and aquatic resources downstream from land Development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of storm water Runoff; establish minimum design criteria for measures to minimize Nonpoint Source Pollution from stormwater Runoff which would otherwise degrade water quality;
- (4) Establish design and application criteria for the construction and use of structural stormwater control facilities that can be used to meet the minimum Post-Development Stormwater Management standards;
- (5) Encourage the use of nonstructural Stormwater Management, stormwater Better Site Design practices or “low-impact Development practices”, such as reducing Impervious cover and the preservation of greenspace and other natural areas, to the maximum extent practicable;
- (6) Establish provisions to ensure that soil erosion and sedimentation control measures, and stormwater Runoff control practices are incorporated into the Site planning and design process, and are implemented and maintained;
- (7) Provide for the long-term responsibility for and maintenance of structural stormwater control facilities and nonstructural Stormwater Management practices to ensure that they continue to function as designed, are maintained, and pose no threat to public safety;
- (8) Ensure that there is an adequate funding mechanism, including surety, for the proper review, inspection, and long-term maintenance of stormwater facilities implemented as part of this Bylaw;
- (9) Establish administrative procedures and fees for the submission, review, approval or disapproval of Stormwater Management plans, and for the inspection of approved active projects, and long term follow up;
- (10) Ensure that construction and waste materials, toxic materials, hazardous materials, and other pollutants are prevented from mixing with stormwater Runoff, which would degrade water quality;
- (11) Comply with state and federal statutes and regulations relating to stormwater discharges;



(12) Establish the Town’s legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the Federal Clean Water Act found at 40 CFR 122.34, and as authorized by the Charter & Town Council.

Nothing in this Bylaw is intended to replace the requirements of the Zoning Bylaw, the Wetlands Bylaw, or any other Bylaw that may be adopted by the Town, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

**B. Definitions**

“Alter” means any activity that will measurably change the ability of a ground surface area to absorb water, will change existing surface drainage patterns, or will increase or decrease the rate or volume of flow from a Site.

“Best Management Practice (BMP)” means structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and Nonpoint Source Pollution, and promote stormwater quality and protection of the environment. “Structural” BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater Runoff. “Nonstructural” BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

“Better Site Design” means Site design approaches and techniques, including Low Impact Development (LID) that can reduce a Site’s impact on the watershed through the use of nonstructural Stormwater Management practices. Better Site Design includes conserving and protecting natural areas and green space, reducing Impervious cover, using natural features for Stormwater Management, and providing Site-wide Infiltration.

“Development” means any construction that disturbs or Alters a parcel of land.

“Disturbance of Land (Land Disturbance)” means any action causing the importation, removal or redistribution of soil, sand, rock, gravel, or similar earth material; results in an increased amount of Runoff or pollutants; measurably changes the ability of a ground surface to absorb waters; involves clearing and grading; or results in an alteration of drainage characteristics.

“Existing Lawn” means the grass area which has been maintained and mowed in the previous two years.

“Impervious” means any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include,

without limitation: paved surfaces (parking lots, sidewalks, and driveways), concrete, brick, stone, and roof tops.

“Infiltration” means the act of conveying surface water into the ground to permit groundwater Recharge and the reduction of stormwater Runoff from a project Site.

“Low Impact Development (LID)” means an ecosystem-based approach to land Development and stormwater management that ensures that each Development Site is designed to protect, or restore, the natural hydrology of the Site.

“Stormwater Management Handbook” means the latest version as may be amended from time to time of the Massachusetts Stormwater Management Standards and accompanying Stormwater Management Handbook issued by the Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. The Stormwater Management Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

“Municipal Separate Storm Sewer System (MS4)” or “Municipal Storm Drain System” means the system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Amherst.

“Nonpoint Source Pollution” means pollution from many diffuse sources caused by rainfall, snowmelt, or other method of pollutant transport moving over and through the ground. As the Runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

“Person” means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

“Pre-Development” means the conditions that exist prior to the proposed disturbance activity. Where phased Development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish Pre-Development conditions.

“Post-Development” means the conditions that reasonably may be expected or anticipated to exist after completion of the land Development activity in accordance with approved plans on a specific Site or tract of land. Post-Development refers to the phase of a new Development or Redevelopment project after completion, and does not refer to the construction phase of a project.

“Recharge” means the replenishment of underground water reserves.

“Redevelopment” means Development, rehabilitation, expansion, demolition, construction, land alteration, or phased projects that disturb the ground surface, including Impervious surfaces, on previously developed Sites. Redevelopment includes maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems and repaving; and remedial projects specifically designed to provide improved Stormwater Management such as stormwater retrofit projects.

“Runoff” means rainfall or snowmelt water flowing over the ground surface or other source which may result in transport of pollutants.

“Site” means the entire parcel of land being developed.

“Stormwater Management” means the use of structural or non-structural practices that are designed to control or treat stormwater Runoff pollutant loads, discharge volumes, and/or peak flow discharge rates. Stormwater Management includes the use of Low Impact Development (LID) management practices.

“Stormwater Management Permit (SMP)” means a permit issued by the Department of Public Works after review of an application, plans, calculations, and other supporting documents, which is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater Runoff.

### C. Applicability

This Bylaw shall apply to the following activities, whether or not stormwater discharges from these activities enter the Municipal Stormwater Drainage System (MS4):

- (1) All new Development and Redevelopment, Land Disturbance, and any other activity disturbing the drainage characteristics of one acre (43,560 square feet) or more of land, or is part of a common plan of Development or construction that will disturb one acre or more of land, unless exempt pursuant to Section D of this Bylaw;
- (2) Multifamily residential Developments involving four or more units;
- (3) Any new, Redevelopment or additions to commercial, industrial, institutional, or mixed-use properties which results in an additional gross floor area of greater than 5,000 square feet or an additional Impervious surface greater than 10,000 square feet;
- (4) Activities that affect less than an acre, but could adversely affect the Municipal Separate Storm Sewer System (MS4), or can reasonably be expected to cause or contribute to a violation of State Surface Water Quality Standards, may also require a permit subject to the discretion of the Superintendent of Public Works or their designee.

Prior to the issuance of any Site plan approval or Development permit for activities where these regulations apply, a Stormwater Management Permit (SMP) must be approved by the Department of Public Works.

#### D. Exemptions

Exemptions from this Bylaw apply to the following activities, provided that a project is solely comprised of any one of these activities:

- (1) Normal maintenance and improvement of land in agricultural or aquacultural use, as defined by the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A Section 3;
- (2) Timber harvesting under an approved forest cutting plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL Chapter 132 Sections 40-46;
- (3) Activities that are exclusively limited to maintenance and improvement of existing roadways (including widening less than a single lane, adding shoulders, correcting substandard intersections, improving existing drainage systems, and repaving projects);
- (4) Construction of utilities (gas, water, sanitary sewer, electric, communications), other than drainage, which will not Alter terrain, ground cover, or drainage patterns, so long as Best Management Practices (BMPs) are used to prevent erosion, sedimentation and release of pollutants;
- (5) Any emergency activity that poses a threat to public health or safety as determined by the Superintendent of Public Works or their designee;
- (6) Maintenance of existing landscaping, gardens or Lawn areas;
- (7) Construction of any fence that will not Alter existing terrain or drainage patterns;
- (8) Repairs to any stormwater treatment system deemed necessary by the Department of Public Works;
- (9) Any work or projects for which all necessary approvals and permits were issued before the effective date of this Bylaw.

#### E. Administration

- (1) The Town Manager through the Department of Public Works shall be responsible for the administration, implementation, and enforcement of this Bylaw.
- (2) The Town Manager shall develop and may periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw. Failure of the Town Manager to create such rules or regulations shall not have the effect of suspending or invalidating this Bylaw.
- (3) Stormwater Management Handbook. The Department of Public Works will utilize the policy, criteria, and information, including specifications and standards, of the latest edition of the Massachusetts Department of Environmental Protection (MADEP)

Stormwater Handbook and any amendments thereto for execution of the provisions of this Bylaw. This Handbook includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice.

(4) Stormwater Management Permits (SMPs). The Superintendent of Public Works or their designee shall have the authority to issue a SMP for projects of one acre or more of Land Disturbance and not otherwise exempted under Section D of this Bylaw. Procedures and requirements of the SMP shall be defined and included within the Stormwater Regulations promulgated pursuant to Section E(2) of this Bylaw, and shall be consistent with or more stringent than the most recent Small Municipal Separate Storm Sewer System General Permit (MS4).

(5) Actions. The Superintendent of Public Works or their designee may take any of the following actions as a result of an application for a SMP as more specifically defined as part of Stormwater Regulations promulgated pursuant to this Bylaw: Approval, Approval with Conditions, Disapproval, Partial Disapproval, or Disapproval without Prejudice.

(6) Appeals of Action. Further relief of a decision by the Superintendent of Public Works or their designee made under this Bylaw shall be reviewable in compliance with Section G(5) of this Bylaw.

(7) Waivers. The Superintendent of Public Works or their designee may waive strict compliance with any requirement of this Bylaw or the rules and regulations promulgated hereunder where such action is allowed by Federal, state, and local statutes, and/or regulations, is in the public interest, and is not inconsistent with the purpose and intent of this Bylaw.

(8) Stormwater Utility. The Town Council may adopt a Stormwater Utility pursuant to M.G.L. Chapter 83 Section 16 and Chapter 40 Section 1A. Failure by the Town Council to promulgate such a Stormwater Utility or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of the other provisions of this Bylaw.

#### F. Performance Standards

Criteria for Stormwater Management Standards shall be defined and included as part of any Stormwater Regulations promulgated pursuant to Section E(2) of this Bylaw.

#### G. Enforcement

(1) The Superintendent of Public Works or their designee shall enforce this Bylaw, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(2) If a Person violates the provisions of this Bylaw or its regulations, or of any permit, notice, or order issued thereunder, the Town may seek injunctive relief in a court of competent jurisdiction to restrain the Person from activities which would create further violations, or to compel the Person to perform abatement or remediation of the violation.

(3) The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to inspect work being performed under a permit issued pursuant to this Bylaw to confirm work is being done in accordance with said permit. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property where work is being done without a permit to determine if that work is in violation of this Bylaw or regulations.

(4) The Superintendent of Public Works or their designee may issue a written order to enforce the provisions of this Bylaw or regulations, which may include but not be limited to requirements to:

- a. Cease and desist from land-disturbing activity until there is compliance with the Bylaw and provisions of any approved Stormwater Management Permit;
- b. Maintain, install, or perform additional erosion and sediment control measures;
- c. Perform monitoring, analyses, and reporting;
- d. Remediate erosion and sedimentation resulting directly or indirectly from land-disturbing activity;
- e. Comply with requirements in the Stormwater Management Permit for operation and maintenance of Stormwater Management systems;
- f. Remediate adverse impacts resulting directly or indirectly from malfunction of the Stormwater Management systems; and,
- g. If the Superintendent of Public Works or their designee determines that abatement or remediation of erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed.

(5) Appeals. The decisions or orders of the Superintendent of Public Works or their designee may be appealed to the Town Manager by the party who is the subject of the decision or order. A written notice of appeal shall be filed with the Town Manager within 30 days of receipt of the order or decision being appealed. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.

(6) Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available to the Town under any applicable federal, state or local law.

### **3.58 – ILLICIT DISCHARGE DETECTION & ELIMINATION (IDDE) BYLAW**

(Voted 5-4-2021 by the Town Council)

## **PENALTIES FOR VIOLATION OF ILLICIT DISCHARGE & ELIMINATION BYLAW**

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### **Criminal Enforcement:**

- \$300 fine

### **Noncriminal Disposition:**

- First Violation: Warning
- Second Violation: \$100 penalty
- Third Violation: \$200 penalty
- Fourth and subsequent violations: \$300 penalty
- Enforcement by Police Officers or Superintendent of Public Works

### **See Section K for non-monetary penalties**

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#### **A. Purpose and Authority**

The purpose of this Bylaw is to protect the public health, safety, environment, and general welfare of the Town through the regulation of Non-Storm Water Discharges into the Municipal Separate Storm Sewer System (MS4). Increased and contaminated Stormwater Runoff is a major cause of water pollution in our ponds, streams, rivers, wetlands and groundwater. This Bylaw establishes methods for controlling the introduction of Pollutants into the MS4 system in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and protect our Town's water bodies and groundwater from pollution. The objectives of this Bylaw are:

- (1) To prevent Pollutants from entering the Town's Municipal Separate Storm Sewer System;
- (2) To prohibit Illicit Connections and unauthorized discharges to the MS4;
- (3) To require the removal of all such Illicit Discharges;
- (4) To comply with state and federal regulations relating to Stormwater discharges; and
- (5) To establish legal authority to ensure compliance with the provisions of this Bylaw through inspection, monitoring, and enforcement.

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the Charter & Town Council.

Nothing in this Bylaw is intended to replace the requirements of the Zoning Bylaw, the Wetlands Bylaw, or any other Bylaw that may be adopted by the Town, or any Rules and Regulations adopted thereunder. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

## B. Definitions

“Best Management Practices (BMPs)” means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of Pollutants directly or indirectly to Stormwater, receiving waters, or Stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site Runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Hazardous Materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illicit Connections” means either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an Illicit Discharge to enter the Municipal Storm Drain System including but not limited to sewage, Process Wastewater, or wash water and any connections from indoor drains, sinks, or toilets regardless of whether said drain or connection was previously allowed, permitted, or approved before the effective date of this Bylaw; or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by the Department of Public Works.

“Illicit Discharge” means any direct or indirect Non-Stormwater Discharge to the storm drain system, except as exempted in Section G of this Bylaw.

“Municipal Separate Storm Sewer System (MS4)” or “Municipal Storm Drain System” means the system of conveyances designed or used for collecting or conveying Stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or human-made or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town.

“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit” means a permit issued by the United States Environmental Protection Agency (EPA) (or by a State under authority delegated pursuant to 33 USC § 1342(b))



that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

“Non-Storm Water Discharge” means any discharge to the storm drain system that is not composed entirely of Stormwater.

“Person” means any individual, association, organization, partnership, firm, corporation, or other entity recognized by law and acting as either the owner or as the owner's agent.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; rock, sand, salt, soils; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Process Wastewater” means water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product. Process Wastewater includes water which has increased in temperature as a result of manufacturing or other processes.

“Stormwater” or “Runoff” means rainwater, snowmelt, and/or other water that flows off surfaces and across or over the ground surface rather than being absorbed into the soil.

“Stormwater Pollution Prevention Plan (SWPPP)” means a document which describes the Best Management Practices and activities to be implemented by a Person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

“Surface Water Discharge Permit” means a permit issued by the Department of Environmental Protection (DEP) pursuant to 314 CMR 3.00 that authorizes the discharge of Pollutants to Waters of the Commonwealth of Massachusetts.

“Watercourse” means a natural or human-made channel through which water flows or a stream of water, including a river, brook, or underground stream.

“Wastewater” means any sanitary waste, sludge, or septic tank or cesspool contents or discharge, and/or Process Wastewater.

“Waters of the Commonwealth” means all waters within the jurisdiction of the Commonwealth of Massachusetts, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

C. Applicability

This Bylaw shall apply to all flows entering the municipally owned storm drainage system.

D. Administration

(1) The Town Manager through the Department of Public Works shall be responsible for the administration, implementation, and enforcement of this Bylaw.

(2) The Town Manager may develop and periodically amend, regulations, rules and/or written guidance relating to the terms, conditions, definitions, enforcement, fees, procedures and administration of this Bylaw. Failure of the Town Manager to create such rules or regulations shall not have the effect of suspending or invalidating this Bylaw.

E. Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this Bylaw are minimum standards; therefore, this Bylaw does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants.

F. Prohibited Activities

(1) Illicit Discharges. No Person shall dump, discharge, cause, or allow to be discharged any Pollutant or non-Stormwater discharge into the Municipal Separate Storm Sewer System (MS4), into a Watercourse, wetland resource area, or the Waters of the Commonwealth, except as exempted in Section G.

(2) Illicit Connections. The construction, use, maintenance, or continued existence of Illicit Connections to the MS4 system is prohibited. This prohibition expressly includes, without limitation, Illicit Connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) Obstruction of Municipal Storm Drain System. No Person shall obstruct or interfere with the normal flow of Stormwater into or out of the MS4 without prior written approval from the DPW Superintendent or their designee.

G. Exemptions: This section shall not apply to any of the following non-Stormwater discharges or flows, provided that the source is not a significant contributor of a Pollutant to the MS4 system:

(1) Waterline flushing and flow from potable water sources, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;

- (2) Springs, natural flow from riparian habitats and wetlands, diverted stream flow, and rising groundwater;
- (3) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (4) Water from exterior foundation drains, footing drains, crawl space pumps, sump pumps, or air conditioning condensation;
- (5) Discharge from landscape irrigation or lawn watering;
- (6) Water from non-commercial car washing;
- (7) Discharge from de-chlorinated swimming pool or hot tub water (less than one ppm chlorine) provided the pool or hot tub is drained in such a way as not to cause a nuisance;
- (8) Discharge from street sweeping, and Stormwater Runoff containing sand and deicers used for public safety purposes on public or private property;
- (9) Emergency repairs to the Municipal Storm Drain System, and any Stormwater management structure or practice that poses a threat to public health or safety, or as deemed necessary by the Superintendent of Public Works or their designee;
- (10) Dye testing, provided verbal notification by telephone or email is given to the Department of Public Works at least 24 hours prior to the time of the test;
- (11) Non-Stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations, and
- (12) Discharge for which advanced written approval is received from the Department of Public Works as necessary to protect public health, safety, welfare or the environment.

#### H. Suspension of Storm Drainage System Access

- (1) The Department of Public Works may suspend Municipal Storm Drain System access to any Person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of Pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any Person fails to comply with an emergency suspension order, the Superintendent of Public Works or their designee may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.
- (2) Any Person discharging to the MS4 in violation of this Bylaw may have their MS4 access terminated if such termination would abate or reduce an Illicit Discharge. The

Superintendent of Public Works or their designee will issue a written order in compliance with Section K(4) of this Bylaw notifying the violator of the proposed termination of its MS4 access. The violator may appeal the order in accordance with Section K(5) of this Bylaw. A Person commits an offense if the Person reinstates MS4 access to Premises terminated pursuant to this Section, without the prior approval of the Public Works Department.

I. Use of Best Management Practices

The Department of Public Works has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of Stormwater, the storm drain system, or waters of the United States. The owner or operator of a commercial or industrial establishment or construction site shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the Municipal Storm Drain System or Watercourses through the use of these structural and non-structural BMPs. Further, any Person responsible for a property or Premises, which is, or may be, the source of an Illicit Discharge, may be required to implement, at said Person's expense, additional structural and non-structural BMPs to prevent the further discharge of Pollutants to the Municipal Separate Storm Sewer System. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of Stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this Section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

J. Notification of Spills

Notwithstanding other requirements of local, state or Federal law, as soon as a Person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of Pollutants into the municipal drainage system, a wetland resource area, or the Waters of the Commonwealth, the Person shall take all necessary steps to ensure containment, and cleanup of the release. In the event of a release of oil or Hazardous Materials, the Person shall immediately notify the Department of Public Works. In the event of a release of non-Hazardous Material, the reporting Person shall notify the Department of Public Works no later than the next business day. The reporting Person shall provide to the Department of Public Works written confirmation of all telephone, email or in-person notifications within three business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or operator of the

facility shall retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

#### K. Enforcement

(1) The Superintendent of Public Works or their designee shall enforce this Bylaw, and any regulations, permits, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for violations.

(2) If a Person violates the provisions of this Bylaw or its regulations, or of any permit, notice, or order issued there under, the Town may seek injunctive relief in a court of competent jurisdiction to restrain the Person from activities which would create further violations, or to compel the Person to perform abatement or remediation of the violation.

(3) The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to perform their duties under this Bylaw and regulations including inspections, surveys, or sampling they deem necessary to investigate Illicit Discharges, connections, or obstructions of the MS4 system. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property to inspect work being performed under a permit issued pursuant to this Bylaw to confirm work is being done in accordance with said permit. The Superintendent of Public Works or their designee may, to the extent permitted by law, enter a property where work is being done without a permit to determine if that work is in violation of this Bylaw or regulations.

(4) The Superintendent of Public Works or their designee may issue a written order to enforce the provisions of this Bylaw or regulations, which may include but not be limited to requirements to:

- a. eliminate Illicit Connections or discharges to the MS4;
- b. perform monitoring, analyses, and reporting;
- c. cease and desist unlawful discharges, practices, or operations;
- d. remediate contamination in connection therewith.

1. If the Superintendent of Public Works or their designee determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town may, at its option, undertake such work, and expenses thereof shall be charged to the violator.
2. Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property

owner will be notified of any costs incurred by the Town including administrative costs.

3. The violator or property owner may appeal the amount or basis of costs within thirty (30) days of receipt of the notification of the costs incurred in accordance with Section K(5) of this Bylaw.
4. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Superintendent of Public Works or their designee affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in G.L. Ch. 59, 57 after the thirty-first day at which the costs first become due.

(5) Appeals. The decisions or orders of the Superintendent of Public Works or their designee may be appealed to the Town Manager by the party who is the subject of the decision or order. A written notice of appeal shall be filed with the Town Manager within 30 days of receipt of the order or decision being appealed. The Town Manager shall hold a hearing within 30 days of receipt of the notice of appeal and shall issue a decision within 30 days of conclusion of the hearing. Further relief from a decision by the Town Manager shall be to a court of competent jurisdiction.

(6) Compensatory Action. In lieu of enforcement proceedings, penalties, and remedies authorized by this Bylaw, the Superintendent of Public Works or their designee may impose upon a violator alternative compensatory actions consistent with the objectives of the Town's Stormwater management program, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(7) Remedies Not Exclusive. The remedies listed in this Bylaw are not exclusive of any other remedies available to the Town under any applicable federal, state or local law.

### **3.59 - SURVEILLANCE TECHNOLOGY OVERSIGHT**

(Voted 11-15-2021 by the Town Council)

#### **A. Purpose**

The purpose of this Bylaw is to provide for the regulation of Surveillance Technology acquisition or use by the City known as the Town of Amherst or the use of the Surveillance Data it provides, to safeguard the right of individuals to privacy balanced with the need to promote and provide safety and security.

#### **B. Definitions**

(1) "Disparate Impact" means an adverse effect that is disproportionately experienced by individual(s) having any traits, characteristics, or status as to which discrimination is

prohibited under the Constitution or any law of the United States, the constitution or any law of the Commonwealth of Massachusetts, or the Amherst Home Rule Charter or any law of the Town of Amherst than by similarly situated individual(s) not having such traits, characteristics, or status.

(2) "Exigent Circumstances" means the Police Chief's or the Police Chief's designee's good faith belief that an emergency involving danger of death or physical injury requires use of the Surveillance Technology or the Surveillance Data it provides. The use of Surveillance Technology in Exigent Circumstances shall not infringe upon an individual's right to peacefully protest and exercise other lawful and protected Constitutional Rights.

(3) "Marginalized Communities" means communities that are defined by a common race, ethnicity, religion, national origin, disability, income level, sexual orientation, or political perspective.

(4) "Personal Communication Device" means a cellular telephone that has not been modified beyond stock manufacturer capabilities, a personal digital assistant, a wireless capable tablet, or similar wireless two-way communications and/or portable Internet-accessing devices, whether procured or subsidized by a Town entity or personally owned, that is used in the regular course of conducting Town business.

(5) "Surveillance Data" means any electronic data collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology acquired by the Town or operated at the direction of the Town.

(6) "Surveillance Technology" means any software, electronic device, system utilizing an electronic device, or similar used, designed, or primarily intended to collect, retain, process, or share audio, electronic, visual, location, thermal, biometric, olfactory or similar information specifically associated with, or capable of being associated with, any individual or group.

a. "Surveillance Technology" includes, but is not limited to:

1. International Mobile Subscriber Identity ("IMSI") catchers and other cell site simulators;
2. Automatic license plate readers;
3. Electronic toll readers;
4. Closed-circuit television cameras except as otherwise provided herein;
5. Biometric Surveillance Technology, including facial, voice, iris, and gait-recognition software and databases;
6. Mobile DNA capture technology;

7. Gunshot detection and location hardware and services;
  8. X-ray vans;
  9. Video and audio monitoring and/or recording technology, such as surveillance cameras, vehicle cameras, and wearable body cameras;
  10. Tools, including software and hardware, used to gain unauthorized access to a computer, computer service, or computer network;
  11. Social media monitoring software;
  12. Radio-frequency identification (RFID) scanners; and
  13. Software designed to integrate or analyze data from Surveillance Technology, including surveillance target tracking and predictive policing software.
- b. For the purposes of this Bylaw, "Surveillance Technology" does not include the following devices, hardware, or software:
1. Office hardware, such as televisions, computers, credit card machines, copy machines, telephones, and printers that are in widespread use by the Town and are used for routine Town business and transactions;
  2. Town databases and enterprise systems that contain information kept in the ordinary course of Town business, including, but not limited to, human resources, permits, licenses, and business records;
  3. Town databases and enterprise systems that do not contain any data or other information collected, captured, recorded, retained, processed, intercepted, or analyzed by Surveillance Technology, including payroll, accounting, or other fiscal databases;
  4. Information technology security systems, including firewalls and other cybersecurity systems;
  5. Physical access control systems, employee identification management systems, inventory control systems, and other physical control systems;
  6. Infrastructure and mechanical control systems, including those that control or manage street lights, traffic lights, electrical, natural gas, or water or sewer functions;
  7. LiDAR technology and systems used for Geographic Information Systems imagery purposes;



8. Global Positioning System technology used to collect field data or track Town-owned vehicles that are stored on Town property when not in use;
9. Computers, software, hardware, or other devices used in monitoring the work and work-related activities involving Town employees, contractors and volunteers or used in conducting internal investigations involving Town employees, contractors and volunteers;
10. Cameras installed on the exterior or the interior of Town property solely for security purposes, such as to monitor entryways and outdoor areas of Town-owned or controlled buildings and property for the purpose maintaining the safety of Town employees and visitors to Town buildings, protecting Town property, or to protect the physical integrity of Town infrastructure;
11. Cameras, computers, software, hardware, or devices used for videoconferencing or to facilitate broadcast or recording of public meetings;
12. Police department interview room, holding cell, and police department internal security audio/video recording systems;
13. Police department computer-aided dispatch (CAD), records/case management, Live Scan, booking, Department of Motor Vehicles, 9-1-1, and related dispatch and operation or emergency services systems;
14. Police department early warning systems;
15. Parking Ticket Devices ("PTDs") and related databases;
16. Manually-operated, handheld cameras, audio recorders, and video recorders whose functionality is limited to manually capturing and manually downloading video and/or audio recordings;
17. Surveillance devices that cannot record or transmit audio or video or be remotely accessed, such as image stabilizing binoculars or night vision goggles;
18. Manually-operated technological devices that are used primarily for internal Town communications, such as radios, personal communications devices, and email systems; and
19. Parking access and revenue control systems, including proximity card readers and transponder readers at Town-owned or controlled parking garages.

(7) "Surveillance Use Policy" means a publicly-released, legally enforceable written policy for governing the Town's use of Surveillance Technology, approved by the Town Attorney as to form, and submitted by the Town Manager to and approved by the Town Council. The Surveillance Use Policy shall at a minimum, include the following:

- a. Purpose: The specific purpose(s) that the Surveillance Technology item is intended to advance;
- b. Authorized Use: The uses that are authorized, the rules and processes required prior to such use, the location(s) it may be deployed, and uses of the Surveillance Technology that will be expressly prohibited;
- c. Data Collection: What types of Surveillance Data will be collected, captured, recorded, intercepted, or retained by the Surveillance Technology;
- d. Data Access: The category of individuals who can access or use the collected information, and the rules and processes required prior to access or use of the information;
- e. Data Protection: The general safeguards that protect information from unauthorized access, including encryption and access control mechanisms;
- f. Data Retention: The limited time period, if any, that information collected by the Surveillance Technology will be routinely retained, the reason such retention period is appropriate to further the purpose(s) enumerated in the Surveillance Use Policy, the process by which the information is regularly deleted after that period lapses, and the specific conditions that must be met to retain information beyond that period;
- g. Public Access: How collected information can be accessed or used by members of the public, including criminal defendants, consistent with the provisions of the Public Records Law and its implementing regulations;
- h. Third-Party Data-Sharing: If and how other Amherst or non-Amherst entities, agencies, departments, bureaus, divisions, or units can access or use the data collected by the Surveillance Technology, including any required justification or legal standard necessary to share that data, and how Town of Amherst will ensure that any entity sharing or receiving such data complies with the Surveillance Use Policy;
- i. Maintenance: Whether use or maintenance of the Surveillance Technology will require data gathered by the Surveillance Technology to be handled or stored by a third-party vendor on an ongoing basis and, if so, the parameters of the third-party vendor's use, handling, or storage;
- j. Training: The training required for any individual authorized to use the Surveillance Technology or to access information collected by the Surveillance Technology;
- k. Complaints: What procedures will be put in place by which members of the public can register complaints or concerns, or submit questions about the deployment or use of a specific surveillance technology, and how the municipal entity will ensure each question and complaint is responded to in a timely manner; and

1. Auditing and Oversight: The mechanisms to ensure that the Surveillance Use Policy is followed, including internal personnel assigned to ensure compliance with the policy, internal record keeping of the use of the technology or access to information collected by the technology, technical measures to monitor for misuse, any independent person or entity with oversight authority, and the legally enforceable sanctions for violations of the policy.

(8) "Town of Amherst" means any department, agency, bureau, and/or subordinate division of the Town of Amherst, except those under the jurisdiction of the School Committee, Regional School Committee, or Library Trustees.

C. Town Council Review and Approval Mandatory for Surveillance Decisions

(1) The Town Manager shall obtain Town Council approval of a Surveillance Use Policy for use of Surveillance Technology by the Town of Amherst prior to engaging in any of the following:

- a. Acquiring or borrowing new Surveillance Technology whether or not that acquisition is made through the exchange of monies or for other or no consideration;
- b. Using new or existing Surveillance Technology for a purpose, in a manner, or in a location not previously approved by the Town Council in accordance with this Bylaw; or
- c. Entering into an agreement, including a written or oral agreement, with a non-Town of Amherst entity to acquire, share, or otherwise use Surveillance Technology or its Surveillance Data.

(2) Any Surveillance Use Policy submitted to the Town Council for approval shall be published on the Town Bulletin Board no fewer than fourteen (14) days prior to the date of the Council meeting where it shall be discussed.

(3) Prior to approval, the Town Council may request revisions to the Surveillance Use Policy submitted by the Town Manager.

D. Exceptions

(1) The following situations constitute the use, acquisition, or borrowing of Surveillance Technology or Surveillance Data; however, the provisions of this Bylaw shall not apply said situations:

- a. Use of Surveillance Technology or Surveillance Data by the Police Department with regard to Exigent Circumstances and compelling law enforcement needs that make it impractical to obtain a court order; provided that the Police Chief confirms that such use is appropriate, and, further that the receipt, access or use is logged in the Town Department Surveillance Report addressed under Section 3.59 H, and signed off by the Police Chief.

- b. The receipt of evidence derived from Surveillance Technology or Surveillance Data pursuant to a warrant issued in relation to the investigation of a crime.
- c. A Town department head may, with the approval of the Town Manager, apply a technical patch or upgrade that is necessary to mitigate threats to the Town's environment. The department shall not use the new surveillance capabilities of the technology until the requirements of Section 3.59 C are met, unless the Town Manager determines that the use is unavoidable; in that case, the Town Manager shall request Town Council approval as soon as possible. The request shall include a report to the Town Council of how the altered surveillance capabilities were used since the time of the upgrade.

E. Surveillance Technology Impact Report and Surveillance Use Policy Submission

- (1) When seeking approval under Section 3.59 C of this Bylaw, the Town Manager shall submit to the Town Council a Surveillance Technology Impact Report and a proposed Surveillance Use Policy pertaining to the specific Surveillance Technology for which approval is sought at least fourteen (14) days prior to the date of the Council meeting where it shall be discussed under Section 3.59 C. The proposed Surveillance Technology Impact Report and proposed Surveillance Use Policy shall be posted on the Town Bulletin Board at least fourteen (14) days prior to the date of the Council meeting where it shall be discussed.
- (2) The Surveillance Technology Impact Report shall be written and include at a minimum the following:
  - a. If applicable, the crime statistics for any location(s) the Technology will be deployed;
  - b. An assessment identifying any potential impact on civil liberties and civil rights and a description of a plan to safeguard the rights of the public, including identifying with specificity (1) Any potential adverse impacts the Surveillance Technology, if deployed, might have on civil liberties and civil rights of any individuals, communities, or groups, including, but not limited to, Marginalized Communities in the Town; and (2) what specific, affirmative measures will be implemented to safeguard the public from those potential adverse impacts;
  - c. The fiscal costs for the Surveillance Technology, including initial purchase and other ongoing costs and excluding personnel costs, and any current or potential sources of funding; and
  - d. A summary of the experience, if any, other governmental entities have had with the proposed technology, including information about the effectiveness, any known adverse information about the Surveillance Technology such as unanticipated costs, failures, civil rights, or civil liberties abuses.

F. Standard of Approval

The Town Council shall only approve a request under Section 3.59 C of this Bylaw if it determines the benefits to the community of the proposed Surveillance Technology outweigh its costs, that the Surveillance Use Policy will safeguard civil liberties and civil rights, that no alternative with lesser economic cost or impact on civil rights or liberties would be as effective, and that the uses and deployments of the Surveillance Technology will not be based upon discriminatory or viewpoint-based factors or have a Disparate Impact on any community or group.

G. Compliance for Existing Surveillance Technology

- (1) The Town Manager shall submit to the Town Council for its review and approval pursuant to Sections 3.59 C and E a proposed Surveillance Use Policy applicable to each Surveillance Technology in use by the Town of Amherst at the time this Bylaw becomes effective no later than 180 days following the effective date of this Bylaw.
- (2) If the Town Manager is unable to meet this 180-day timeline, the Town Manager may notify the Town Council in writing requesting to extend this period and the reasons for that request. The Town Council may grant an extension to the Town Manager to submit a proposed Surveillance Use Policy of up to ninety (90) days beyond the 180-day timeline.
- (3) If the Town Council has not approved the continuing use of Surveillance Technology through approval of a Surveillance Use Policy pursuant to Sections 3.59 C and E, within one hundred eighty (180) days of its submission to the Town Council, the Surveillance Use Policy shall be deemed approved.

H. Oversight Following Council Approval

- (1) For each Surveillance Technology approved for use under this Bylaw, upon request by the Town Council, the Town Manager, or designee, shall submit to the Town Council and publish on the Town Bulletin Board a Town Department Surveillance Report by the date stated in the Town Council's request, and no more frequently than once every twelve (12) months. If the Town Manager, or designee, is unable to meet the deadline, the Town Manager shall request, in writing, the Town Council extend this period, and shall provide the reasons for the request. The Town Council may grant reasonable extensions for good cause.
- (2) Within sixty (60) days of receiving the Town Department Surveillance Report, the Town Council shall discuss the Report at a regular Council Meeting.
- (3) Based upon information in the Town Department Surveillance Report, the Town Council shall reassess whether the Surveillance Technology as used continues to meet the standard of approval set forth in Section 3.59 F of this Bylaw. If it does not, the Town Council shall consider (1) directing that the use of the Surveillance Technology cease; (2) requiring modifications to the Surveillance Use Policy that are designed to address the Council's concerns; and/or (3) directing a report-back from the Town Manager regarding steps taken to address the Council's concerns.

- (4) The Town Department Surveillance Report shall be written, shall concern specific Surveillance Technology, and shall include the following:
- a. A description of how the Surveillance Technology has been used;
  - b. A description of whether and how often data acquired through the use of the Surveillance Technology was shared with outside entities, the name of any recipient entity, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure;
  - c. A summary of community complaints or concerns about the Surveillance Technology, if any;
  - d. The results of any internal audits required by the Surveillance Use Policy, any information about violations of the Surveillance Use Policy, and a general description of any actions taken in response;
  - e. Information that helps the Town Council assess whether the Surveillance Technology has been effective at achieving its identified purposes;
  - f. Statistics and information about any related public records requests;
  - g. Total annual costs for the Surveillance Technology, including personnel and other ongoing costs, and what source of funding will fund the Technology in the coming year;
  - h. Any requested modifications to the Surveillance Use Policy and a detailed basis for the request; and
  - i. Where applicable, a breakdown of what physical objects the Surveillance Technology was installed upon, using general descriptive terms; for Surveillance Technology software, a breakdown of what data sources the Surveillance Technology was applied to.
- (5) If the Town Manager believes that data or other information is insufficient to report on any of the requirements for the Report, the Manager shall indicate the same in the Report.

I. Enforcement

- (1) Violation. Any violation of this Bylaw may be enforced through any means in law or in equity; provided, however, that the following conditions must first be met:
- a. Prior to the initiation of any legal proceeding under this Bylaw, the Town of Amherst shall be given written notice of the violation(s) and an opportunity to correct such alleged violation(s) within 30 days of receipt of the notice.

- b. If the alleged violation is substantiated and subsequently cured, a notice shall be posted in a conspicuous space on the Town’s website that generally describes the corrective measure(s) taken to address the violation(s).
- (2) Whistleblower Protections. Subject to the limitations and requirements set forth in M.G.L. Ch. 149, Sec. 185 (known as the "Massachusetts Whistleblower Statute" and cited herein as "Section 185") as it may be amended from time to time, any Town employee as defined in Section 185 who reports an alleged violation of this Bylaw, shall be afforded protections against retaliation if applicable pursuant to Section 185, as set forth in and subject to the limitations and requirements of Section 185.
- (3) Nothing in this Chapter shall be construed to limit or affect any individual's rights under state or federal laws.

J. Effective Date

This Chapter shall take effect 90 days after its adoption.

### 3.60 – PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

(Voted 6-13-2022 by the Town Council)

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#### PENALTIES FOR VIOLATION OF BYLAW FOR PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

**Noncriminal Disposition:** \$300.00 penalty for each offense (enforcement by: Historical Commission or Building Commissioner). Each day the violation exists shall constitute a separate offense until the demolished building is rebuilt or re-created as directed by the Historical Commission, or unless otherwise agreed to by the Historical Commission.

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#### A. Declaration of Policy

Finding that the economic, cultural and aesthetic standing of the Town of Amherst can best be maintained and enhanced by due regard for the historical and architectural heritage of the Town and by striving to discourage the destruction of such cultural assets, it is hereby declared as a matter of public policy that the protection, enhancement, perpetuation, and use of structures of historical and architectural significance, located within the Town of Amherst, is a public necessity, and is required in the interest of the prosperity, civic pride, and general welfare of the people.

#### B. Purpose

This Bylaw is enacted for the purpose of preserving and protecting historic buildings that constitute or reflect distinctive features of the architectural, cultural, economic, political, or social history of the Town and encouraging sustainability through the adaptive reuse of historic structures. Through this Bylaw, owners of historic buildings are encouraged to seek out alternative options that will preserve, rehabilitate, or restore such buildings, and residents of the Town are alerted to the impending Demolition of Significant Buildings. By preserving and protecting Significant Buildings, this Bylaw promotes public welfare by making the Town a more attractive and desirable place in which to live, work, and visit. To achieve these purposes

the Historical Commission is authorized to allow or delay Demolition through the issuance of a Demolition Authorization or a Preservation Order.

### C. Definitions

The following terms used in the Bylaw shall be understood by the subsequent indicated meanings:

Applicant	Any person or entity filing an application for a Demolition Authorization.
Application	A form to request a Demolition Authorization.
Building	Any combination of materials forming a shelter for persons, animals, or property. The word “Building” shall include the word “Structure”.
Building Commissioner	The person occupying the Office of Building Commissioner or anyone otherwise authorized to issue a Demolition Permit.
Commission	The Amherst Historical Commission.
Demolition	<ul style="list-style-type: none"> <li>a) Initiating the work of total destruction of an entire Building with the intent of completing the same; or</li> <li>b) any act of pulling down, destroying, removing, or razing 25% or more of the front, back, or side elevations of a Building, with the gross square footage of each elevation including wall area, roof area, and exposed foundation area calculated separately; or</li> </ul>
Demolition Authorization	An approval granted by the Commission to an Applicant permitting the Demolition of a Significant Building as determined at or after a Public Hearing.
Demolition Delay	A delay of up to 12 months on the granting of a Demolition Permit, imposed by the Commission upon a Significant Building determined to be Preferably Preserved, during which time the Commission will work with the Building owner(s) on the preservation of the Building.
Demolition Permit	A Building Permit issued for Demolition by the Building Commissioner under the State Building Code for the Demolition of all or a significant portion of a Building.
Emergency Demolition	A determination made by the Building Commissioner that a Building is found to be dangerous and an imminent threat to public health, safety or welfare due in part, but not limited to, threat of collapse, fire hazard, weather damage, or structural failure, and is therefore required to be demolished.
Public Hearing	A meeting of the Commission, open to the public and duly advertised, at which Commission members hear from Applicants and the public, review applications, and make decisions regarding whether a Significant Building should be Preferably Preserved, if a Demolition Authorization should be approved, or if the Demolition Delay period should be reduced.



Preferably Preserved Building	A Significant Building determined by the Commission at a Public Hearing to be worthy of and in the public interest to preserve rather than Demolish, in accordance with Section G of this Bylaw, and therefore the Commission issues a Preservation Order on the Building.
Preservation Order	A restriction issued by the Commission to an Applicant delaying the Demolition of a Significant Building as determined at or after a Public Hearing for the duration of the Demolition Delay period.
Significant Building	A Building found by the Commission or its designee(s) to contribute to the historical or architectural heritage or resources of the Town pursuant to Section F of this Bylaw.
Structure	Any edifice, object, or building of any kind that is constructed or erected and requires more or less permanent location on the ground or attachment to an object with permanent location on the ground, not including wheels.

#### D. Historical Commission Appointment and Powers

The Commission shall consist of seven (7) members, appointed by the Town Manager, for terms of three (3) years each. The Commission is charged with implementing the Preservation of Historically Significant Buildings Bylaw.

#### E. Procedures

The Building Commissioner may not issue a Demolition Permit for a Significant Building without a Demolition Authorization from the Historical Commission or its designee, except in accordance with Section H. Buildings that are less than 75 years old are not subject to this Bylaw.

##### (1) Application to and Initial Review by the Historical Commission

- a. An Applicant proposing Demolition of a Building 75 years or older shall submit a complete Application to Commission staff. If a Building is of unknown age, it shall be assumed that the Building is over 75 years old for the purposes of this Bylaw.

A complete Application shall be filed with Commission staff containing the following information:

- The address of the Building where Demolition is proposed.
- The owner's name and signature, address, email and telephone number.
- A description of the Building, including the approximate year of construction, if known.
- The reason for a Demolition Permit.
- A brief description of the proposed reuse, reconstruction, or replacement.

- A photograph or photograph(s) of the building.
- Timeline for Demolition.
- Additional information requested to support the application in accordance with the Historical Commission Rules and Regulations.

- b. The Commission or its designee(s) shall determine if the Application concerns a Significant Building as defined in Section F of this Bylaw. For Applications reviewed for significance by the designee(s), a decision shall be made or the Application shall be referred to the Commission within fourteen (14) days of the receipt of the complete Application. The Commission shall make the determination of Significance if there is not a unanimous vote of the designee(s) or at the request of the designee(s). For Applications reviewed by the Commission, a decision shall be made within twenty-one (21) days from referral by the designee(s).
- c. If the Building has been determined to be Significant, the Commission shall notify the Applicant and Building Commissioner and then will hold a Public Hearing, within twenty-one (21) days of the determination of Significance, as outlined in Section E(2).
- d. If the Building is determined to not be Significant, the Commission or its designee(s) shall give the Building Commissioner and Applicant written notice of this determination. The Building Commissioner may then issue the Demolition Permit.

(2) Public Hearing Procedure

For the purposes of a Public Hearing:

- a. Notice of the Public Hearing shall be sent by Commission staff to the Applicant and property owners within 300 feet at least fourteen (14) days prior to the Public Hearing.
- b. Posting on the Town website and publication within local news media shall take place fourteen (14) days prior to the Public Hearing.
- c. The Commission may hold a site visit prior to the Public Hearing.
- d. The Commission shall hold the Public Hearing on the designated date and time and shall review the Application to determine whether:
  1. the Significant Building shall be Preferably Preserved, per Section G; or
  2. a Demolition Authorization can be issued; or,
  3. the Demolition Delay period should be reduced, per Section E(3).

- e. During the Public Hearing, the Commission shall consider alternatives to Demolition during the Demolition Delay period such as:
    - the incorporation of the building into the future development of the site,
    - the adaptive re-use of the building,
    - the use of financial incentives for the rehabilitation of the building,
    - the relocation of the building to another site, and,
    - with the owner's consent, the search for a new owner willing to purchase the building and preserve, restore, or rehabilitate it.
  - f. If, during the Public Hearing, the Commission determines that the Significant Building shall not be Preferably Preserved, the Commission shall grant a Demolition Authorization to the Applicant.
  - g. If, during the Public Hearing, the Commission decides to reduce the Demolition Delay period, the Commission shall issue a Demolition Authorization to the Applicant.
  - h. If, during the Public Hearing, the Commission determines that the Significant Building shall be Preferably Preserved based on criteria in Section G, then the Commission shall issue a Preservation Order to the Applicant. Upon issuance of a Preservation Order, no Demolition Permit shall be issued by the Building Commissioner for the duration of the Demolition Delay period, unless otherwise agreed to by the Commission in Section under E(3).
  - i. When issuing a Demolition Authorization or a Preservation Order, within 14 days of the close of the Public Hearing, the Commission shall notify the Building Commissioner in writing of its findings, file the decision with the Town Clerk, and provide notice of the decision to the Applicant, including when the Applicant is eligible to apply for a Demolition Permit.
- (3) After a Preservation Order has been issued, an Applicant may apply to the Commission for a reduction of the Demolition Delay period. Within forty-five (45) days following the Commission's receipt of such request, the Commission shall hold a Public Hearing in accordance with the procedures of Section E(2) to consider whether or not to reduce the delay period through the issuance of a Demolition Authorization. At this Public Hearing, the Commission may consider whether the Applicant has taken any of the following actions:
- a. Filed with the Building Commissioner plans for intended future use and development of the site and has been found to comply with all laws pertaining to the issuance of a building permit, including without limitation, any

necessary zoning findings, variances, or special permits required for said use and development.

- b. Made bona fide, reasonable, and unsuccessful efforts to locate a purchaser for the Building who is willing to preserve, rehabilitate, or restore the Building. These efforts could include actions such as marketing the Building for sale and/or relocation, studying the feasibility of rehabilitating the Building, and evaluating the structural integrity of the Building.
  - c. Agreed to accept a Demolition Authorization on specified conditions approved by the Commission, such as those described in E(2)e. If the specified conditions involve approved plans and elevations, the Applicant shall provide the Commission a complete set of plans and elevations.
- (4) At the end of the Demolition Delay period, Commission staff shall issue a Demolition Authorization to the Applicant, notify the Building Commissioner in writing of this issuance, file the decision with the Town Clerk, and provide notice of the decision to the Applicant, including when the Applicant is eligible to apply for a Demolition Permit.

(5) Exemptions

The Building Commissioner may issue a Demolition Permit without Commission review if proposed changes are limited to any of the following:

- a. Removal and replacement of exterior architectural features, including roofing and siding materials, that replicate significant historic design detail with exact or similar material.
- b. 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 such reconstruction is begun within two years thereafter and carried forward with due diligence.

F. Standards for Designation as a Significant Building

The Commission or its designee(s) shall determine that a Building be designated as a Significant Building if it is 75 years old or older and meets one or more of the following criteria:

- (1) The Building is individually listed on, or is a contributing structure within an area listed on, the National Register of Historic Places or is the subject of a pending application for such listing; or
- (2) The Building has value in association with a specific location, or one or more historic persons or events, or with the broad architectural, social, political, economic, or cultural heritage of the Town of Amherst or the Commonwealth; or

- (3) The Building alone, in the context of a group of buildings, or as part of a viewshed, has historical or architectural value, as to period, style, craftsmanship, method of building construction, or in association with a recognized architect or builder.

#### G. Designation of a Building as Preferably Preserved

The Commission, in the public interest of the Town's robust historic character and rich cultural identities, prefers to preserve Significant Buildings whenever possible. In doing so, the Commission serves to promote the environmental, economic, educational, and social advantages of a community with historic identities and to avert the possible negative impacts of a Significant Building's loss.

To this end, the Commission will weigh the factors which led to the Building's designation as Significant, including additional review of the criteria in Section F and the owner(s) plans for reuse, reconstruction, or restoration, and make a determination regarding its preservation. A designation of "Preferably Preserved" will be applied to those Significant Buildings that the Commission finds would represent a loss to the Amherst community if a Demolition Authorization were granted.

A Preservation Order will be issued for any Building designated as Preferably Preserved delaying the issuance of a Demolition Permit for a period of up to 12 months from the date that the decision is voted on by the Commission. During this 12-month period the Commission members will work with the owner(s) on methods for possible preservation as referenced in Section E(2)e.

#### H. Emergency Demolition

If after an inspection, the Building Commissioner finds that a Building subject to this Bylaw is found to pose an imminent threat to public health, safety, or welfare due to its deteriorated condition and there is no reasonable alternative to the immediate Demolition of the Building, then the Building Commissioner may issue an emergency Demolition Permit to the owner of the Building. The Building Commissioner shall then prepare a report explaining the condition of the Building and the basis for the decision which shall be forwarded to the Commission.

#### I. Expiration

##### (1) Expiration for No Action

- a. If the Building is not determined to be Significant or if a Demolition Authorization is issued, said determination or authorization shall lapse if Demolition has not commenced within one (1) year of the date of the decision.

- b. If Demolition does not commence within the timeframe allowed above, any future Demolition shall be subject again to full review in accordance with the provisions of this Bylaw.
- c. An applicant may request in writing to the Commission a 6-month extension of the time permitted to commence Demolition. The Commission may issue such an extension through a majority vote at a Public Meeting.

#### J. Enforcement, Penalties, and Remedies

The following enforcement and remedies shall apply under this Bylaw:

- (1) The Commission and the Building Commissioner are each authorized to institute any and all proceedings in law or equity they shall deem necessary and appropriate to obtain compliance with the requirements of this Bylaw, or to prevent a violation thereof.
  - a. Any owner of a Building subject to this Bylaw who knowingly performs Demolition of said Building, or damages a portion of a Building in a way which increases its likelihood of total failure, without first obtaining a Demolition Authorization or a Demolition Permit in accordance with the provisions of this Bylaw, or who likewise, by some causative action, contributes to the deterioration of said Building, shall be in violation of this Bylaw and subject to enforcement by a non-criminal complaint pursuant to the provisions of this Bylaw and M.G.L. Chapter 40, Section 21D, as amended.
  - b. Notwithstanding the above, this section does not create an affirmative obligation to maintain a property.
- (2) No building permit shall be issued with respect to any premises upon which a Building has had Demolition occur in violation of this Bylaw for a period of two (2) years from the date of the completion of such Demolition unless first authorized by the Historical Commission at a Public Hearing.

#### K. Administration

- (1) The Commission is authorized to adopt rules and regulations to carry out its duties and functions under this Bylaw.
- (2) The Commission may delegate authority at a public meeting to make initial determination of Significance of all or certain Application types to one or more members of the Commission or municipal employees.