GENERAL BY-LAWS

TOWN OF ASHBURNHAM, MASSACHUSETTS

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TOWN CLERK

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GENERAL BY-LAWS

TOWN OF ASHBURNHAM, MASSACHUSETTS

CHAPTER I: GENERAL PROVISIONS

Section 1. The following provisions shall constitute the General By-Laws of the Town of Ashburnham, which shall be in lieu of all by-laws heretofore in force.

Section 2. Any or all of these by-laws may be repealed or amended or, other by-laws may be adopted at a town meeting, an article or articles for that purpose having been inserted in the warrant.

Section 3. Except when otherwise provided by law, prosecution of any violation of the by-laws of the town may be made by any law enforcement officer of the town.

Section 4. Whoever violates any provisions of these by-laws, whereby any act or thing is enjoined or prohibited, shall, unless other provision is expressly made, forfeit and pay a fine not exceeding seventy-five dollars ($75.00) for each offense.

Section 5. These by-laws shall go into effect upon their acceptance by the town meeting, their approval by the Attorney General, and their publication in the manner required by law.

CHAPTER II: TOWN MEETINGS

Section 1. The annual town meeting shall be held on the first Saturday in May at 10:00 o'clock in the morning. All business of the annual town meeting, except the election of town officials and other matters to be determined by ballot, shall be considered at this time. This meeting may be adjourned to such other times and places as may be determined by the meeting. Special town meetings shall be held as provided by law.

Section 2. On the last Tuesday of April, the election of town officials and voting on other matters to be determined by ballot shall take place pursuant to a warrant issued according to the General Laws. This day is to provide a uniform election date with Westminster. Special town meetings may be held as provided by the General Laws.

Section 3. Notice of every town meeting shall be given by posting attested copies of the warrant in at least two places in the town, which shall include the Town Hall and the Post Office on Central Street in Ashburnham, and in such other places as the selectmen shall determine and occasion require. The posting shall be done at least seven days before the date of the meeting.

Section 4. The Advisory Committee shall report in writing its recommendations at each Annual Town Meeting, which report shall be distributed with the annual Town Report. In case of Special Town Meetings the report and recommendations of the Advisory Committee shall be presented orally or in writing at such special Town Meetings, and whenever practicable shall be released for publication by the news service prior to such Special Town Meetings.

Section 5. As soon as practical after the adjournment of any Town Meeting on a vote to adjourn to another day, the Town Clerk shall cause a notice of the day and hour and place to which this adjournment was voted, together with the business to come before the meeting, to be posted as prescribed in Section 3 preceding.

CHAPTER III: GOVERNMENT OF TOWN MEETINGS

Section 1. The quorum for the annual town meeting and the quorum for special town meetings will be established at (75) seventy-five registered voters whose names appear on the current official list of registered voters as posted by the Board of Registrars, provided however, that a number less than a quorum may adjourn the same to a time certain. This section shall not apply to such parts of meetings as are devoted exclusively to the election of town officers. *(Passed by Attorney General – 7/9/96)*

Section 2. In case of an attendance at a town meeting, which exceeds the capacity of the floor of the auditorium, the moderator shall appoint tellers who shall permit, only registered voters to enter upon the floor of the auditorium. The balcony may be open to the public. When the attendance at any town meeting exceeds the capacity of the floor and balcony of the auditorium, it shall be the duty of the moderator to make suitable provision so that every registered voter at the Town Hall may hear and participate in the proceedings.

Section 3. Articles in the warrant shall be acted upon in the order in which they appear in the warrant, unless otherwise determined by the vote of the meeting.

Section 4. All motions having to do with the expenditure of money shall be presented in writing. Other motions shall be in writing, if so directed by the moderator.

Section 5. No motion, the effect of which would be to dissolve the meeting shall be in order until every article in the warrant therefore has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article to an adjournment of the meeting to a stated time and place.

Section 6. When a motion is before the meeting, the following motions, namely: to adjourn; to lay on the table; for the previous question; to postpone to a time certain; to commit; to amend; to postpone indefinitely; to pass over; shall be received, and shall have precedence in the foregoing order; and the first three shall be decided without debate.

Section 7. When a question is put, the sense of the meeting shall be determined by a "YES" or "NO" ballot, provided a motion to that effect shall have been carried. Otherwise, the sense of the meeting shall be determined by the voices of the voters, and the moderator shall declare the vote as it seems to him. If the moderator is unable to decide such vote, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, he shall determine the vote by a display of hands, or rising vote, and shall appoint tellers to make and return the count.

Section 8. No final vote which has been announced by the moderator shall be reconsidered, except upon motion for that purpose within one hour of the time which the vote was taken, provided however, that any vote taken during the last hour of a meeting which is adjourned to a time certain, may be reconsidered upon motion made during the first hour of the adjourned meeting. No question shall be reconsidered except by an order of two-thirds of the voters present and voting.

Section 9. All questions of parliamentary procedure not covered by these by-laws shall be governed by "Town Meeting Time" a handbook of Parliamentary Law by Johnson, Trustman and Wadsworth.

Section 10. On matters requiring a two thirds vote by statute a count need not be taken. *(Passed by A.G. 3/21/97)*

CHAPTER IV: APPOINTIVE TOWN COMMITTEES AND BOARDS

Section 1. No person shall be appointed to a committee or board who is not a registered voter of the Town and domiciled in the town.

Section 2. Anyone appointed to a committee or board who subsequently removes his domicile from town, shall automatically cease to be a member of said committee or board.

Section 3. When anyone appointed to an appointive committee or board is absent repeatedly from duly called meetings, same shall be reported to the authority making the original appointment, who may declare that a vacancy exists.

Section 4. Vacancies occurring on appointive committees and boards shall be filled by the authority making the original appointment.

Section 5. All committees shall report to the town unless otherwise specified by the town. If no report is made within a year of its appointment, a committee shall be discharged, unless in the meantime the town meeting shall vote otherwise. When an appointed committee reports to the town meeting, recommending action upon the matter referred to it, and a vote is taken thereon, such committee shall automatically be discharged, unless otherwise voted by the meeting.

CHAPTER V: CAPITAL BUDGETING

5.1 The Board of Selectmen shall establish and appoint a committee to be known as the Capital Planning Committee, composed of one member of the Board of Selectmen, two members of the Advisory Board, one member of the Planning Board, the Town Treasurer/Collector and two citizens at large. The Town Accountant, Treasurer/Collector and Town Administrator shall be ex-officio, non-voting members of the Committee. The Committee shall choose its own officers.

5.2 The Committee shall study proposed capital projects and improvements involving major tangible assets and projects which: 1) have a useful life of at least three years; 2) have a dollar value of $15,000 or greater.

5.3 The Committee shall develop policies and procedures, as necessary, to establish and maintain a capital improvement program.

5.4 All officers, boards and committees shall each year, on or before September 30th of each year, give to the Committee, on the forms prepared by it, information concerning all anticipated projects and capital requests requiring Town Meeting action during the ensuing five years. The Committee shall consider the existing and probable future needs of the town for public improvement and purchases of major equipment, their relationship to the probable future growth of the town, relative needs, impact, timing and cost of these expenditures and the effect each will have on the financial position of the town. No appropriation shall be voted for a capital improvement requested by a department, board or commission at an Annual Town Meeting, or at any Special Town Meeting, unless the Committee has first made a recommendation to such Annual Town or Special Town Meeting with respect to such proposed capital improvement unless the proposed capital improvement is considered in the Committee's report, or the Committee shall first have submitted a report to the Board of Selectmen explaining the omission.

5.5 The Committee shall prepare an annual report recommending a Capital Improvement Program for the next fiscal year, and Capital Improvement Program including recommended capital improvements for the following five fiscal years after that. The report shall be submitted to the Board of Selectmen for its consideration and approval by December 1st of each year. The Board shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the town.

5.6 Such Capital Improvement Program, after its adoption, shall permit the expenditure on projects included therein of sums from departmental budgets for surveys, architectural or engineering advice, options or appraisals; but no such expenditure shall be incurred on projects which have not been so approved by the town through the appropriation of sums in the current year or in prior years, or preliminary planning for projects to be undertaken more than five years in the future.

5.7 The Committee's report and the Selectmen's recommended Capital Budget shall be published and made available in a manner consistent with the distribution of the Advisory Board report. The Committee shall file its original report with the Town Clerk.

CHAPTER VI: ADVISORY COMMITTEE

Section 1. The Advisory Committee shall consist of seven members, each a registered voter and domiciled in the town, who shall be appointed by the moderator, provided that no person who shall have the care, custody or disposal of town funds, or the care, custody or disposal of town property, either as a town officer, or member of any town committee, or an agent of such officer or town committee, shall be eligible to serve on said committee.

Section 2. The Moderator of the Town shall within thirty days after the adjournment of every Annual Town Meeting appoint for a term of three years the number of persons, as may be necessary, to provide a committee of seven members, except that following the final adjournment of the Annual Town Meeting in 2004, the Moderator shall appoint two persons for one year terms, two persons for two year terms each and three persons for three year terms each. The term of office of each member shall commence immediately upon qualification and shall expire upon the final adjournment of the Annual Town Meeting of the last year of such person's term of office. Said committee shall choose its own officers, shall serve without pay and shall cause to be kept a true record of its proceedings.

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Section 3. A vacancy caused by death, resignation or removal of domicile, in the membership of the Advisory Committee shall be filled as provided in Section 4, Chapter IV. Frequent non-attendance of any member shall be reported to the moderator, who may at his discretion, declare that a vacancy exists. The term of office of any person chosen to fill a vacancy shall be that of the person whom he replaces.

Section 4. All articles in a warrant for any town meeting shall be referred to the Advisory Committee for its consideration. The selectmen, after drawing any such warrant, shall transmit a copy thereof to the said committee, which shall, after due consideration of the subject matter of all the articles, report thereon in writing to the voters, as prescribed in Chapter 11, Section 4, of these by-laws.

Section 5. It shall be the duty of the Advisory Committee annually to consider the expenditure in previous years and the estimated requirements for the current fiscal year, which shall be submitted by the several officers, boards and departments of the town in such form and detail as shall be prescribed by said committee. Said committee shall make a report tabulating such expenditures and estimates together with the amounts which, in its opinion, shall be appropriated for the current fiscal year, including such pertinent recommendations as it may deem appropriate, and its consideration of capital budgeting. Said report is to be distributed according to Chapter II, Section 4, of these by-laws.

Section 6. The Advisory Committee shall have authority at any time to investigate the books, accounts and management of any department of the Town, and to employ such expert and other assistance as it may deem advisable for that purpose and the books and accounts of all departments and officers of the Town shall be open to the inspection of the Committee and any person employed by it for that purpose. The Committee may summon the attendance of witnesses under General Laws, Chapter 233, Section 8, 10. The Committee may appoint sub-committees of its members and delegate to them such of its powers as it deems expedient.

CHAPTER VII: CONTRACTS BY TOWN OFFICERS

Section 1. No officer of the town shall, in his official capacity make or pass upon, or participate in making or passing upon, any sale, contract or agreement or the terms of amount of any payment in which the town is interested and in which such officer has any personal financial interest, direct or indirect.

Section 2. No town officer and no salaried employee of the town, or any agent of any such officer or employee shall receive any compensation or commission for work done by him for the town, except his official salary and fees allowed by law, without permission of the selectmen expressed in a vote which shall appear on the records, with the reasons therefore.

Section 3. No contract involving an obligation of the town in excess of ($1,000) one thousand dollars shall be binding on the town unless it is in writing and is signed by the Town Accountant whose signature shall indicate that funds are duly appropriated and available to pay for the contract, and by the Town Administrator. No contract involving an obligation of the Town in excess of ($10,000) ten thousand dollars shall be binding unless it is in writing and signed by the Town Accountant whose signature shall indicate that funds are duly appropriated and available to pay for the contract, and by the Town Administrator, and by the majority of the Board of Selectmen or other Board or Committee duly authorized to have control over the appropriation.

Section 4. On all contracts with the town for labor, supplies, materials, machinery or equipment, the estimated cost of which exceeds twenty-five thousand dollars ($25,000), a bond of an approved surety company, or other security, in amount equal to the estimated contract price, conditioned upon full and faithful performance of the contract, shall be posted by the contracting party.

Section 5. No board, committee or officer shall make any contract on behalf of the town, the execution of which shall necessarily extend beyond one year from the date thereof, except as otherwise provided by law, unless specific authority to do so has been given by vote of the town.

Section 6. No contract shall be awarded for any work or service to be performed for the town, other than professional service or service performed by a person regularly employed by the town as part of the duties of such employment, and no purchase of apparatus, materials, supplies or equipment shall be made; the estimated cost of which in any case is twenty-five thousand dollars ($25,000) or more, unless competitive bids have been obtained therefore. Such bids shall be invited by invitation to prospective vendors, contractors or other qualified persons when considered necessary to insure fair competition, and by public advertisement by at least two insertions in a newspaper of local circulation, on two consecutive weeks, the last publication to be at least one week before the opening of said proposals. Such advertisements shall state the time and place where plans and specifications of proposed work or purchases of apparatus, supplies or materials may be had, and the time and place for opening the proposals in answer to said advertisement, and shall reserve the right of the town to reject any or all of such proposals, and to accept such proposal as may seem for the best interest of the town. All bids shall be

opened in public. No contract or preliminary plans and specifications therefore shall be split or divided for the purpose of evading the provisions of this section.

Section 7. All regular employees of the Town Departments, excluding the School Department, shall be entitled to personal leave not to exceed a maximum of three days per fiscal year and granted at the start of the fiscal year. All regular employees shall be entitled to sick leave not to exceed a maximum of 12 days in a fiscal year and accrued at a rate of one day per month. Sick time shall be cumulative to a total not to exceed 120 days and upon death or retirement an employee or his legal spouse shall be rebated at 50%. All regular employees are entitled to be paid for all legal holidays, not to exceed 12 days.

CHAPTER VIII: RECORDS AND REPORTS

Section 1. All officers, boards and committees of the town shall cause minutes of their doings and of their meetings, and also accounts, to be kept in suitable books. Said books shall regularly be kept in appropriate places, except when in the custody of an authorized official. Such books shall, unless otherwise provided by law be open to public inspection at any reasonable time, but shall remain, during such inspection at any time, under the supervision of the officer, board, or committee having custody thereof. In addition, all such officers, boards and committees shall file with the Town Clerk copies of all meeting minutes, whether in draft or final approved form, within 45 days following each meeting. Said 45 days shall not include Saturdays, Sundays or legal holidays.

Section 2. All officers, boards, standing committees and special committees of the town having the expenditure of town money shall report annually in writing, in such manner as to give the citizens a clear understanding of the objects and methods of such expenditures referring however to the report of the Town Treasurer for statements in detail of receipts and payments. These reports may contain such recommendations as may be deemed proper. Such reports shall be submitted to the selectmen for inclusion in the annual town report on or before the first day of February each year.

Section 3. The annual town report shall contain, in addition, to the reports of officers, boards and committees as hereinbefore provided, a detailed report of all moneys received and paid out of the town treasury in the financial year next preceding showing separate payments made from the proceeds of loans as capital outlays for permanent improvements; the report of tax receipts, payments and abatements; statement of all funds belonging to the town or held for the benefit of its inhabitants; a statement of the liabilities of the town in bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred, and the purpose thereof; a statement made to or from any appropriation; a record of the meetings of the town held since publication of the last annual town report; and such matters as the said report is required by law to contain, or as may be inserted by the selectmen under the discretion granted them by law.

Section 4. The selectmen or the town may direct that the assessors' valuation lists, the by-laws, and standing votes of the town, and the rules and regulations adopted by any officer, board or committee by printed either separately or as a part of the annual town report.

CHAPTER IX: LEGAL AFFAIRS

Section 1. The selectmen shall be agents of the town to institute, prosecute and defend any and all claims, actions and proceedings to which the town is a party, in which the interests of the town are or may be involved.

Section 2. The selectmen may, at their discretion, compromise or settle any claim or suit to which the town is a party, which does not require the payment by the town of an amount in excess of four thousand dollars ($4,000). No settlement or claim or suit obligating the town in an amount in excess of four thousand dollars ($4,000), shall be made, except as authorized by law, without the consent of the town meeting.

Section 3. The selectmen shall state in their annual report what actions have been brought against and on behalf of the town, what cases have been compromised or settled, and the current standing of all suits at law involving the town, or any of its interests.

Section 4. The selectmen shall annually in March, after final adjournment of the annual town meeting, appoint a person who is a member of the bar in good standing, and preferably domiciled in the town, to serve as town counsel for the term of one year from the first day of April following and until his successor is appointed and enters on the performance of his duties. They shall likewise fill any vacancy in said office for the unexpired term, and may employ special counsel whenever, in their judgment, necessity therefore arises.

Section 5. It shall be the duty of the town counsel to attend each town meeting, to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the town is a party, and the prosecution of action or proceedings by or on behalf of any town officer, board or committee as such; to conduct the defense of any action or proceedings brought against any town officer, board or committee as such, when the selectmen, having determined that any rights or interests of the town are or may be involved therein, shall so request; to conduct proceedings brought against the assessors before the Board of Tax Appeals; to assist in the prosecution of complaints for the Board of Tax Appeals; to assist in the prosecution of complaints for violation of any by-law of the town when requested so to do by the board or officer enforcing the same; to examine and report upon titles to all land to be acquired by the town; to prepare or approve contracts, bonds, deeds and other legal instruments in which the town is a party or in which any right or interest of the town is involved; to appear at any and all hearings on behalf of the town whenever his/her services may be required; and generally to advise and act for the town officers, boards and committees upon and in legal matters touching the duties of their respective offices. No contract, bond, deed or other legal instrument to which the town is a party or in which any right or interest of the town is involved shall be binding upon the town unless it is approved as to form by the town counsel in writing.

CHAPTER X: JUNK AND SECOND HAND DEALERS AND COLLECTORS

Section 1. The selectmen may license suitable persons to be collectors of or dealers in junk and keepers of shops for the purchase, sale or barter of junk, old metal, used cars, and other second hand articles, and may make such additional rules, regulations and restrictions as they may deem necessary, not inconsistent with the law or of these by-laws.

Section 2. Every keeper of such a shop shall put up and maintain in a suitable and conspicuous place in his shop, a sign having his name and occupation legibly inscribed thereon in large letters.

Section 3. Every shop for the sale, purchase or barter of junk, old metals, used cars or other second hand articles shall be closed between the hours of 8:00 p.m. and 7:00 a.m. and no keeper thereof and no junk collector shall purchase any of such articles between said hours.

Section 4. Such shops, and any place, vehicle or receptacle used for collecting and keeping of such articles and all articles of merchandise therein, may be examined at all times by the selectmen or by any police officer of the town, or by any other person authorized by the selectmen.

Section 5. Every keeper of a shop for the sale, purchase or barter of junk, old metals, used cars or other second hand articles, shall keep a book in which shall be written at the time of each purchase, a description thereof, the name, age and residence of the person from whom, and the day and hour when purchase was made; and such book shall at all times be open to inspection of the selectmen, or of any person by them or by law authorized to make such an inspection.

Section 6. No keeper of such a shop and no collector of junk shall directly or indirectly purchase or receive by way of barter or exchange from a minor any of the articles mentioned in Section 1 of this Chapter.

Section 7. No person or entity, corporate or otherwise, as owner or as one in control of premises, shall keep in the open any junk motor vehicle as defined in the following section, without being licensed to do so under this by-law.

Section 7A. For the purpose of this by-law, a junk motor vehicle shall be one which is worn out, cast off, or discarded and which is ready for dismantling or destruction, or which has been collected or stored for salvage, or for stripping in order to make use of parts thereof. Any parts from such a vehicle shall be considered junk motor vehicle under this by-law.

Section 7B. A license to keep no more than two (2) junk motor vehicles shall be requested from the Chief of Police who may issue said license under the terms and standards set forth in Section 7D of this by-law. The refusal to grant such license may be appealed to the Board of Selectmen within ten (10) days of such refusal.

Section 7C. The Board of Selectmen shall hold a public hearing upon such appeal, notice of which shall be given by publishing in a newspaper having general circulation in the Town, five (5) days at least before the date of the hearing. The cost of publishing shall be paid by the applicant.

Section 7D. The Board of Selectmen may grant a license for not more than one (1) year to keep such junk motor vehicles in the open after a public hearing has been held and said Board determines that the keeping of the same will not depreciate property values in the area, will not create a hazard to the public safety or will not become a public nuisance. Renewals of said licenses shall be granted only after the procedure set forth above is followed.

Section 7E. No provisions contained herein shall apply to premises for which a Class III license has been granted under Chapter 140, Section 58.

Section 7F. Any person or entity who violates this by-law shall be liable to a fine of $20.00 for each day said violation continues.

CHAPTER XI: USE OF PUBLIC WAYS AND PLACES

Section 1. No person or other entity shall dig up, alter or obstruct any portion of any Town road, or way or any way that the town is responsible for maintenance, without first obtaining a Road and/or Sidewalk Opening Permit.

No person or other entity shall construct a driveway or curb cut exiting onto a Town road or way or other way that the town is responsible for maintenance, without first obtaining a Driveway Permit.

Anyone who violated the provision of Chapter XI, Section 1 of the Town of Ashburnham's General Bylaw shall be punished by a fine not to exceed three hundred dollars ($300). Each day of violation shall constitute a separate offense.

a. Road and/or Sidewalk Opening Permits shall be issued by the Town Engineer or his/her designee, and shall be obtained before any obstructing, cutting, digging up, or altering in any Town road or way, or sidewalk and right of way or any way the Town maintains.

   The Town Engineer or his/her designee, shall adopt, and may, from time to time, amend reasonable design standards and forms for Road and/or Sidewalk Openings to include fees and surety requirements with the approval of the Board of Selectmen.

b. Driveway permits shall be issued by the Town Engineer or his/her designee, and shall be obtained prior to construction of any and every new driveway, curb cut or alteration of any existing driveway at its intersection with the boundary line of any public street or way or any way the town maintains, including sidewalks and any rights of way.

The Town Engineer or his/her designee with assistance from the Planning Board shall adopt, and may from time to time, amend reasonable design standards and forms for driveways to include fees and surety requirements, with the approval of the Board of Selectmen.

Section 2. Any person moving a building, structure or material or anything liable to obstruct passage along the highway, must apply for a permit to the selectmen, in the same manner as provided in Section 1, and no permit shall be granted by the selectmen if said moving will cause destruction or serious injury to any tree or shrub standing on the highway, or owned by an abutter without written consent of that abutter.

Section 3. Any person who secures a permit under regulations in Section 1 and 2 herein, shall execute a written agreement to save harmless the town against all damage, costs, or claims or by reason of any process, civil or criminal, on account of such excavation or obstruction and shall obey all requirements or limitations imposed by the selectmen, in respect to barriers and maintenance of lights, and the taking of other precautions for the safety of travelers on the highway.

Section 4. No person shall remove a barrier or light placed on any public way for the safety of travelers.

Section 5. No person shall place rubbish, garbage, bottles, cans, nails or any substance dangerous to persons or vehicles on any public way.

Section 6. Any person owning a building so situated and constructed that snow or ice on the roof or other portion thereof would fall or slide to, on or in any sidewalk, street, road, way or other public place, shall cause suitable snow guards or barriers to be attached or erected on such roof or other portion of such building or take other suitable measures to prevent the fall or sliding of snow or ice therefrom.

Section 7. No person shall shovel or throw snow or ice into that portion of any public way, which is open to travel. No person shall pump or direct water so that it runs in or on to any public way.

Section 8. Any person who owns a building, the sewage from which flows in any amount off his property and onto, across or underneath any sidewalk, public place or waterway, shall be required to take such action as is necessary to confine the sewage from his own building to his own property, unless he can secure a written agreement from the selectmen, the Highway Department, or from an adjacent landowner, to allow such sewage to enter such adjacent property.

Section 9. No person who owns or has the care of domestic animals of the grazing type shall permit such animals to graze on any highway common or other public place, or to go at large, without proper restraint.

Section 10. In order to provide a safe area for coasting, it shall be the duty of the selectmen, when practicable, to designate streets and times where and when coasting shall be permitted, and such streets shall be closed to vehicle traffic during the period coasting is permitted. Except as provided above, no person shall coast on any sidewalk or any public way of the town.

Section 11. No person may fire or discharge any firearm nor shoot a bow and arrow nor use a sling shot within 200 feet of a pave highway or public property, nor on any private property, except with the consent of the owner thereof, except that a shotgun may be discharged while hunting, if otherwise lawful, without the landowner's permission; provided however that this by-law shall not apply to the use of any weapons at any military exercise, or in the lawful defense of the person, family or property of any citizen, nor in any act of duty required or justified by law.

Section 12. No person, unless lawfully authorized, shall set up, take down, cut or destroy any tree, post, fence, edgestone, or any part thereof in or on any street, highway, square or other public place in town, or on any property owned or controlled by the town, without a permit from the selectmen.

Section 13. No person, unless required or permitted to do so, shall make any marks, letters or figures of any kind, or affix in any manner any sign, advertisement or placard, bill, picture or notice, or anything of like nature upon or against any wall, fence post, ledge, store, building or other structure, without permission of the owner, thereof, not upon any sidewalk, bridge, guide post, electric light or telephone pole or fence adjoining any public way, or upon any property belonging to the town, without permission of the selectmen.

Section 14. No person shall place, deposit or cause to flow in any well, stream, pond, lake or any other body of water in the town, any glass, metal or any article, material or substance, or liquid, liable to cause injury or pollute the same in any manner.

Section 15. No person shall deposit papers, circulars, or advertising matter of any kind in the public ways of the town, not distribute the same through the town in such manner as to create a disturbance or litter.

Section 16. No person or group of persons shall obstruct or impede the movement of traffic on any sidewalk, street or road, or prevent access to any public or private building adjacent to said sidewalk, street or road. Any person doing so and who refuses to move on the direction of a police officer shall be subject to a fine of not more than $25.00.

Section 17. The selectmen shall from time to time, as they may deem necessary, make such regulations and rules for parking vehicles and for traffic, as is essential for the public safety and convenience.

Section 18. The selectmen shall make rules and regulations for the operation of motor boats upon rivers, ponds and lakes of the town to the end that such motor boats shall not be operated in a manner which endangers the safety of the public, or is detrimental or injurious to the neighborhood, or to the value of property therein; and shall provide penalties for the breaking of such rules and regulations.

Section 19. No person shall drink any alcoholic beverages as defined in General Laws Chapter 138, Section 1, or have in his possession any open container thereof while in any public park or on any playground or athletic field, to which the public has a right of access or on any public way. All alcoholic beverages used in violation of this by-law shall be seized and held until final adjudication of the charge against the person summoned before the Court, at which time they shall be returned to the person lawfully entitled to their possession. Any violation of this by-law shall be punished by a fine of not more than fifty dollars.

Section 20. Anyone who violates the provisions of Chapter 40, Section 15C of the Massachusetts General Laws concerning the designation and improvement of scenic roads shall be punished by a fine not to exceed three hundred dollars ($300). Each day of violation shall constitute a separate offense.

CHAPTER XII: NEW CONSTRUCTION

Section 1. No person shall commence any new construction whose cost is estimated to exceed five hundred ($500) dollars in value in any calendar year until such proposed construction shall have been reported to the Board of Assessors on such form as they may prescribe.

Section 2. The term “new construction” shall be held to include any structural alteration or improvement of an existing structure, but shall not include maintenance work, plumbing, electrical or heating changes.

Section 3. Whoever violates the provisions of the foregoing section shall be subject to a fine not exceeding twenty ($20) dollars for each offense.

Section 4. The Town Administrator shall annually in March appoint an inspector of gas piping and gas appliances in buildings, who shall hold office for one year or until his successor is appointed, and whose compensation shall be fixed by said Board of Selectmen. Said inspector shall be a licensed gas fitter and shall enforce the rules and regulations adopted by the Board established under Section H. of Chapter Twenty-five of the General Laws.

CHAPTER XIII: PROTECTION OF WELLS

Section 1. Any owner of land on which is located, to his knowledge, an abandoned well or well in use, shall either provide a covering for such well capable of sustaining a weight of three hundred pounds or fill the same to the level of the ground.

Section 2. The penalty for violation of the foregoing by-law shall be a fine of not less than one hundred ($100) dollars nor more than five hundred ($500) dollars.

SOIL REMOVAL

Section 1. Except as hereinafter provided, no person shall remove any soil, loam, sand or gravel from any land not in public use without a written permit from the Board of Selectmen granted after a public hearing, notice of the time and place of which shall have been given by publication in some newspaper having a circulation within the town at least seven days prior to the date thereof.

This by-law shall not apply to the removal of any of said substances from a pit in operation at the time this by-law becomes effective unless such use shall thereafter be discontinued for a period of more than one year, or to removal incidental to the construction or alteration of buildings on said land by planting, landscaping or grading or in connection with the construction of a public or private way on said land.

The Board will include in a permit any reasonable conditions, including provisions as to the distance from highways where removal operations shall be allowed, the method of removal, the re-establishment of ground levels and grades, the restoration of top soil and the planting of the area to suitable cover.

The Board will require a bond or other security to insure compliance with such conditions as it may impose, and may, after public hearing and proof of violation of the conditions of a permit, cancel, revoke or amend the same.

The penalty for any violation of any provision of this by-law shall be for the first offense $50, for the second offense $100 and for each subsequent offense $200.

CHAPTER XIV: PAID VACATIONS FOR TOWN EMPLOYEES

Section 1. All regular full time employees of the Town and regular part time (20 hours or more per week) of the town on a prorated basis shall be entitled to a paid vacation as follows:

After completion of

1 year of continuous service	2 weeks vacation
5 years of continuous service	3 weeks vacation
10 years of continuous service	4 weeks vacation

CHAPTER XV: COUNCIL ON AGING

Section I – Name

a. The name of this organization shall be the Ashburnham Council on Aging, hereafter referred to as the Council.

b. The address of the Council shall be P.O. Box 292, Ashburnham, MA 01430. All mail shall be delivered to this address unless another shall be specified by the officers of the Council.

Section II – Purpose

The purpose of the Council shall be to pursue the following objectives:

a. To identify the total needs of the elderly population of the community;

b. To educate the community and enlist support and participation of all citizens about their needs;

c. To design, advocate, and/or implement services to fill these needs;

d. To cooperate with the Massachusetts Executive Office of Elder Affairs and the Central Massachusetts Area Agency on Aging, and to be cognizant of State and Federal legislation and programs regarding elders.

Section III – Membership

a. The Council shall consist of a minimum of seven (7) voting members and a maximum of eleven (11). Other interested persons may attend the meetings and express their opinions but shall not have voting privileges.

b. Membership on the Council shall be open to all Ashburnham citizens, provided that at least fifty-one percent shall be elders (persons sixty years of age or older).

c. Prospective members shall be nominated by a majority of the existing members of the Council, and no person so nominated is to serve on the Council until appointed by the Town Administrator.

d. Such persons shall be appointed on a rotating basis, so that no less than three (3) members shall be appointed annually, each for a period of three years.

e. All members shall be sworn in by the town clerk within seven days of their appointment.

f. After a three-year term, former voting members may be reappointed.

Section IV – Meetings

a. Regular meetings of the Council shall be held once per month. Should a postponement become necessary, due for example inclement weather or a legal holiday, each member shall be notified.

b. Special meetings of the Council may be called by the Chair, or by the request of three members. Due notice must be given to each member at least three (3) days prior to the scheduled special meeting.

c. The Annual meeting of the Council shall be held on the second Monday in May. Notice of the annual meeting and the time and place where it is to be held shall be sent to each member not less than ten days before the meeting. Notices informing the community of the annual meeting shall also be made.

d. Quorum: At all meetings of the Council, the presence of a simple majority of the total membership shall constitute a quorum. Votes shall be cast only by members in attendance.

e. Conduct of Meetings: All meetings shall be conducted in accordance with Robert's Rules of Order and Open Meeting Law.

f. Resignation: In the event that a member wishes to resign from the Council, he/she shall notify the Council and the Town Administrator in writing.

g. Attendance: Regular attendance is expected of all members. If a member is absent for three (3) consecutive meetings, except for reasons of health or extenuating circumstances duly reported to the Chair in advance of Council meetings, the Council may request the resignation of that member. Six absences during any calendar year constitute an automatic dismissal from the Council.

Section V – Officers

Part 1

a. The officers of the Council shall consist of a Chair, Vice Chair, Secretary and Treasurer.

b. The officers shall be elected at the annual meeting of the Council, and shall take office upon election.

c. Vacancies in offices shall be filled by Robert's Rules.

Part 2 – Chair

The Chair shall be the chief executive officer of the Council and subject to the direction of the Council shall have charge of the business affairs and property of the Council. He/she shall prepare an agenda, preside at all meetings of the members, appoint all committees, be an ex-officio member of all committees.

Part 3 – Vice Chair

During the absence or disability of the Chair, the Vice Chair shall exercise all the functions of the Chair, and when so acting, shall have all the powers and be subject to all restrictions of the Chair.

Part 4 – Secretary

The Secretary shall:

a. Record all the proceedings of the meetings of Council.

b. Cause all notices to be given in accordance with the by-laws and as otherwise may be required.

c. Perform all duties relevant to the office of Secretary.

d. Forward the Annual Report of the Council to the Town Administrator.

Part 5 – Treasurer

The Treasurer shall:

a. Keep all books of accounts of all the business and financial transactions of the Council and submit vouchers to the Town Accountant for payment of bills.

b. Render to the Chair and the members a monthly statement of the financial condition of the Council.

c. Assist in preparing an annual budget for submission to the Council for approval and to the Town Administrator.

Part 6 – Staff

a. The Council shall have the power and authority to appoint or employ any clerical or other assistance it may require in the discharge of its duties.

b. No individual member of the Council shall make requests of the staff or assign duties.

CHAPTER XVI: MUNICIPAL DOG CONTROL LAW

Section 1 Licensing of Dogs: The owner or keeper of any dog shall license such animals in accordance with the provisions of General Laws, Chapter 140, Section 137-139 inclusive except that fees for such licenses shall be as follows:

For a Male Dog:	$11.00
For a Female Dog:	$11.00
For a Female Dog which shall have been spayed:	$ 7.00

For dog licenses that are not renewed by June 1st, the above fee schedule will be increased by ten dollars ($10.00).

Section 2. Definition of Terms: As used in this by-law, unless the context indicated otherwise:

a. "Dogs" shall mean all animals of the canine species, both male and female.

b. "Owner" shall mean any person or persons, firm, association or corporation owning, keeping or harboring a dog as herein defined.

c. "Keeper" shall mean any person, corporation or society, other than the owner, harboring or having in his possession any dog.

d. "Run at Large" shall mean free to wander on public or private ways at will, or on the property of another.

Section 3. Permitting a Dog to Run at Large: No owner or keeper of a dog shall permit such dog, whether licensed or unlicensed, to run at large within the Town of Ashburnham, except that a dog may, for the purpose of sporting events, (such as hunting, field trials or training purposes) or for agricultural assistance, or while working as a canine guard of mercantile, commercial or industrial establishment, be exempt from the restraining order during such period of time as the dog is actually engaged in the event, sport, agricultural function, or guard work.

(3A) Dogs may be taken from the owner's premises provided that such dogs are on a leash.

Section 4. Impounding: It shall be the duty of the Dog Officer, duly appointed, to apprehend any dog found unrestrained and running at large, and to impound such dog in a suitable place or to order the owner or keeper thereof to restrain said dog.

Section 5. Notice to Owner and Release: If such dog so impounded has upon it the name and owner thereof, or if the name of said owner is otherwise known, then the Dog Officer shall immediately notify the owner and if the owner is not known, then no notice shall be necessary. The owner of any dog so impounded may reclaim such dog upon payment of the sum

of ten dollars ($10.00) for the first reclaiming, for each twenty-four hour period or any part thereof, that the dog is held thereafter, the sum of twenty-five dollars ($25.00) for the second and subsequent reclaimings for each twenty-four period or any part thereof that the dog is held thereafter, however, if the dog is not licensed that before release to any person, a license as required by the Town of Ashburnham be secured.

Section 6. Disposition of Funds: The sums collected pursuant to the provisions of this by-law shall be accounted for and paid to the Town Treasurer, however, under the provisions of the State Law, the Dog Officer shall be entitled to all fees paid to him for the care of impounded dogs by the owners thereof.

Section 7. Disposition of Unclaimed Dogs: Any dog which has been impounded and has not been redeemed by the owner within ten (10) days shall be disposed of as provided by Section 152, Chapter 140 of the General Laws of the Commonwealth of Massachusetts and any amendment thereto.

Section 8. Penalty: Any owner found in violation of any of the provisions of this by-law shall be subject to a fine in accordance with the following schedule:

1st Offense:	Twenty-five ($25.00) Dollars
2nd Offense in any 12 month period:	Fifty ($50.00) Dollars
3rd Offense in any 12 month period:	Seventy-five ($75.00) Dollars

Further, if the owner or keeper of a dog be a minor, the parent or guardian of such minor shall be held liable for any violation of this by-law.

Section 9. Enforcement: The Dog Officer or Officers duly appointed shall enforce the provisions of this by-law relating to dogs, and shall attend to all complaints or other matters pertaining to dogs in the Town of Ashburnham.

Section 10: Alternative Procedures under General Laws, Chapter 140, Section 173A.

(10A) Notwithstanding any provisions of the General Laws to the contrary, any Dog Officer who takes cognizance of a violation of

(A) This by-law

(B) Failure to license dogs pursuant to General Laws, Chapter 140, Section 137, failure to acquire kennel license pursuant to General Laws, Chapter 140, Section 137A

(C) Failure to vaccinate against rabies pursuant to General Laws, Chapter 140, Section 145B.

May issue or mail a Notice of Complaint of Violation of Municipal Dog Control Law to the owner or keeper of such dog or dogs, and if the owner or keeper of such dog or dogs is a minor, the parent or guardian of such minor shall be liable for any violation of the by-law.

(10B) Any owner or keeper found in violation of the above mentioned procedures shall be subject to a fine of $25.00. If the owner or keeper of a dog or dogs is a minor, the parent or guardian of such minor shall be held liable for any violation of this by-law.

(10C) The procedure set forth above shall also include the provisions of paragraphs 2-4 of General Laws, Chapter 140, Section 173A as amended.

Section 11: Effective Date: This by-law shall take effect upon its passage by the Town Meeting and approval by the Attorney General's office.

CHAPTER XVII: REVOCATION OR SUSPENSION OF LOCAL LICENSES

a. The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually furnish to each department, board, commission, or division, hereinafter referred to as the Licensing Authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the Party, that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve month period, and that such Party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.

b. The Licensing Authority may deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing authority from the Tax Collector; provided, however, that written notice is given to the Party and the Tax Collector, as required by applicable provisions of law, and the Party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation, or suspension of said license or permit to any Party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation, or suspension. Any findings made by the Licensing Authority with respect to such license denial, revocation, or suspension shall be made only for the purpose of such proceeding and shall be made only for the purpose of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation, or suspension. Any license or permit denied, suspended, or revoked under this section shall not be reissued or renewed until the Licensing Authority receives a certificate issued by the Tax Collector that the Party is in good standing with respect to any and all local taxes, fees, assessments, betterments, or other municipal charges payable to the municipality as of the date of issuance of said certificate.

c. Any Party shall be given an opportunity to enter into payment agreement, thereby allowing the Licensing Authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.

d. The Board of Selectmen may waive such denial, suspension, or revocation if it finds there is not direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight, in the business or activity conducted in or on said property.

e. This section shall not apply to the following licenses and permits granted under the General Laws of the Commonwealth of Massachusetts; open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of chapter eighty-five; sales of articles for charitable purposes; section thirty-three of chapter one hundred and one; children work permits, section sixty-nine of chapter one hundred and forty nine, clubs, associations dispensing food or beverage license, section twenty-one E of chapter one hundred and forty; dog licenses, section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping license, section twelve of chapter one hundred and thirty-one; marriage licenses, section twenty-eight of chapter two hundred and seven; and theatrical events, public exhibition permits, section one hundred and eighty-one of chapter one hundred and forty.

CHAPTER XVIII: DEMOLITION DELAY

DEFINITIONS:

1. Commission – Ashburnham Historical Commission

2. Building – any structure built for the support, shelter or enclosure of persons, animals, goods or property of any kind.

3. Demolition – any act of pulling down, destroying, removing or razing a building or any portion thereof, or commencing the work of total or substantial destruction with the intent of completing the same.

4. Demolition Permit – the permit issued by the Building Inspector as required by the State Building Code for the demolition, partial demolition or removal of a building or structure.

5. Significant Building – any building or portion hereof which:

    a. in whole or in part was built fifty (50) or more years prior to the date of the application for demolition permit or is of unknown age: or

    b. is listed on, or is within an area listed on, the National Register of Historic Places, or is the subject of a pending application on said National Register; or

    c. is included in the Historical Survey and Inventory prepared for the Town by Commonwealth Collaborative or the Ashburnham Historical Commission including those buildings listed for which complete surveys may be pending; or

    d. is importantly associated with one or more historic persons or events, or with the broad architectural, political, economic or social history of the Town or the Commonwealth; or

    e. is historically or architecturally significant (in terms of period, style, method of building construction or association with a famous architect or builder either by itself or in the context of a group of buildings.

6. Preferably-Preserved – Any historically significant building or structure which, because of the important contribution made by such structure to the Town's historical and/or architectural resources, is in the public's interest to preserve, rehabilitate or restore.

PROCEDURE:

1. The Building Inspector shall forward a copy of each demolition permit application for a building or structure to the Ashburnham Historical Commission within seven (7) days of the filing of such application. No demolition permit shall be issued at that time.

2. Within fourteen (14) days from its receipt of a demolition permit application the Commission shall determine whether the building is historically significant. If the Commission decides that the building or structure is not historically significant, the Commission shall so notify the Building Inspector in writing and the Building Inspector may issue the permit. If the Commission determines that the building or structure is historically significant, the Commission shall notify the Building Inspector in writing. The demolition plan review must be made prior to the issuance of any demolition permit. If the Commission fails to notify the Building Inspector of its determination within fourteen (14) days of its receipt of the application, then the building or structure shall be deemed not historically significant and the Building Inspector may issue the permit.

3. If the determination is positive and a demolition plan review is deemed necessary, the Commission shall fix a reasonable time for public hearing on the application and shall give public notice thereof by publishing notice of the time, place and purpose of the

hearing and also within seven (7) days of said hearing, mail a copy of said notice to the applicant, to the owners of all property deemed by the Commission to be affected thereby as they appear on the most recent local tax list, and to such other persons as the Commission shall deem entitled to notice. The applicant for the permit shall be entitled to make a presentation to the Commission of said hearing if so desired.

4. If, after such hearing, the Commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of the Town, the Commission shall so notify the Building Inspector within ten (10) days of such determination. Upon receipt of such notification, or after the expiration of fifteen (15) days from the date of the closing of hearing without receiving notification from the Commission, the Building Inspector may, subject to the requirements of the State Building Code and any other applicable laws, rules, and regulations, issue the demolition permit.

5. If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building. The Commission shall notify Massachusetts Historical Commission, the Ashburnham Planning Board and other interested parties requesting assistance in preservation funding and adaptive reuses.

6. Upon determination by the Commission that the significant building which is the subject of the application for a demolition permit is a preferable-preserved significant building, the Commission shall so advise the applicant and the Building Inspector and no demolition permit is a preferable-preserved significant building, the Commission shall so advise the applicant and the Building Inspector and no demolition permit may be issued until at least six (6) months after the date of such determination by the Commission.

7. Notwithstanding the preceding sentence. The Building Inspector may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advice from the Commission to the affect that either:

    a. The Commission is satisfied that there is no reasonable likelihood that either the owner or some other person or group is willing to purchase, preserve, rehabilitate or restore such building, or

    b. The Commission is satisfied that for a least six (6) months the owner has made continuing, bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore subject building, and that such efforts have been unsuccessful.

EMERGENCY DEMOLITION:

Nothing in this ordinance shall restrict the Building Inspector from immediately ordering the demolition of any building in the event of an imminent danger to the safety of the public.

ENFORCEMENT AND REMEDIES:

1. The Commission and Building Inspector are both authorized to institute any and all proceedings in law or equity as they deem necessary and appropriate to obtain compliance with the requirements of this by-law, or to prevent violation thereof.
2. No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this by-law for a period of two (2) years after the date of completion of such demolition. As used herein, "premises" refers to the parcel of land upon which the demolished building was located and all adjoining parcels of land under common ownership or control.

SEVERABILITY:

If any section, paragraph or part of this bylaw be for any reason declared invalid or unconstitutional by any court, every section, paragraph or part shall continue in full-force and effect.

REVIEW AND APPEAL:

Any person aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the Town Clerk for a review by the Zoning Board of Appeals.

The finding of the Zoning Board of Appeals shall be filed with the Town Clerk within forty-five (45) days after the request and shall be binding on the applicant and the Commission.

CHAPTER XIX: RECYCLING

Purpose: It is the purpose and intent of this by-law to require that recycling in the Town of Ashburnham be conducted in the same manner and include the materials and method of disposition as set forth by the Commonwealth in its regulations promulgated by the Department of Environmental Protection (DEP) in order to insure orderly and organized recycling in the Town in accordance with State Law.

Section 1. All residents of the Town shall recycle materials as determined by DEP and set forth in 310 Code of Massachusetts Regulations 19.17, as amended from time to time.

Section 2. All commercial haulers providing residential collection of solid waste within the Town of Ashburnham shall recycle materials as determined by DEP and set forth in 310 Code of Massachusetts Regulations 19.17, as amended from time to time. Said commercial haulers shall be subject to all inspections by appropriate town officials as may from time to time by ordered, in writing, by the Board of Selectmen.

CHAPTER XX: RULES AND REGULATIONS FOR MUNICIPAL SEWER COLLECTION DISPOSAL SYSTEM

TOWN OF ASHBURNHAM MASSACHUSETTS
By Vote January 2, 1996
By: Board of Water/Sewer Commission
(Passed by Attorney General 7/21/97)

RULES, REGULATIONS AND DEFINITIONS COVERING THE USE OF PUBLIC AND PRIVATE SEWERS AND DRAINS, THE INSTALLATION AND CONNECTION OF BUILDING SEWERS AND THE DISCHARGE OF WATERS AND WASTES INTO THE PUBLIC SEWER SYSTEM(S) AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF IN THE TOWN OF ASHBURNHAM AS ESTABLISHED BY THE WATER/SEWER COMMISSION OF THE TOWN OF ASHBURNHAM.

SECTION 1 – GENERAL PROVISIONS

1.1 Purpose and Policy

These rules and regulations set forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the Town of Ashburnham and enables the Town to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code 1251 et seq), and the General Pretreatment Regulations (40 Code of Federal Regulations Part 403). The objectives of these rules and regulations are:

A. To prevent the introduction of pollutants into the POTW that will interfere with its operation;

B. To prevent the introduction of pollutants into the POTW that will pass through the POTW, inadequately treated, into the receiving waters, or otherwise be incompatible with the POTW;

C. To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

D. To promote reuse and recycling of industrial wastewater and sludge from the POTW;

E. To enable the City of Gardner to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, sludge use and disposal requirements, and any other Federal and State laws to which the POTW is subject.

These rules and regulations shall apply to all users of the POTW. The rules and regulations authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires user reporting.

1.2 Administration

Except as otherwise provided herein, the Board of Water/Sewer Commissioners shall administer, implement, and enforce the provisions of these rules and regulations. Any powers granted to or duties imposed upon the Board may be delegated by the Board to other Town employees or officers.

1.3 Abbreviations

The following abbreviations shall have the designated meanings:

A.S.T.M.	American Society for Testing and Materials
BOD	Biochemical Oxygen Demand
CFR	Code of Federal Regulations
COD	Chemical Oxygen Demand
EPA	U. S. Environmental Protection Agency
gpd	gallons per day
mg/1	milligrams per liter
NPDES	National Pollutant Discharge Elimination System
POTW	Publicly Owned Treatment Works
RCRA	Resource Conservation and Recovery Act
SIC	Standard Industrial Classification
TSS	Total Suspended Solids
U.S.C.	United States Code
W.P.C.F.	Water Pollution Control Federation

1.4 Definitions

Unless a provision explicitly states otherwise, the following terms and phrases, as used in these rules and regulations, shall have the meanings hereinafter designated.

A. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

B. Approved Authority. The Region 1 U.S. Environmental Protection Agency Administrator or a designee.

C. Authorized Representative of the User.
   1. If the user is a corporation:
      a. The president, secretary, treasurer, or a vice-president of the corporation a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
      b. The manager of one or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five (25) million dollars (in second-quarter 1980 dollars), if authority to sign documents has

been assigned or delegated to the manager in accordance with corporate procedures.

2. If the user is a partnership or sole proprietorship: a general partner or proprietor, respectively.

3. If the user is a Federal, State or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or a designee.

4. The individuals described in paragraphs 1 through 3 above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Town.

D. Biochemical Oxygen Demand. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 centigrade, usually expressed as a concentration (e.g., mg/1).

E. Building Drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five (5) feet outside the inner face of the building wall.

F. Building Sewer. The extension from the building drain or other non-public sewers from residential, commercial and industrial areas to the public sewer or other place of disposal.

G. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (o) of the Act (33 U.S.C. 1317) which apply to a specific category of users and which appear in 40 CFR Chapter 1, Subchapter N, Parts 405-471.

H. Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

I. Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

J. Director Board of Water/Sewer Commissioners. Town of Ashburnham – or their authorized representative(s)/Director.

K. Easement. An acquired right for the specific use of land owned by others.

L. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director or other duly authorized official of said agency.

M. Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication of the EPA proposed categorical pretreatment standards, which will be applicable to such source, if the standard is thereafter promulgated in accordance with Section 307 of the Act.

N. Garbage. The solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage and sale of produce.

O. Grab Sample. A sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

P. Indirect Discharge of Discharge. The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act.

Q. Industrial Wastes. The wastewater from industrial processes, trade, or business as distinct from domestic or sanitary wastes.

R. Instantaneous Maximum Allowable Discharge Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

S. Interference. A discharge, which alone or in conjunction with a discharge of discharges from other sources, inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, is a cause of a violation of the City of Gardner's NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or more stringent State or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

T. Medical Waste. Isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

U. New Source.

1. Any building, structure, facility, or installation which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act. The construction of which there is (or may be) a discharge of pollutants, the construction will be applicable to such source if such standards are thereafter promulgated in accordance with the section, provided that:

    a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
    b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
    c. The production or wastewater generating processes of the building, structure, facility, or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (o) above but otherwise alters, replaces, or adds to the existing process or production equipment.

3. Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    a. Begun, or caused to begin, as part of a continuous on-site construction program.
        i. Any placement, assembly, or installation of facilities or equipment; or
        ii. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    b. Entered into a binding contractual obligation for the purchase of facilities or equipment, which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

V. Noncontact Cooling Water. Water used for cooling, which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

W. Pass Through. A discharge which exits the POTW into waters within the boundaries of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the City's NPDES permit, including an increase in the magnitude or duration of a violation.

X. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.

Y. pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

Z. Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD toxicity, or odor).

AA. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical, or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

BB. Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment is imposed on a user, other than a pretreatment standard.

CC. Pretreatment Standards or Standards. Pretreatment standards shall mean prohibitive discharge standards, categorical pretreatment standards, and local limits.

DD. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in Section 3.1 of this ordinance.

EE. Publicly Owned Treatment Works or POTW. A "treatment works" as defined by Section 212 of the Act (33 U.S.C. 1292) which is owned by the Town. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances, which convey wastewater to a treatment plant.

FF. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

GG. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

HH. Significant Industrial User.

1. A user subject to categorical pretreatment standards; or
2. A user that:
    a. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
    b. Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic organic capacity of the POTW treatment plant; or
    c. Is designated as such by the Town on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
3. Upon finding that a user meeting the criteria in subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

II. Slug Load or Load. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards in Section 3.1 of these Rules & Regulations.

JJ. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

KK. Storm Water. Any flow occurring during or following any form of natural precipitation and resulting from such precipitation, including snowmelt.

LL. Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

MM. Town. Means Town of Ashburnham.

NN. User or Industrial User. A source of indirect discharge.

OO. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

PP. Wastewater Treatment Plant or Treatment Plant. That portion of the POTW designed to provide treatment of municipal sewage and industrial waste.

QQ. City. Being City of Gardner or their authorized agent.

SECTION 2. – BUILDING SEWERS AND CONNECTIONS

2.1 No unauthorized person shall uncover, make any connections with or opening into, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Director. Any person, except significant industrial users, proposing a new discharge into the system shall notify the Director in writing at least ten (10) working days prior to the proposed change or connection.

2.2 There shall be three (3) classes of building sewer permits: (a) for residential, (b) for commercial service not producing industrial waste and (c) for service to establishments producing industrial wastes. In each case, the owner or an agent shall make application on a form furnished by the Town. The application shall be supplemented by a plan, drawn to scale (not less than 1” = 40”), showing the building location (proposed or existing), the location of the proposed connection to the sewer, proposed or existing sill elevation of the building to be connected, roadway or right-of-way centerline elevation, invert of sewer main at the point of connection, rim and invert elevations of any sewer manholes, location of connection from nearest manhole. If a pump is required, the applicant shall submit a plan, drawn to scale (not less than 1” = 40”), showing the location of the pump and force main. Additional information may be required if it is considered pertinent in the judgment of the Director. A permit and inspection fee shall be made payable to the Ashburnham Water/Sewer Department at the time application is filed.

2.3 All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the Town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

2.4 A separate and independent building sewer shall be provided for every building, except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, or where it is not able to be subdivided, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

2.5 Reserve for Ashburnham Requirements.

2.6 The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall conform to the requirements of all applicable building and plumbing codes or other applicable rules and regulations of the Town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.

2.7 Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor in all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by a method approved by the Director and discharged to the building sewer. A minimum of four (4) feet of cover shall be required for all building sewers, unless otherwise authorized by the Director.

2.8 The connection of the building sewer shall conform to the requirements of all applicable building and plumbing codes or other applicable rules and regulations of the Town. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials shall be approved by the Director in writing before installation.

2.9 The applicant for the building sewer permit shall notify the Director twenty-four (24) hours prior to installation and when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Director or his representative. Failure to give proper notice will require the building sewer to be re-excavated for inspection purposes. The cost for re-excavation shall be borne by the owner.

2.10 All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Director. All applicable permits must be obtained prior to excavation. A street opening permit shall be obtained from the Highway Superintendent prior to any work done in the public way. The Highway Superintendent reserves the right to deny street openings from November 1 to April 15, if adverse weather conditions exist.

2.11 Relation of Water Mains and Sewer Mains

A. Sewer mains or services shall be laid at least ten (10) feet horizontally, from any existing or proposed water mains or services.

B. Should conditions prevent a lateral separation of ten (10) feet, a sewer main or service may be laid closer than ten (10) feet to a water main or service if, for absolutely essential reasons, it is not possible to achieve such separation. The sewer may be located not less than three (3) feet horizontally from a water main or service, provided there is at least eighteen (18) inches below the bottom of the water main or service and the top of the sewer with the sewer below the water main or service.

2.12 A. In the case of a sewer extension on or to a new development, the owner shall install the sewer main in accordance with the rules pertaining to the subdivision of land and the laying-out of Public Ways as required by the Planning Board.

B. Prior to any work, the owner shall file a plotted plan and profile prepared by a licensed professional engineer with the Director.

C. The owner shall furnish the Director with a complete set of reproducible as-built plans detailing the location of wyes with measurements and elevations.

D. Service location as-built drawings shall be submitted prior to the issuance of an occupancy permit.

SECTION 3 – GENERAL SEWER USE REQUIREMENTS

3.1 Prohibited Discharge Standards

A. General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other nation, state, or local pretreatment standards or requirements.

B. Specific Prohibitions. No user shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

1) Pollutants which create a fire or explosive hazard in the POTW, including but not limited to, waste streams with a closed-cup flashpoint of less than 140F (60 c) using the test methods specified in 40 CFR 261.21.
2) Wastewater having a pH less than 5.0, or otherwise causing corrosive structural damage to the POTW or equipment;
3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than ½ inch or 1.27 centimeters in any dimension;
4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
5) Wastewater having a temperature greater than 150F (65 c), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 103F (40 c);
6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

8) Trucked or hauled pollutants;
9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, or a hazard to life, or to prevent entry into the sewers for maintenance or repair;
10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit;
11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations;
12) Storm water, surface water, groundwater, artisan well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, de-ionized water, noncontact cooling water, and unpolluted wastewater, unless specifically authorized in writing by the City of Gardner DPW prior to any discharge;
13) Sludge, screenings, or other residues from the pretreatment of industrial wastes;
14) Medical wastes, except as specifically authorized by the Director in a wastewater discharge permit;
15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test;
16) Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW; or
17) Fats, oils, or greases, containing substances which may solidify or become viscous at temperatures between zero (0) degrees c (32 F) and sixty-five (65) degrees c (150 F).

Pollutants, substances, or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

3.2 National Categorical Pretreatment Standards

The national categorical pretreatment standards found at 40 CFR Chapter 1, Subchapter N, Parts 405-471 are hereby incorporated.

A. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

B. When wastewater subject to a categorical pretreatment standard is mixed prior to treatment with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 402.6(e).
C. A user may obtain a variance from a categorical pretreatment standard if the user can prove to the satisfaction of the Director and the Approval Authority pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its

discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

D. A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

3.3 Local Limits

The following pollutant limits are established to protect against pass through and interference. No person shall, unless otherwise approved by the EPA, discharge wastewater containing concentrations in excess of the following:

Parameter	Limit (mg/1)
Aluminum	11.323
Arsenic	3.084
Cadmium	0.028
Copper	0.300
Cyanide	1.046
Lead	0.020
Mercury	0.002
Nickel	3.278
Silver	0.025
Zinc	0.553

3.4 Town's Right of Revision

The Town reserves the right to establish, by Rules and Regulations or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

3.5 Dilution

No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on users, which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

SECTION 4 – PRETREATMENT OF WASTEWATER

4.1 Pretreatment Facilities

Users shall provide wastewater treatment as necessary to comply with these Rules and Regulations and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Section 3.1 of these Rules and Regulations within the time limitations specified by the EPA, the state, or the Director, whichever is

more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed written plans describing such facilities and operating procedures shall be submitted to the Director for review and acceptable before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the Director under the provisions of these Rules and Regulations.

4.2 Additional Pretreatment Facilities

A. Whenever he deems it necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of these Rules and Regulations.

B. The Director may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

C. Grease, oil and sand interceptors shall be provided when in the opinion of the Director, they are necessary for the proper handling of wastewater excessive amount of grease and oil, or sand, except that such interceptors may not be required for residential users. All interception units shall be of type and capacity approved in writing by the Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

4.3 Accidental Discharge/Slug Control Plans

At least once every two (2) years, the Director shall evaluate whether each significant industrial used needs an accidental discharge/slug control plan. The Director may require any user to develop, submit for approval, and implement such plan. Alternatively, the Director may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

A. Description of discharge practices, including non-routine batch discharges;

B. Description of stored chemicals;

C. Procedures for immediately notifying the Director of any accidental or slug discharge as required by Section 7.6 of these Rules and Regulations; and

D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

4.4 Hauled Wastewater

Per Intermunicipal Agreement, June 22, 1995. No septic waste from Ashburnham will be accepted by the City of Gardner.

SECTION 5 – WASTEWATER DISCHARGE PERMIT APPLICATION

5.1 Wastewater Analysis

If requested by the Director, a user shall submit information on the nature and characteristics of its wastewater within fifteen (15) days of the request. The Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

5.2 Wastewater Discharge Permit Requirement

A. No significant industrial user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director, except that a significant industrial user that has filed a timely application pursuant to Section 5.3 of these Rules and Regulations may continue to discharge for the time period specified therein.

B. The Director may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of these Rules and Regulations.

D. Any violations of the terms and conditions of a wastewater discharge permit shall be deemed a violation of these Rules and Regulations and subjects the wastewater discharge permit holder to the sanctions set out in Sections 10 through 12 of these Rules and Regulations. Obtaining a wastewater discharge permit does not relieve a permit holder of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state and local law.

5.3 Reserved

5.4 Wastewater Discharge Permitting: New Connections

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging into the POTW shall obtain such permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit,

in accordance with Section 5.5 of these Rules and Regulations, shall be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

5.5 Wastewater Discharge Permit Application Contents

All users required to have a wastewater discharge permit shall submit a permit application to the Director. The Director shall require all users to submit as part of an application the following information:

A. All information required by Section 7.1(b) of these Rules and Regulations;

B. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;

C. Number and type of employees, hours of operation, and proposed or actual hours of operation;

D. Each product produced by the user, identifying the type, amount, process or processes, and rate of production;

E. Type and amount of raw materials processed (average and maximum per day);

F. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances, by size, location and elevation, and all points of discharge;

G. Time and duration of discharges;

H. Any other information as may be deemed necessary by the Director to evaluate the wastewater discharge permit application.

The Director shall not process incomplete or inaccurate applications and shall return said applications to the user for revision.

5.6 Application Signatories and Certification

All wastewater discharge permit applications and user reports shall be signed by an authorized representative of the user and contain the following certification statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

5.7 Wastewater Discharge Permit Decisions

The Director shall evaluate the data furnished by the user and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the Director shall determine whether or not to issue a wastewater discharge permit. If the Director fails to make a determination within this time period, the application shall be deemed denied.

SECTION 6 – WASTEWATER DISCHARGE PERMIT ISSUANCE PROCESS

6.1 Wastewater Discharge Permit Duration

A wastewater discharge permit shall be issued for a specified time period, not to exceed five (5) years. Each wastewater discharge permit shall state the specific date upon which it shall expire.

6.2 Wastewater Discharge Permit Contents

Wastewater discharge permits shall include, but are not limited to, such conditions as are reasonably deemed necessary by the Director to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

A. Wastewater discharge permits shall, at a minimum contain:
   1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five (5) years;
   2) A statement that the wastewater discharge permit is non-transferable without prior approval by the Town in accordance with Section 6.5 of these Rules and Regulations, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;
   3) Effluent limits based on applicable pretreatment standards;
   4) Self-monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, or local law; and
   5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state and local law.

B. Wastewater discharge permits may contain, but need not be limited to, the following conditions:

1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;
4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
5) The unit charge or schedule of industrial user charges and fees for the management of the wastewater discharged to the POTW;
6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
7) A statement that compliance with the wastewater discharge permit does not relieve the permit holder of responsibility for compliance with all applicable federal and state and local pre-treatment standards, including those which become effective during the term of the wastewater discharge permit, and
8) Other conditions as deemed appropriate by the Director to ensure compliance with these Rules and Regulations, and local, state and federal laws, rules, and regulations.

6.3 Wastewater Discharge Permit Appeals

Any aggrieved person, including the user, may petition the Director to reconsider the terms of a wastewater discharge permit within thirty (30) days of its issuance.

A. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. A timely petition for review shall be a prerequisite to an aggrieved person's appeal to a court of competent jurisdiction.

B. In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge.

C. The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

D. If the Director fails to allow the request within fifteen (15) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit shall be considered final administrative action for purposes of judicial review.

E. Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the Superior Court

for the Commonwealth of Massachusetts within thirty (30) days after notice of any action or refusal to act.

6.4 Wastewater Discharge Permit Modification

The Director may modify a wastewater discharge permit upon his own initiative or, upon the petition of an aggrieved person, within thirty (30) days of issuing of the underlying permit for good cause including, but not limited to the following reasons:

A. To incorporate any new or revised federal, state, or local pre-treatment standards or requirements;

B. To address significant alterations to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance;

C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

D. Information indicating that the permitted discharge poses a threat to the Town's POTW, Town of Gardner's personnel, the public, or the receiving waters and or City of Gardner's Waste Water Treatment Plant;

E. Violation of any terms or conditions of the wastewater discharge permit;

F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any require reporting;

G. Revision of or a grant of variance from categorical pre-treatment standards pursuant to 40 CFR 403.13;

H. To correct typographical or other errors in the wastewater discharge permit; or

I. To reflect a transfer of the facility ownership or operation to a new owner or operator.

6.5 Wastewater Discharge Permit Transfer

Wastewater discharge permits may be transferred to a new owner or operator only if the permit holder gives at least sixty (60) days advance notice to the Director and the Director approves in writing the wastewater discharge permit transfer. The notice to the Director shall include a written certification by the new owner or operator which:

A. States that the new owner and/or operator has no immediate intent to change the facility's operations and processes;

B. Identifies the specific date on which the transfer is to occur; and

C. Acknowledges full responsibility for complying with the existing wastewater discharge permit.

D. Such additional information as the Director deems necessary.

Failure to provide advance notice of a transfer renders the wastewater discharge permit void on the date of facility transfer.

6.6 Wastewater Discharge Permit Revocation

The Director may revoke a wastewater discharge permit for good cause, including, but not limited to the following reasons:

A. Failure to notify the Director of significant changes to the wastewater prior to the changed discharge;

B. Failure to provide prior notification to the Town and City of changed condition pursuant to Section 7.5 of these Rules and Regulations;

C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

D. Falsifying self-monitoring reports;

E. Tampering with monitoring equipment;

F. Refusing to allow the Director access to the facility premises and records;

G. Failure to meet effluent limitations;

H. Failure to pay fines;

I. Failure to pay sewer charges;

J. Failure to meet compliance schedules;

K. Failure to complete a wastewater survey or the wastewater discharge permit application;

L. Failure to provide advance notice to the Director of the transfer of business ownership of a permitted facility; or

M. Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or these Rules and Regulations.

Wastewater discharge permits shall be void upon cessation of operations or transfer of business ownership in the absence of prior approval by the Director. All wastewater discharge permits are void upon issuance of a new wastewater discharge permit to that user.

6.7 Wastewater Discharge Permit Reissuance

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with Section 5.5 of these Rules and Regulations, a minimum of ninety (90) days prior to the expiration of the user's existing wastewater discharge permit.

6.8 Waste Received from Other Jurisdictions

Not allowed.

SECTION 7 – REPORTING REQUIREMENTS

7.1 Baseline Monitoring Reports

A. Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the Director a report which contains the information listed in paragraph B below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the Director a report which contains the information listed in paragraph B, below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.

B. Users described above shall submit the information set forth below:

1. Identifying Information. The name and address of the facility, including the name of the operator and owner.
2. Environmental Permits. A list of any environmental control permits held by or for the facility.
3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description shall include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
4. Flow Measurement. Information showing the measured average daily and maximum daily flow in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste-stream formula set out in 40 CFR 403.6(e).

5. Measurement of Pollutants
   a) The categorical pretreatment standards applicable to each regulated process.
   b) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 7.10 of these Rules and Regulations.
   c) Sampling shall be performed in accordance with procedures set out in Section 7.11 of these Rules and Regulations.
6. Certification. A statement, reviewed by the user's authorized representative and certified by a licensed professional engineer, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
7. Compliance Schedule. If additional pretreatment and/or O&M is required to meet the pretreatment standards, the shortest schedule by which the user shall provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section shall meet the requirements set out in Section 7.2 of these Rules and Regulations.
8. Signature and Certification. All baseline monitoring reports shall be signed and certified in accordance with Section 5.6 of these Rules and Regulations.

7.2 Compliance Schedule Progress Reports

The following conditions shall apply to the compliance schedule required by 7.1(b)(7) of these Rules and Regulations:

A. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring a licensed professional engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

B. No increment referred to above shall exceed nine (9) months.

C. The user shall submit a progress report to the Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and

D. In no event shall more than nine (9) months elapse between such progress reports to the Director.

7.3 Reports on Compliance with Categorical Pretreatment Standard Deadline

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the Director a report containing the information described in Section 7.1(b)(4-6) of these Rules and Regulations. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports shall be signed and certified in accordance with Section 5.6 of these Rules and Regulations.

7.4 Periodic Compliance Reports

A. All significant industrial users shall at a frequency determined by the Director, but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by such pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports shall be signed and certified in accordance with Section 5.6 of these Rules and Regulations.

B. All wastewater samples shall be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good work order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

C. If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the Director, using the procedures prescribed in Section 7.11 of these Rules and Regulations, the results of this monitoring shall be included in the report.

7.5 Reports of Changed Conditions

Each user must notify the Director of any planned significant changes to the user's operations or system, which might alter the nature, quality, or volume of its wastewater at least ninety (90) days before the change.

A. The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a

wastewater discharge permit application under Section 5.5 of these Rules and Regulations.

B. The Director may issue a wastewater discharge permit under Section 5 of these Rules and Regulations or modify an existing wastewater discharge permit under Section 6.4 of these Rules and Regulations in response to changed conditions or anticipated changed conditions.

C. For purposes of this requirement, significant changes include, but are not limited to, flow increases or decreases of twenty percent (20%) or greater, or the discharge of any previously unreported pollutants.

7.6 Reports of Potential Problems

A. In the case of any discharge including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the Director of the incident. This notification shall include location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

B. Within five (5) days following such discharge, the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to these Rules and Regulations or any and all other applicable laws.

C. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who may cause or suffer such a discharge to occur, are advised of the emergency notification procedure.

7.7 Reports from Un-Permitted Users

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the Director as the Director may require.

7.8 Notice of Violation/Repeat Sampling and Reporting

If sampling performed by a user indicates a violation, the user shall notify the Director within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Director within

thirty (30) days after becoming aware of the violation or in such time as the Director may, in writing, require.

7.9 Notification of the Discharge of Hazardous Waste

A. Any user who commences the discharge of hazardous waste shall notify the Town and City, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known or readily available to the user. An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste-stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under Section 7.5 of these Rules and Regulations. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Section 7.1, 7.3, and 7.4 of these Rules and Regulations.

B. Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous waste, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

C. In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user shall notify the Director, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. In the case of any new notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. This provision does not create a right to discharge any substance not otherwise permitted to be discharged by these Rules and Regulations, a permit issued thereunder, or any applicable Federal or State law.

7.10 Analytical Requirements

All pollutants analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses shall be performed in accordance with procedures approved by EPA.

7.11 Sample Collection

A. Except as indicated in Section B, below, the user shall collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Director may authorize use of time proportional sampling or a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

B. Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic compounds shall be obtained using grab collection techniques.

7.12 Timing

Written reports submitted to the Director shall be deemed to have been submitted on the date received.

7.13 Record Keeping

Users subject to the reporting requirements of these Rules and Regulations shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by these Rules and Regulations and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. The user shall insure these records remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the Town or where the user has been specifically notified of a longer retention period by the Director.

SECTION 8 – COMPLIANCE MONITORING

8.1 Right of Entry: Inspection and Sampling

The Director shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of these Rules and Regulations, and any wastewater discharge permit or order issued hereunder. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

A. Where a user has security measures in force, which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Director shall be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Director shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

C. The Director may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated in accordance with the manufacturer's operating instructions to ensure their accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be born by the user.

E. Unreasonable delays in allowing the Director access to the user's premises shall be a violation of these Rules and Regulations.

8.2 Refusal of Access

If the Director has been refused access to a building, structure or property or any part thereof, the Director may petition the Superior Court for an order to authorize such entry.

SECTION 9 – CONFIDENTIAL INFORMATION

Information and data on a use obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the Director's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the

satisfaction of the Director, that such information may be kept as confidential in compliance with applicable local, state, and federal law, including but not limited to Chapter 66 of the Massachusetts General Laws. Any such request shall be asserted to the time of submission of the information or data or shall be deemed waived. If the Director determines that the user has satisfied all the above criteria, then the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement and proceedings involving and the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

SECTION 10 – PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE

The Director shall publish annually, in the largest daily newspaper in the area where the POTW is located, a list of the users, which, during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of wastewater measurements taken during a six (6) month period exceed the daily maximum limit for the same pollutant parameter by any amount;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the daily maximum limit criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

C. Any other discharge violation which the Director believes caused, alone or in combination with other discharges, interference or pass through, including endangering the health of Ashburnham's or Gardner's personnel or the general public;

D. Any discharge of pollutants, which caused imminent danger to the public or to the environment, or resulted in the Director's exercise of emergency authority to halt or prevent such a discharge;

E. Failure to meet, within ninety (90) days after the due date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within thirty (30) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical

pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s) which the Director determines will adversely affect the operation or implementation of the local pretreatment program.

SECTION 11 – ADMINISTRATIVE ENFORCEMENT REMEDIES

11.1 Notification of Violation

If the Director finds that any user has violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that user a written Notice of Violation. Within ten (10) days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the Notice of Violation. Nothing in section shall limit the authority of the Director to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

11.2 Consent Orders

The Director may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Sections 11.4 and 11.5 of these Rules and Regulations and shall be judicially enforceable.

11.3 Show Cause Hearing

The Director may order a user which has violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit or orders issued hereunder, or any other pretreatment standard or requirement, to appear before the Director and show cause why enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or

prerequisite for, taking any other action available by local, state, or federal law, against the user.

11.4 Compliance Orders

If the Director finds that a user has violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit or orders issued hereunder, or any other pretreatment standard or requirement, the Director may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified period of time. If the user does not come into compliance to the satisfaction of the Director within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order does not relieve the user of liability for any violation, including any continuing violation. Issuance of compliance order shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

11.5 Cease and Desist Orders

If the Director finds that a user has violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit or any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Director may issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and
B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

11.6 Emergency Suspensions

The Director may immediately suspend a user's discharge whenever such suspension is necessary in order to stop an actual or threatened discharge, which reasonably appears to present or cause an imminent or substantial danger to the health or welfare of persons. The Director shall immediately inform the user of such a suspension in writing or verbally, and if verbally, then followed in writing within forty-eight (48) hours. The Director may also immediately suspend a user's discharge, after giving the user an opportunity to cease the violation in no less than twenty-four (24) hours, that threatens to interfere with the operation of the POTW, or which presents, or may present, danger to the environment.

A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Director may take such steps as deemed necessary, including, but not limited to, immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or danger to any individuals or the public. The Director may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the Director that the period of danger is passed, unless termination proceedings set forth in Section 11.7 of these Rules and Regulations are initiated against the user.

B. A user that is responsible, in whole or in part, for any discharge presenting imminent danger shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the Director prior to the date of any show cause or termination hearing under Section 11.3 and 11.7 of these Rules and Regulations.

Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

11.7 Termination of Discharge Permit

In addition to those provisions in Section 6.6 of these Rules and Regulations, any user who violates the following conditions is subject to discharge permit termination:

A. Violation of wastewater discharge permit conditions;
B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
C. Failure to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;
D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;
E. Violation of the pretreatment standards in Section 3 of these Rules and Regulations.

The Director shall notify such user of the proposed termination of its discharge permit and offer to the user an opportunity to show cause under Section 11.3 of these Rules and Regulations why the termination action should not be taken. Exercise of this option by the Director shall not be a bar to, or a prerequisite for, taking any other action available by local, state, or federal law, against the user.

SECTION 12 – JUDICIAL ENFORCEMENT REMEDIES

12.1 Injunctive Relief

If the Director finds that a user has violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Director may petition the Superior Court through the Town Solicitor for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by these Rules and Regulations on activities of the user. The Director may also seek such other action as is appropriate for legal and/or equitable relief, including but not limited to, a requirement that the user is to perform environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against a user.

12.2 Civil Penalties

A. Any user that violated, or continues to violate, any provision of these Rules and Regulations, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the Town for a maximum civil penalty of $5,000 per violation per day. In the case of a monthly or long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

B. The Director may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the Town.

C. In determining the Town's actual damages, the Director may take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user.

D. Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action available by local, state, or federal law, against a user.

12.3 Remedies Nonexclusive

The remedies provided for in these Rules and Regulations are not exclusive. The Director may take any, all, or any combination of these actions against a non-complying user. Enforcement of pretreatment violations shall generally be in accordance with the Town's enforcement response plan. However, the Director may take other action against any user when the circumstances warrant.

SECTION 13 – SUPPLEMENTAL ENFORCEMENT ACTION

13.1 Performance Bonds

The Director may decline to issue or reissue a wastewater discharge permit to any user that failed to comply with the provisions of these Rules and Regulations, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the Town, in a sum not to exceed a value determined by the Director, to be necessary to achieve consistent compliance.

13.2 Liability Insurance

The Director may decline to issue or reissue a wastewater discharge permit to any user that failed to comply with any provision of these Rules and Regulations, a previous wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained liability insurance or other financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.

13.3 Informant Rewards

The Director may be authorized by the Town to pay up to $500 for information leading to the discovery of noncompliance by a user. In the event that the information provided results in a civil penalty levied against the user, the Director may be authorized by the Town to disperse up to five percent of the collected penalty to the informant. However, a single reward payment may not exceed $1,000.

13.4 Contractor Listing

Users that have not complied with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or service to the Town. Existing contracts for the sale of goods or services to the Town held by a user found to be in significant noncompliance with pretreatment standards, or requirements may be terminated at the discretion of the Town, at the request of the Director.

SECTION 14 – AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

14.1 Upset

A. For the purposes of this section, “upset” means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

B. An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (c), below, are met.

C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly authenticated, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and the industrial user has identified the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
3. The user has submitted the following information to the Director within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, written submission shall be provided with five (5) days):
   a) A description of the indirect discharge and cause of noncompliance;
   b) The period of noncompliance, including exact dates and times or, if not corrected, the time the user anticipates the noncompliance to continue; and
   c) Steps the user is taking or has taken to reduce, eliminate, and prevent recurrence of the noncompliance.

D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

E. Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

F. Users shall control production of all discharges as necessary to maintain compliance with categorical pretreatment standards in the event of reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of payment is provided. In addition to other situations, this requirement shall apply where the primary source of power of the treatment facility is reduced, lost or fails.

G. Notwithstanding the above affirmative defenses, the user shall not be excused from its responsibility to clean up the violating discharge, at its own expense, and in compliance with local, state and federal law, and further to pay for any and all damages arising from said discharge, whether to the Town or third parties.

14.2 Prohibited Discharge Standards

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in Section 3.1(A) of these Rules and Regulations or the specific prohibitions in Section 3.1(B)(3) through (17) of these Rules and Regulations if it proves that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

A. A local limit exists for each pollutant discharged and the user was in compliance with each limit immediately prior to, and during, the pass through or interference; or

B. No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the Town was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements;

C. Notwithstanding the above affirmative defenses, the user is not excused from cleaning up the violating discharge, as set forth in Section 14.1(G).

14.3 Bypass

A. For the purposes of this section;

1) "Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.
2) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

B. 1) Bypass is prohibited, and the Director may take enforcement action against a user for a bypass, unless
   a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
   b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
   c. The user submitted notices as required under paragraph (c) of this section.

   2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed in paragraph (D)(1) of this section.

C. A user may allow any bypass to occur that does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (C) and (D) of this section.

D. 1) If a user knows in advance of the need for a bypass, it shall submit prior written notice to the Director at least ten (10) days before the date of the bypass, if possible.

2) A user shall submit oral notice to the Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the time the user expects it to continue; and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The Director may waive the written report on a case-by-case basis is the oral report has been received within twenty-four (24) hours.

E. Notwithstanding the above affirmative defenses, the user is not excused from cleaning up the violating discharge, as set forth in Section 14.1(G).

SECTION 15 – MISCELLANEOUS PROVISIONS

15.1 Severability

If any provision of these Rules and Regulations is invalidated by a court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

15.2 Conflicts

All other rules and regulations and part of other rules and regulations inconsistent or conflicting with any part of these Rules and Regulations are hereby repealed to the extent of the inconsistency or conflict.

SECTION 16 – SEWER SERVICE CHARGES AND INDUSTRIAL COST RECOVERY

16.1 Sewer service charges for the use of the public sewage shall be based upon the actual use of such system or contractual obligation for a level of use in excess of current actual use, or property value as permitted by Federal law. The sewer service charges shall be based on such factors, which significantly affect the cost of treatment in accordance with the Town's approved User Charge System.

16.2 The cost for operation and maintenance of the sewage works shall be shared by the municipalities of Gardner, Ashburnham, and Templeton in proportion to their actual use of the facilities as determined by actual measurement and analysis of each user's discharge in accordance with Section 3, or as otherwise agreed to in a signed inter-municipal agreement.

16.3 The following criteria shall be used in assessing sewer service charges for users in Ashburnham.

A. For users that discharge more than 25,000 gallons per day or the equivalent of 25,000 gallons per day of domestic sanitary sewage the use of the Town's sewage works shall be based upon actual measurement and analysis of each user's discharge in accordance with the provisions of Section 3 to the extent such measurement and analysis is considered feasible by the Director.

Where measurement of actual discharge is considered not feasible, determination of use of the facilities shall be based upon the quantity of water used, whether purchased from the public water utility or obtained from a private source. The Director, when determining actual use of the Town's sewage works based on water use shall consider consumptive, evaporative, or other use of water, which results in a significant difference between a discharger's water use and discharge. Where appropriate, such consumptive water use may be metered to aid in determining actual use of the sewage works.

B. For tax-exempt users, sewer service charges shall be based upon the water used, whether purchased from the public water utility or obtained from a private source. Tax-exempt users with septic tanks will be assessed a septage dumping fee.

C. For users not included in the above categories, charges for the use of sewer work shall be based upon assessed valuation of property.

16.4 Discharge of septage from septic tanks located on properties outside of the City of Gardner shall not be permitted.

16.5 Users of the Town's and City's sewage works shall also be assessed industrial cost recovery charges as required by Federal Law.

SECTION 17 – APPLICATIONS

17.1 All applications for use of the Town's sewer system must be made at the office of the Director by the owner of the premises or his property authorized agent.

17.2 The Director reserves the right to defer action on any application between November 1 and April 15.

SECTION 18 – SEWER ENTRANCE FEE

18.1 All properties shall pay a Sewer Entrance Fee as a condition of connection into the public sewage works system.

18.2 A schedule of rates for the Sewer Entrance Fee is available at the Water/Sewer Office.

18.3 For all premises not provided for in the schedule of rates, the question of charges in connection with entrance fees shall be determined by the Director.

18.4 For any additional use of or further connection made with any sewer, at any time, other than that stated in the original application for connecting any estate with the public sewers, said estate shall make due application for same, and shall pay such fees, as established by the Water/Sewer Commission.

18.5 All connection with the system of sewers shall be made in such manner as the Director shall direct, and only by and with his consent or his authorized agents. The cost of connecting any estate with any main drain or sewer, together with the construction and maintenance of the connecting private drain, shall be paid by the owner of the estate thereby connected with the public sewer. Payment in advance of the Sewer Entrance Fee is required to cover the cost of connecting any estate with the public sewer.

CHAPTER XXI: RAPID ENTRY SYSTEMS FOR THE FIRE DEPARTMENT

SECTION 1 - Any building other than a residential building of fewer than six (6) units which has a fire alarm system or other fire protection system shall provide a secure key box installed in a location accessible to the fire department in the event of an emergency. This key box shall contain the keys to fire alarm control panels and elevators and any other keys necessary for fire protection.

SECTION 2 - The key box shall be a type approved by the Chief of the Ashburnham Fire Department or his designee and shall be located and installed as approved by the Chief or his designee.

SECTION - 3 All existing buildings shall be required to comply within twelve (12) months of the effective date of this by-law in all commercial buildings not normally occupied twenty-four (24) hours.

SECTION 4 - All newly constructed buildings regardless of use or occupancy, except residential dwellings under six (6) units, shall install a key box system.

CHAPTER XXII: WATER USE RESTRICTION

SECTION 1 – AUTHORITY

This by-law is adopted by the Town of Ashburnham under its police powers to protect public health and welfare and its powers under M.G.L. c. 40, sec. 21 et seq. and implements the Town's authority to regulate water use pursuant to M.G.L. c. 41, sec. 69B. This by-law also implements the Town's authority under M.G.L. c. 40, sec. 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection (DEP).

SECTION 2 – PURPOSE

The purpose of this by-law is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a State of Water Supply Conservation or State of Water Supply Emergency by providing for enforcement of any duly imposed restrictions, requirements, provisions or conditions imposed by the Town or by the DEP.

SECTION 3 – DEFINITIONS

"Person" shall mean any individual, corporation trust, partnership or association, or other entity.

"State of Water Supply Emergency" shall mean a State of Water Supply Emergency declared by the DEP under M.G.L. c. 21G, sec. 15-17.

"State of Water Supply Conservation" shall mean a State of Water Supply Conservation declared by the Town pursuant to Section 4 of this by-law.

"Water Users or Water Customers" shall mean all public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

SECTION 4 – DECLARATION OF A STATE OF WATER SUPPLY CONSERVATION

The Town, through its Water and Sewer Commission, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Commission that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water customers. Public notice of a State of Water Supply Conservation shall be given under Section 6 of this bylaw before it may be enforced.

SECTION 5 – RESTRICTED WATER USES

A declaration of a State of Water Supply Conservation shall include one or more of the following restrictions, conditions or requirements limiting the use of water as necessary to protect the water supply. The applicable restrictions, conditions or requirements shall be included in the public notice required under Section 6.

a) Odd/Even Day Outdoor Watering: Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.

b) Outdoor Watering Ban: Outdoor watering is prohibited.

c) Outdoor Watering Hours: Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.

d) Filling Swimming Pools: Filling of swimming pools is prohibited.

e) Automatic Sprinkler Use: The use of automatic sprinkler systems is prohibited.

SECTION 6 – PUBLIC NOTIFICATION OF A STATE OF WATER SUPPLY CONSERVATION; NOTIFICATION OF DEP

Notification of any provision restriction, requirement or condition imposed by the Town as a State of Water Supply Conservation shall be published in a newspaper of general circulation within the Town or by such other means reasonably calculated to reach and inform all users of water of the State of Water Supply Conservation. Any restriction imposed under Section 5 shall not be effective until such notification is provided. Notification of the State of Water Supply shall also be simultaneously provided to the DEP.

SECTION 7 – TERMINATION OF A STATE OF WATER SUPPLY CONSERVATION; NOTICE

A State of Water Supply Conservation may be terminated by a majority vote of the Water and Sewer Commission, upon a determination that the water supply shortage no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section 6.

SECTION 8 – STATE OF WATER SUPPLY EMERGENCY; COMPLIANCE WITH DEP ORDERS

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the DEP, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the DEP intended to bring about an end to the State of Emergency.

SECTION 9 – PENALTIES

Any person violating this bylaw shall be liable to the Town in the amount of $50.00 for the first violation and $100.00 for each subsequent violation which shall inure to the Town for such uses as the Water and Sewer Commission may direct. Fines shall be recovered by indictment, or a

complaint before the District Court, or by non-criminal disposition in accordance with Section 21D of Chapter 40 of the General Laws. Each day of violation shall constitute a separate offense.

SECTION 10 – SEVERABILITY

The invalidity of any portion or provision of this bylaw shall not invalidate any other portion or provision thereof.

CHAPTER XXIII: UNREGISTERED MOTOR VEHICLE OR TRAILER REGULATIONS

No more than two (2) unregistered motor vehicles or trailers or any parts thereof may be stored on any property in Town, except if such vehicles or parts thereof are stored inside a garage or other enclosed structure, or such vehicles are used for agricultural purposes, or such vehicles are on premises duly licensed under the provisions of Chapter 140 of the General Laws. Anyone who fails to remove or register such vehicles or parts thereof within ten (10) days of receipt of written notice by the Police Department shall be subject to a fine of one hundred dollars ($100.00). Each day or part thereof on which such vehicle or part thereof remains and continues to exist on the property shall constitute a separate offense.

CHAPTER XXIV: ENFORCEMENT

SECTION 1 – ENFORCEMENT BY NON-CRIMINAL DISPOSITION

Any person who violates a provision of any by-law, rule or regulation of any town officer, board or department of the Town of Ashburnham, a violation of which is subject to a specific penalty, may be penalized by the method of non-criminal disposition as set forth in Chapter 40, Section 21D, of the general laws. The “enforcing person” as used in this by-law shall mean any police officer of the Town of Ashburnham and any person who is identified as such in a particular by-law, rule or regulation relating to violation within such person’s respective jurisdiction.

Nothing herein shall limit or restrict the Town’s or any enforcing person’s authority to seek criminal prosecution or civil enforcement of any violation of any bylaw, rule or regulation.

CHAPTER XXV: STREET ADDRESS NUMBERING

Referencing Street Address Numbering: Massachusetts General Law
Chapter 148: Section 59 – Display of street address number on building; use in enhanced 911 service.

Section 59. Every building in the Commonwealth, including, but not limited to, dwellings, apartment buildings, condominiums and business establishments shall have affixed thereto a number representing the address of such building. Said number shall be of a nature and size and shall be situated on the building so that, to the extent practicable, it is visible from the nearest street or road providing vehicular access to such building.

The statewide emergency telecommunications board shall case such number and the address of such building to be entered into the electronic data base for use in enhanced 911 service as defined in section eighteen A of chapter six A.

Purpose: The standards and regulations set forth within the provisions of this By-Law shall have the purpose and effect of promoting the general health, safety, welfare and convenience of the inhabitants of the Town of Ashburnham by reducing the difficulty in quickly responding to individual residences in cases of police, fire, medical or other emergency situations requiring immediate location and response; by facilitating the delivery efforts of the United States Postal Service through the creation of a numbering system for all delivery locations; by decreasing the potential for traffic accidents caused by motorists searching for address locations; by improving local census data gathering capabilities; by improving the accuracy of important legal documents requiring address location information; and by assisting in the planning efforts of a growing community.

Administration

1. This By-Law shall be administered by the Planning Board of the Town of Ashburnham who shall see that building numbers are assigned to all residential, commercial and industrial structures, and that such numbering is conducted in conformance with the Town of Ashburnham Street Numbering Guidelines to be promulgated under the authority of the Planning Board in order to provide guidance in the development of a consistent numbering system within the Rules and Regulations of the Planning Board using the 40 foot rule.

Compliance: All building owners and/or occupants are required to display assigned numbers in the following manner.

1. Number on the structure or residence. Where the residence or structure is within fifty (50) feet of the edge of a street right-of-way, the assigned number shall be displayed on the front of the residence or structure in the vicinity of the front door or entry.
2. Number at the street line. Where the residence or structure is over fifty (50) feet from the edge of the street right-of-way, the assigned number shall be displayed on a post, fence, wall or mailbox at the property line in the vicinity of the walk or access drive to the residence or structure.'

3. Size and color of number. The numbers shall be 3 inches high minimum. The color of the number shall be of contrasting color from its background color.

Existing Structures: Within 60 days of the approval of this By-Law by the Attorney General, the owner of all structures within the Town shall ensure his property meets this By-Law.

Enforcement: Enforcement of this By-Law shall be as follows:

1. The Building Commissioner of the Town of Ashburnham shall be the enforcement agent for the purposes of this By-Law.
2. No inspection shall be performed or certificate of occupancy or compliance issued, by any Town Inspector for any structure that does not comply with this By-Law.
3. Any property owner found to be in violation of any section of this By-Law shall be notified in writing of the violation by the Building Commissioner. Any person who permits said violation to continue for a period of sixty (60) days subsequent to the receipt of a written notice from the Building Commissioner concerning said violation shall be assessed a penalty by the Board of Selectmen of not more than one hundred dollars ($100.00) for each violation. For the purposes of this By-Law, each successive day during which any violation is committed or permitted to continue after sixty (60) days of the receipt of a written notice from the Building Commissioner shall constitute a separate violation.

   Penalty: - 1st Offense - $25.00
   2nd & Subsequent Offenses - $50.00

CHAPTER XXVI: WETLANDS PROTECTION

SECTION 1: PURPOSE

1.1 The purpose of this Bylaw is to protect resource areas in the Town of Ashburnham by overseeing all activities deemed by the Conservation Commission (hereinafter "Commission") likely to have a significant or cumulative effect upon the following resource area interests: protection of public and private water supplies, protection of groundwater supply, flood control, storm damage prevention, prevention of pollution, protection fisheries, and protection of wildlife habitat, as identified in the Wetlands Protection Act M.G.L. c.131 s.40

1.2 It shall be the responsibility of the Conservation Commission to administer the protection of all wetlands within the geographical boundaries of the Town of Ashburnham, as defined in the Massachusetts Wetlands Protection Act, M.G.L. c.131, s.40, and enforce all provisions of this Bylaw as described below and adopt regulations for administrating this Bylaw.

SECTION 2: JURISDICTION

2.1 Except as permitted by the Commission or as provided by this Bylaw, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; and, lands within 200 feet of a perennial river or stream, (hereinafter "resource areas").

2.2 Consistent with M.G.L. c.131 s.40 310 CMR 10.02, any activity other than minor activities identified in 310 CMR 10.02(2)(b)1 proposed or undertaken within 100 feet of a resource area (hereinafter called the Buffer Zone) which, in the judgment of the Commission, will alter a resource area is subject to regulation under this Bylaw, and requires the filing of an application with the Commission.

SECTION 3: WAIVERS

3.1 Strict compliance with this Bylaw may be waived when, in the judgment of the Conservation Commission, such action is in the public interest and is consistent with the intent and purpose of the Bylaw. Any request for a waiver must be submitted to the Commission in writing. The waiver shall be presented at the time of filing along with a written justification stating why a waiver is desired or needed, is in the public benefit, and is consistent with the intent and purpose of the Bylaw.

SECTION 4: EXCEPTIONS

4.1 Pre-existing activities or structures not meeting the requirements set forth in this Bylaw need not be discontinued or removed but shall be deemed to be nonconforming. No new activity shall be commenced and no new structure shall be located closer to the edge of wetlands than existing non-conforming like activities or structures, but the Commission may permit new activity or structures as close to the edge of a resource area if it finds that such activity or structure will not affect the interests protected by the Bylaw no more adversely than the existing activity or structure.

4.2 The permit and application required by this Bylaw shall not be required for work on any pre-existing lot when the alteration is required to protect public health and safety, provided that the applicant receives a Determination of Negligible Impact from the Commission as described in Section 5.

4.3 The permit and application required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public. An emergency project shall mean any project certified to be any emergency by the Ashburnham Conservation Commission or its agents within 24 hours of notice. Work necessary to abate the emergency shall proceed provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work, provided that the Commission 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 said emergency project a permit application shall be filed with the Commission for review as provided in the Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

SECTION 5: APPLICATIONS

5.1 Written application shall be filed with the Commission to perform activities affecting resource areas protected by this Bylaw. The application, formally known as the Notice of Intent, Request for Determination of Applicability, or Abbreviated Notice of Resource Area Delineation, shall include such information and plans as are deemed necessary by the Commission to describe all resource areas and/or proposed activities and their effects on the resource areas protected by this Bylaw. No activities shall commence without receiving and complying with a permit, formally known as an Order of Conditions or Conditions imposed on a Negative Determination of Applicability, issued pursuant to this Bylaw.

5.2 Any person may request, in writing, that the Commission review a minor activity, as defined in the Regulations of the Commission, for a Determination of Negligible Impact. The Commission shall review the request at a public hearing within 21 days from receipt of the request. In order to approve the request, the Commission must find that the proposed activity will have negligible or no impact on a resource area. A Request for Determination of Negligible Impact is decided upon at the sole discretion of the Commission, can be denied for good cause including failure to submit information requested by the Commission and can only be approved by a *super majority* vote of the Commission members present. A letter shall be sent informing the applicant of the Commission's decision within 21 days of the decision.

5.3 The Commission may accept as the permit application submittal under this Bylaw, the permit applications filed under the Wetlands Protection Act, M.G.L. c.131, s.40 and in accordance with Regulations set forth in 310 CMR 10.00.

5.4 At the time of a permit application submittal the applicant shall pay a filing fee specified in the Regulations of the Commission. The fee shall be deposited in a special account established pursuant to M.G.L. c.44, s.53E, from which the Commission may withdraw funds without further appropriation for use only for wetland protection activities.

5.5 The Commission is authorized to require the applicant to pay all reasonable costs and expenses for expert consultation deemed necessary by the Commission to review applications for compliance with this Bylaw and its Regulations. The specific consultant services may include, but are not limited to, performing or verifying, the accuracy of resource area survey and delineation; analyzing resource area functions and values, including wildlife habitat evaluations, hydrogeologic and drainage analysis; soils analysis, and researching environmental or land use law. The Commission shall make proper provision to continue the hearing until all information is received, but in no case shall this procedure be used so as to cause unreasonable delay.

5.6 The applicant may seek an administrative appeal from the selection of the outside consultant to the Ashburnham Board of Selectmen. The grounds for such an appeal shall be limited to claims that the consultant chosen by the Conservation Commission has a conflict of interest or does not possess the minimum required qualifications. The minimum qualification shall consist either of an M.S. degree in or related to the field at issue or three or more years of practice in the field at issue or a related field. The required time limits for action upon an application by the Conservation Commission shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one month following the filing of the appeal, the selection of the Conservation Commission shall stand. Such an administrative appeal shall not preclude further judicial review, if otherwise permitted by law, on the grounds provided for in these rules.

5.7 Failure of the applicant to pay such costs within 21 days after the close of the hearing shall be cause for the Commission to deny the issuance of a Determination or Order of Conditions.

5.8 The Commission may waive a filing fee, consultant fee, and/or costs and expenses for a permit application or Request for Determination filed by a town officer or agency.

SECTION 6: PUBLIC NOTICE AND HEARING

6.1 In all respects, public notice and hearings shall be as provided in M.G.L. c.131, s.40, and regulations hereunder.

6.2 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, s.40 and Regulations 310 CMR 10.00

SECTION 7: PERMITS AND CONDITIONS

7.1 In all respects, procedures shall be as provided in M.G.L. c.131 s.40, and regulations hereunder

7.2. If the Commission, after a Public Hearing, determines that the activities which are subject to the permit application or the land or water uses which will result therefrom are likely to have a significant individual or cumulative effect upon the resource area values protected by this Bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions 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 resource areas throughout the community and the watershed, resulting from past activities, permitted and exempt, and foreseeable future activities.

7.3 The Commission is empowered to deny a permit for the applicant's failure to meet the requirements of this Bylaw; to submit necessary information and plans requested by the

Commission; to meet the design specifications, performance standards, and other requirements in regulations of the Commission; to avoid or prevent unacceptable significant or cumulative effects upon the wetland resource areas or interests protected by this Bylaw; or where it finds that no conditions are adequate to protect such values and interests.

7.4 The Commission may require in its regulations that the applicant maintain a strip of continuous, undisturbed vegetative cover and a strip of continuous area where no permanent structures or impervious surfaces exist within these areas, unless the applicant presents credible evidence which in the judgment of the Commission the area or part of it may be disturbed without harm to the values protected by this Bylaw.

7.5 A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be extended, provided that a request for an Extension is received in writing by the Commission 30 days 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, their successors or assigns.

7.6 The Commission, in an appropriate case, may combine the decision issued under this Bylaw with the decision issued under M.G.L. c.131, s.40, and regulations hereunder.

SECTION 8: DEFINITIONS

8.1 The following definitions shall apply in the interpretation and implementation of this Bylaw.

8.1.1 Except as otherwise provided in this Bylaw or in regulations of the Commission, the definitions of terms in this Bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 s.40) and Regulations (310 CMR 10.00).

8.1.2 Buffer Zone – non-wetland areas, immediately adjacent to, and extending in a horizontal direction from any resource area, the activities on which are having or may have a significant or cumulative effect upon wetland values due to factors, such as, but not limited to, soil type, ground cover, slope and project proposed.

8.1.3 Resource Area – wetlands; marshes; wet meadows; bogs; swamps; lakes; ponds; rivers; streams; creeks; banks; vernal pools; lands under water bodies; lands subject to flooding or inundation by groundwater or surface water; respected buffer zones associated with the aforesaid resource areas; and, lands within 200 feet of a perennial river or stream.

8.1.4 Vernal Pool - a confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within 100 feet of the mean annual boundary of such a depression, for site certified by the Massachusetts Division of Fisheries and Wildlife or where credible scientific evidence is presented demonstrate the area meets the

Certification Criteria of The Massachusetts Natural Heritage & Endangered Species Program Vernal Pool Certification Program.

SECTION 9: ENFORCEMENT

9.1 In accordance with applicable law, including but not limited to the provisions of M.G.L. c.40, s.21D and 31, the Commission and or Town may enforce the provisions of this Bylaw and the Massachusetts Wetlands Protection Act, restrain violations thereof and seek injunctions and judgments to secure compliance with its Orders of Conditions.

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

9.3 The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, non-criminal citations under M.G.L. c.40 s.21D, and civil and criminal court actions. Any person who violates provisions of this Bylaw may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.

9.4 Upon written request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the chief of police shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in the enforcement of this Bylaw.

9.5 Any person who violates any provision of this Bylaw or Regulations, any Order of Conditions, or any Permit, or Enforcement Order issued thereunder, with or without conditions issued pursuant to it may be punished by a fine in the amount of $100 per violation, per day. Each day or portion thereof during which a violation continues shall constitute a separate offense; if there is more than one, each condition violated shall constitute a separate offense. The Commission, its agents, officers, employees or any police officer shall be empowered to enforce this Bylaw.

SECTION 10: BURDEN OF PROOF

10.1 The applicant for a permit shall have the sole burden of proving by a preponderance of 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 such 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.

SECTION 11: APPEALS

11.1 At the applicant's request, a decision of the Commission shall be reviewable in the Superior Court in accordance with M.G.L. c.249 s.4., each party independently responsible for its own legal expenses.

SECTION 12: RELATION TO THE WETLANDS PROTECTION ACT

12.1 This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (M.G.L. c.131 s.40) and Regulations (310 CMR 10.00) thereunder.

SECTION 13: REGULATIONS

13.1 After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw which shall be effective upon its filing with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

13.2 At a minimum these regulations shall define key terms in this Bylaw not inconsistent with the Bylaw and procedures governing the amount and filing of fees. Said regulations shall be reviewed by a state certified wetland scientist of the Commission's choosing prior to adoption.

SECTION 14: SEVERABILITY

14.1 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 had been issued.

SECTION 15: SECURITY

15.1 In addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed as part of any Permit issued hereunder (including conditions requiring mitigation work) be secured wholly or in part by one or more of the methods described below:

15.1.1 By a corporate 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. Such deposit shall be held by the Town Treasurer.

15.1.2 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.

CHAPTER XXVII: PERSONNEL

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Note: All new employees will be given a copy of this By-law on their date of hire or at the first opportunity thereafter.

SECTION 1 - PURPOSE

1.0 Purpose

The purpose of the Personnel By-Law is to establish and operate an efficient system of public personnel administration, and to provide for a fair and equitable employee relations policy in municipal government in conformity with Town By-laws, and Federal and State laws including and subject to all applicable provisions of Chapter 31 of the General Laws.

1.1 Applicability

This Personnel By-Law shall apply to all employees in the Town except the following:

- All effective officers and persons appointed to fill vacancies in elective offices.
- Members of Boards, Commissions, Committees and Authorities.
- Volunteer personnel and personnel appointed to serve without pay.
- Employees covered by a collective bargaining agreement.

1.2 Administration/Amendment

The Town Administrator and Department Heads shall be responsible for the proper administration of these policies. The Town Administrator shall review these policies at least annually and shall report to the Board of Selectmen as to whether any amendments or revisions are necessary. The Town Administrator shall solicit employee input prior to making his recommendations. These By-Laws may be amended by majority vote of Town Meeting.

1.3 Appointing Authority

The Board of Selectmen, Town Administrator or any Board, Commission, Committee or manager so empowered by Charter, who has the power to appoint an employee to any non-elective position.

1.4 Employee

"Employee" as used in the Personnel By-Law shall mean any person paid and employed by the Town whether full-time, part-time, probationary, seasonal or temporary.

- *Full-Time Employee*. An employee who has completed the probationary period and who works a regularly established work schedule of at least 37 ½ hours per week. Regular full-time employees are eligible for employee benefits as defined in this By-Law.
- *Permanent Part-Time Employee (20+ hours per week).* An employee who has completed the probationary period and regularly works less than thirty-seven and one-half (37 ½) hours per week on a regular, year round basis. Such employee is eligible for all employee benefits on a pro-rated basis (see section 6.40 of this by-law).
- *Temporary/Seasonal Employee*. An employee who is scheduled to work less than nine months per year, or who works on an "on-call" or "as needed" basis. Such employees are not eligible for employee benefits except as outlined in this By-Law, (see section 6.40 of this by-law).

1.5 Position

Work to which an employee is assigned which consists of duties and responsibilities that reflect the full requirements of the position.

1.6 Probationary Period

A working test period of up to six months during which time an employee is required to demonstrate ability to meet acceptable standards of performance prior to an appointment to a position.

1.7 Seniority

Seniority is the continuous full time service of an employee in the Town computed in years, months, and days from the date of hire.

1.8 Loss of Seniority

An employee shall lose seniority if the employee:

- Quits or resigns.
- Is discharged.
- When recalled from layoff, fails to return to work within five working days after notification was sent by registered mail.

SECTION 2 – CLASSIFICATION & PAY PLAN

2.0 Classification Plan

The Town Administrator is responsible for the preparation of a position classification plan including a written definition for each class of positions in the town services that describe the duties, authority, minimum qualifications, and responsibilities characteristic of positions properly included in the class.

For the purpose of complying with the Federal Fair Labor Standards Act positions shall be classified as "exempt" from the FLSA Regulations or "non-exempt" from the FLSA Regulations according to the definitions included in the act.

2.1 Position Classification

Each classification shall contain positions that are substantially similar with respect to difficulty, responsibility, character of work, and which are substantially equal with respect to the amount of experience or training required for satisfactory performance.

2.2 Position Description

A position description is a written outline of responsibilities for each job in the classification plan. Each position description includes a position title, a description of the representative duties, and the general level of responsibility and authority of the work, a statement of minimum qualification requirements for satisfactory performance of the work, and other pertinent information. The position description shall be standard for classifying individual positions and for determining when reclassification is warranted.

2.21 Position Descriptions not Restrictive

The statements of the position descriptions are descriptive and not restrictive. They indicate the kinds of duties and level of responsibilities assigned to the class, but do not limit the power of a department head or supervisor to direct, assign, and control the work of the department's employees. The use of examples illustrating the duties should not be construed to exclude others not mentioned which are of similar kind and quality.

2.22 Administration of Position Descriptions

All town employees shall be given a copy of their appropriate position description and shall be furnished new ones if their positions are reclassified. Copies of position descriptions for all town positions are maintained in the Town Administrator's office and may be reviewed by town employees.

2.23 Review of Descriptions

The employee's position description shall be reviewed no less than once every four years to note any significant changes, which may have taken place in the employee's duties.

An outside consultant hired by the Town shall conduct this review, subject to the Town Administrator's approval and budgetary constraints.

2.30 Reclassification

Reclassification of positions shall occur when the duties of a position warrant transfer to another grade level reflecting its duties, authority, and responsibility. Any employee may request a reclassification review no more than once every 2 years.

2.31 Classification Review

Changes in the description shall be reviewed by the Consultant for changes significant enough to warrant reclassification to another grade, or a rewriting of the job description. The Town Administrator and appropriate department head shall be notified of positions that have been reclassified, and a new description shall be forwarded to the Town Administrator, supervisor and employee.

2.40 Pay Plan (Non-Union Employees)

The pay plan consists of pay grades directly related to the classification levels. Each pay grade shall have established minimum and maximum pay rates. Except as otherwise provided in these policies, no employee may be paid outside the wage range established for the applicable classification level. Wage ranges shall be reviewed no less than once every four years.

2.41 Maintenance & Adoption of the Pay Plan/Personnel By-law

The Town Administrator shall periodically prepare and recommend a pay plan as described above which shall become effective upon approval of the Board of Selectmen, or in the alternative, shall be deemed approved if the Board fails to act affirmatively or negatively within 30 days of written notification by the Town Administrator of a proposed change to the pay plan. The recommendations of the Town Administrator shall be based upon consideration of all factors relevant to the maintenance of sound compensation practices in the Town services. Such factors shall include pay practices of other comparable municipalities for comparable work; other benefits received by Town employees; suggestions from department heads; and the ability of the Town to recruit and retain qualified personnel.

2.42 Compensation Changes

The Town Administrator, with input from the Department Head if appropriate, shall have the authority to make and approve changes in employee compensation resulting from such personnel actions as reclassification, promotions, demotions, and transfers, or because of abolishment, modification, or establishment of classes within the approved budget.

2.43 Pay for Performance

Wage and salary increases, promotions, and other actions shall be based upon meritorious performance and shall not be considered automatic or based upon length of service alone. The Town Administrator shall be responsible for establishing a written merit pay plan, with all required policies and forms, within six (6) months at passage of this by-law and subject to approval by Selectmen.

2.50 Pay Administration – Starting Rates

An employee appointed to a position shall be compensated at the minimum wage rate according to the applicable classification level except that the Town Administrator may make appointment at a rate higher than the minimum if such action is justified by exceptional qualifications of the applicant or by lack of qualified applicants available at the minimum rate but may not exceed the pay plan. The Town Administrator's decision shall be final.

2.51 Rate of Pay for Promotion

A promotional increase which is at least equivalent to the minimum salary of the new pay grade shall be granted at the time of the promotion, but shall not be less than what the employee is presently earning.

2.52 Rate of Pay for Transfer or Demotion

When a regular employee is transferred from one position to another in the same pay grade, the employee shall continue at the same pay rate. When a regular employee is demoted to a position with a lower pay grade, the employee's salary shall be reduced to a pay rate within the lower pay grade. The pay grade selected will be determined by the pay grades directly related to the classification levels of the pay plan.

2.53 Transfer Authority

The Town Administrator may transfer qualified employees between departments, or to positions within the same department, depending upon the needs of the town and in consultation with Department Heads and subject to all applicable provisions of Chapter 31 of the General Laws.

2.54 Pay for Temporary Assignment Outside Classification

When an employee is temporarily assigned via personnel action to a position in a class with a higher minimum rate of pay (working out of the classification) the Town Administrator may grant a pay increase to the starting rate of the class or a higher rate of pay which provides a pay increase for the duration of the temporary assignment not to exceed six (6) months or longer with the Selectmen's approval. When an employee is temporarily assigned to a classified position below their existing grade, the employee shall continue to be paid at their current rate.

2.60 Basis of Pay

2.61 Hourly Paid Employees (Non-Exempt)

Employees paid on an hourly basis shall be paid for the actual number of hours worked during a pay period times the hourly rate.

2.62 Salaried Employees (Exempt)

Employees paid on a salary basis shall be paid by dividing the annual salary rate by 52 (weeks). If a fiscal year has more than 52 weeks, the employee's pay will be fractionally increased by that pro-rated amount.

2.63 Pay Checks

All employees shall receive their pay checks bi-weekly. Pay checks shall not be given by the department head to anyone other than the person for whom they are written unless a

request is made in writing in advance by the person to whom the check is payable. Paychecks shall not be distributed prior to the date and hour authorized by the Treasurer unless for extenuating circumstances and approval by the Town Administrator.

2.64 Advanced Vacation Pay
Employees may request advanced vacation pay by submitting their request to the Treasurer's Office at the same time they submit payroll information for the pay period that would allow for check disbursement the week prior to their going on vacation.

2.65 Payroll Deductions
No payroll deductions, other than legally required deductions, will be made from the employee's paycheck without the employee's written approval.

2.66 Minimum Wage
It is the policy of the Town to pay no less than the federal or state minimum wage, whichever is higher.

2.70 Overtime Pay
Non-exempt town employees shall receive time and one-half pay for all hours worked over 40 hours in any one week. A week is defined as that period of time commencing at 12:01 A.M. Sunday morning and ending 12:00 midnight the following Saturday.

2.71 Compensatory Time
The substitution of compensatory time off in lieu of overtime for non-exempt employees is expressly forbidden.

2.72 Leave Categories Counted
When calculating overtime pay for non-exempt employees, paid holidays, sick days, vacation days, and personal days, shall be considered as time worked.

2.73 Holiday/Sunday Pay
Not withstanding the provisions of Section 2.70, work on a holiday or Sunday as defined in this By-Law shall be paid at two times the employee's regular rate of pay plus the employee's regular pay. All other overtime shall be paid at one and one-half the employee's regular rate of pay.

2.74 Overtime Equity
When overtime is required, overtime shall be divided as equally as proficient operations permit among those employees performing similar work.

2.75 Positions Exempt from Overtime Pay
Supervisory, professional, and administrative personnel who are classified in exempt positions have an obligation that goes beyond fixed work schedules and they shall not be paid for overtime work except under exceptional circumstances or with prior written approval of the Town Administrator. In those cases where exempt employees are called

out for an emergency, such as snow plowing or a major public safety problem, which requires a substantial amount of overtime work, the Town Administrator, in his sole discretion, may approve the payment of overtime pay. Use of compensatory time by exempt employees will be in accordance with written policy established by the Town Administrator.

2.80 On-Call Rates
Specific on-call pay rates may be available on an individual department basis with the approval of the Town Administrator and Selectmen in compliance with the FLSA.

2.81 Call Back Rates
There shall be a minimum of three hours paid overtime for non-exempt employees called back to work after their normal workday has ended or begun.

2.82 Emergency Closing
Emergency closing procedures for Town Hall and all other facilities will be established by written policy of the Town Administrator.

SECTION 3 – RECRUITMENT & SELECTION

3.00 Recruitment Policy
Individuals to fill Department Head positions shall be recruited from a geographic area as wide as is necessary to assure obtaining well-qualified candidates for the various types of positions. Individuals to fill all other positions shall first be recruited from within the Town government and only after it is determined by the Town Administrator that there is not a qualified candidate within the Town government shall the recruitment be expanded to include a geographic area wide enough to assure obtaining well qualified candidates for that position.

3.10 Announcements
The Town Administrator shall make known all vacancies for positions by posting announcements of such vacancies on official Town bulletin boards. When it is necessary to recruit from outside the Town government pursuant to Section 3.00, the Town Administrator shall advertise in newspapers and other publications to the extent necessary to insure sufficient numbers of qualified candidates.

3.11 Recruitment Expenses
It is recognized that various staff, professional, and supervisory positions may require recruitment from outside the area to obtain well-qualified applicants. Accordingly, in recruiting for and filling positions of this type, the Town Administrator may authorize payment of expenses for an applicant's trip for a personal interview. Reimbursable expenses may include an allowance for transportation, meals, and lodging.

3.12 Non-Discrimination

The Town of Ashburnham, as an Equal Employment Opportunity Employer, shall consider applicants for employment with the Town and candidates for promotion on the basis of their qualifications for a position and without regard to race, color, political or religious affiliation, sex, age, marital status, national origin, place of birth, or mental or physical handicap. The Town conforms to the Civil Rights Act of 1964 and Executive Order 11246.

3.20 Application Form

Each candidate for municipal employment shall make application on a standard form prescribed and provided by the Town Administrator. Such information as is deemed necessary may be required in order to judge the applicant's fitness for services in the Town. Applications shall not be returned but shall remain on file for five years. For certain positions, the Town Administrator may also require the submission of a resume and other pertinent data.

3.30 Selection Policy

Selection and appointment to all Town positions shall be based solely upon job-related requirements and the applicant's demonstration of the skills, knowledge, abilities and other characteristics necessary for successful job performance and career development, as outlined in the position description.

3.31 Selection Procedures

Determining examination: The Town Administrator shall determine which test or combination of tests will be used to evaluate the relative fitness of each candidate for the position.

3.32 Test Shall be Germane and Fair

The test selected shall relate to the duties and responsibilities of the position for which candidates are being examined, and shall fairly appraise and determine the merit, fitness, ability, and qualifications of competitors to perform the duties of the position.

3.33 Evaluation Procedures

A variety of candidate evaluation procedures may be employed, such as reference checks (as outlined in 3.50) personal interviews, assessment of training, education and work experience, medical examinations, written, oral and performance tests. Each procedure utilized, including personal interviews, shall be administered and scored on a standardized basis to insure equity.

3.40 Interviewing Candidates

During interviews, no reference shall be made by anyone employed by the Town regarding an applicant's religion, sex, color, race or national origin, marital status, or arrangements for child or elder care.

3.50 Reference Checks

The Town Administrator or a designee shall make the necessary contacts for the purpose of checking references. All reference checks shall be considered personal and confidential in order not to jeopardize the candidate's present employment status.

Background investigations shall also be conducted with the applicant's prior knowledge and written consent.

3.60 Appointments

The Town Administrator shall notify the appointee in writing and shall include in such writing the date upon which employment shall commence, the rate of pay, the work schedule, any other information which the Town Administrator deems appropriate, and that the appointment is made subject to completion of a physical to be administered by a Town-appointed physician, as well as background and reference checks. The Town Administrator shall notify in writing all applicants of the decision to hire someone else for the position the applicant applied for.

3.61 Regular Appointment/Probationary Period

A regular appointment shall mean that an employee is to work for the Town in either a full or part-time basis. Every employee who receives this type of appointment shall serve a probationary period following the original appointment in accordance with the provisions of Section 4 of this By-Law. Upon recommendation of the Department Head that the employee has satisfactorily completed the probationary period and approved by the Town Administrator, the employee's status of employment shall be changed from probationary to regular.

3.62 Temporary Appointment

When a position in the Town service is limited in duration, such as for special projects, or requires the services of an individual on an irregular, intermittent, or seasonal basis, the Town Administrator may appoint from among the best qualified candidates with no probationary period.

3.63 Emergency Appointment

The Town Administrator may authorize the appointment of any qualified person to any position required to prevent the cessation of public business or serious inconvenience to the public without regard to the rules affecting appointments. In this case the Town Administrator will obtain approval from the Board of Selectmen if the emergency persists for more than fifteen (15) days.

3.64 Physical Examinations

After appointment to the Town service, the Town Administrator will require a medical examination to ensure that an employee is able to perform the duties of the position. A practicing physician appointed or approved by the Town and at the expense of the Town shall perform such examination. All appointments will be made subject to the completion of this physical examination.

3.65 Orientation Packages

The Town Treasurer's office will ensure that all employees receive an orientation package as soon as practical upon being hired, which shall include, at a minimum, a description of all Worcester Regional Retirement benefits, the Town's employee group health/dental/life insurance plans, this by-law and other materials the Treasurer believes necessary.

SECTION 4 – PROBATIONARY PERIOD

4.00 Probation

The six- (6) month probationary or working test period shall be regarded as an integral part of the examination process. It shall be utilized by supervisors and department heads for closely observing the new or promoted employee's work and conduct, securing the most effective adjustment of a new employee to the position, and rejecting any employee whose performance does not meet the required work standards. The department head shall certify whether the employee's performance has been satisfactory at the completion of the probationary period.

4.10 Duration

The probationary period shall begin immediately upon original appointment or promotion and continue for six (6) months. Throughout the probationary period, the department head shall observe the employee's performance and any strengths or weaknesses shall be discussed with the employee. Such factors as work habits, attitudes, attendance, punctuality, and the ability to work with others will be observed and recorded in writing.

4.11 Probation Expiration

At least ten days prior to completion of the probationary period, the department head shall notify the Town Administrator in writing that:

- the employee's performance was satisfactory and that the individual should be retained as a regular employee in the position, or
- the employee's probationary period should be extended for another 3 months, or
- the employee's performance or conduct was unsatisfactory, and that removal is proposed as of a recommended date. The department head shall furnish reasons for the recommended removal, and may terminate the employee upon approval of the Town Administrator.

4.12 Written Notice

The department head shall provide written notice of the employment decision to the employee.

4.20 Removal of a Probationary Employee

An employee may be removed at any time during the probationary period by the department head with approval of the Town Administrator if the employee is unwilling or unable to perform required duties or if work habits or dependability do not merit continuation of the employee in the position. The employee shall be notified in writing of the reasons for termination and the effective date of the action. The employee may not appeal the removal.

4.21 False Application Information

An employee may also be removed by the Town Administrator, appointing authority or department head at any time during the probationary period if it is revealed that information submitted prior to appointment was intentionally falsified.

4.30 Benefits During Probationary Period

All full-time and permanent part-time employees serving the probationary period shall receive the same benefits as other full-time and permanent part-time regular employees.

SECTION 5 – RULES OF CONDUCT

5.00 Hours of Work

Each department's hours of work shall be determined by consultation between the Department Head and the Town Administrator. The Town Administrator will have final authority to establish working hours for each department.

5.10 Department heads and supervisors shall record all absences, tardiness, and early departures. Absences, tardiness, and early departures for unsatisfactory reasons shall be grounds for disciplinary action by the department head or supervisor. Employees shall not be paid for time lost due to absences, tardiness, and early departures for unsatisfactory reasons.

5.11.1 Doctors and dentists' appointments should be scheduled other than during working hours. Such appointments if scheduled during working hours shall be charged to sick time.

5.20.1 Attendance

Regular attendance during all scheduled hours of work, reporting for work on time, and continuing to work to the end of the work period is expected of every employee on each scheduled workday. Non-exempt employees shall record daily hours worked in writing (on attendance sheets) for their supervisors. Exempt employees shall record absences of one half day or more from work only and then only to indicate the leave category to which the absence is charged. All attendance sheets shall be signed for approval by the department head, sent to the Town Administrator and maintained on file for three (3) years.

5.30 Sexual Harassment Policy

The Town of Ashburnham (the "Town") depends upon a work environment of tolerance and respect for the achievement of its goals. The Town is committed to providing a working environment that is free of all forms of abuse or harassment. The Town recognizes the right of all employees to be treated with respect and dignity.

Sexual harassment is a form of behavior, which adversely affects the employment relationship. It is prohibited by State and Federal laws and will not be tolerated by the Town. The Town condemns and prohibits sexual harassment by any employee.

Sexual harassment does not refer to purely voluntary social activities. It refers to behavior, which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and or interferes with the ability of the employee to work effectively. Sexual harassment, as defined by the law, may, depending upon the circumstances, include unwelcome actions such as:

- Verbal abuse of a sexual nature, use of sexually degrading words, or jokes or language of a sexual nature;
- Physical contact including patting, pinching or repeated brushing against another's body;
- Demands or requests for sexual favors accompanied by implied or overt promises of preferential treatment or threats concerning an individual's status as an employee;
- Continued expressions of sexual interest after being informed that the interest is unwelcome;
- Assaults or molestation's;
- The posting or distribution of sexually suggestive pictures or other materials.

Sexual harassment is not limited to prohibit behavior by a male employee toward a female employee. Sexual harassment can occur in a variety of circumstances. Here are some things to remember:

- A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser;
- The harasser does not have to be the victim's supervisor.
- The victim does not have to be the opposite sex from the harasser;
- The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is affected by the harassing conduct, even when it is directed toward another person, if the conduct creates an intimidating, hostile, or offensive working environment for the employee or interferes with the employee's work performance.

5.31 <u>The Rule</u>

It is, therefore, against the policy of the Town for any employee or person with whom a Town employee comes in contact on the job, male or female, to harass a Town employee sexually, that is, by making unwelcome sexual advances, request for sexual favors, or other uninvited verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either implicitly or explicitly as a term or condition of an employee's employment;
- Submission to, or rejection of, such conduct by an individual is made the basis for employment decisions affecting the employee;
- Such conduct has the purpose or effect of interfering with the individual's work performance
- A hostile or intimidating work environment is created for the employee.

It is also against the policy of the Town for an employee to sexually harass any person with whom the employee comes in contact on the job.

5.32 <u>Employee Responsibilities</u>

Each employee is personally responsible for:

- Ensuring that his/her conduct does not sexually harass any other employee or person with whom the employee comes in contact on the job, such as an outside vendor;
- Cooperating in any investigation of alleged sexual harassment by providing any information he/she possesses concerning the matter being investigated;
- Actively participating in efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination;
- Ensuring that an employee who files a sexual harassment claim or cooperates in an investigation may do so without fear of retaliation or reprisal.

5.33 Retaliation

Retaliation against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a sexual harassment complaint is against the law and will not be tolerated by the Town.

5.34 Violation of Policy

Any employee violating this policy will be subject to appropriate discipline, including possible discharge by the Town.

5.35 Procedures for Complaint

A. Complaint: The Town has designated a Sexual Harassment Grievance Officer. The Sexual Harassment Grievance Officers are Town Administrator and Administrative Assistant who can be reached at the Town Hall, 32 Main Street, Ashburnham, MA 01430 telephone number 978-827-4104.

   If an employee believes he or she has been subject to sexual harassment, the employee should initiate a complaint by contacting the Sexual Harassment Grievance Officer as soon as possible. The employee should file the complaint promptly following the incident of alleged harassment. The employee should be aware that the longer the period of time between the event giving rise to the complaint and the filing, the more difficult it will be for the Sexual Harassment Grievance Officer to reconstruct what occurred. The employee may be requested to write out his or her complaint to document the charge.

   If an employee prefers to discuss a possible sexual harassment problem with his or her supervisor, the employee may always do so, but employees do not have to go through the regular chain of supervision when reporting sexual harassment and may go directly to the Grievance Officer.

B. Investigation: On receiving the complaint, the Sexual Harassment Grievance Officer will promptly have a preliminary investigation made into the matter. If after the completion of this preliminary investigation it is determined that there is reasonable cause for finding a violation of this policy, the Town will notify the complainant and the charged employee of the finding orally. Additional investigation will be made to the extent appropriate in each case. This process will be confidential to the extent consistent with an effective investigation.

C. Decision: After the response of the charged employee has been made, any further investigation, which may be warranted, has been carried out, the Town will make a final decision. If the Town finds that the allegations in the complaint have been established by the investigation, the Town will initiate discipline of the charged employee. Discipline will be appropriate to the offense and employees involved, and may include discharge.

The complainant will be notified of the disposition of the investigation.

5.36 State and Federal Agencies

The Massachusetts Commission Against Discrimination ("MCAD") located at One Ashburton Place, Boston and 436 Dwight Street, Springfield, is responsible for enforcing the Massachusetts sexual harassment law, and the U.S. Equal Employment Opportunity Commission ("EEOC") is responsible for enforcing the federal law prohibiting sexual harassment. The EEOC is located at One Congress Street, Room 1001, Boston. They may be contacted at the above addresses.

5.40 Smoking

Smoking has been identified as the single most important detriment to an individual's health. For the smoker, the adverse effects of smoking contribute to a loss of personal health. Smoking also influences adversely the health of those who become innocent victims of second-hand smoke. Consequently, smoking is prohibited in all public buildings or grounds.

5.41 Public Safety Employees

Effective October 5, 1988, the smoking prohibition rule applies to newly appointed public safety employees in state and local government: *"No person appointed to a covered position (uniformed member of the police and fire department) shall subsequent to appointment, smoke any tobacco product at any time during their employment in any position covered by Section 94 of Chapter 32 of the General Laws."* This prohibition includes all time off the job as well as all time on the job. Reference Chapter 697 and 759 of the Acts of 1987.

5.50 Wage Garnishments

Garnishment action against an employees' wages or salary is permitted by law in Massachusetts. Federal laws also permit the preferential attachment of wages by the Internal Revenue Service for delinquent Federal Taxes and child support before other garnishments. When notice of garnishment, levy or attachment action taken or to be taken against any employee is first brought to the attention of the Town, the Town Administrator shall verify with the employee of the garnishment, levy or attachment. The Town recognizes all applicable restrictions, rules, and laws regarding the garnishment or attachment of an employee's wages.

5.60 Solicitation of Employees

All solicitations of employees, either by town employees or others, require prior written approval by the Town Administrator.

5.70 Uniforms and Special Clothing

Upon determination of the Town Administrator or appointing authority, employees may be required to wear uniforms; protective gear, or other types of special clothing; however, the Town will provide the uniforms, protective gear, special clothing, or a clothing allowance for those employees whose work requires that special clothing be worn. The Town reserves the right to determine what uniforms are to be worn, who will wear uniforms, what protective gear is required, and how such gear will be worn or used. At the termination of employment, the Town requires that all uniforms and protective gear be returned.

5.80 Safety

It is the policy of the Town of Ashburnham that every employee is entitled to work under the safest possible conditions in all occupations. Every reasonable effort will be made to provide and maintain a safe and healthy work place, safe equipment, proper materials and to establish and insist upon safe methods and practices at all times.

5.81 Reporting

Accidents, which injure people, damage machinery or equipment and destroy materials or property cause needless suffering, inconvenience and expense. Any incidents resulting in personal injury or property damage shall be reported immediately to the appropriate department head or designee who shall immediately report it to the Town Administrator. Any employee who notices an unsafe working condition shall immediately report such condition to their supervisor.

5.82 Safety Rules Directive in Nature

Any safety rules and regulations developed by the Town Administrator or appointing authority are to be considered directive in nature and applicable to all employees.

5.83 Employee Responsibility

It is the basic responsibility of everyone to make safety realization a concern. Employees shall observe the rules of conduct and safety and properly use the safety equipment provided.

5.90 Vehicles

5.91 Use of Personal Vehicles

No employee shall use a personal vehicle on official town business unless the Department Head first authorizes such use. Use of personal vehicles for official business shall be compensated for at the approved mileage rate established by the Town Administrator according to IRS guidelines. Reimbursement for mileage, tolls, and parking shall be submitted in writing.

5.92 Town Vehicle

The Town provides assigned vehicles to specific position classifications to be used by employees so classified to assist them in fulfilling their position responsibility. Town vehicles shall be used for municipal business only. Employees using Town vehicles shall

possess a current state driver's license and shall be responsible for safe and proper driving and regular maintenance.

5.93 Personal use of town vehicles is prohibited. In certain specific cases requiring emergency response, the Town Administrator may approve the use of a Town vehicle for purposes of commuting. Normally, the following town vehicles are exempt from income tax as they are considered qualified, non-personal use:

- Public Safety (on-call)
- Police and Fire Vehicles (marked and unmarked)
- Ambulances, dump trucks, utility trucks (for emergencies)
- School buses.

5.94 Tax Value

Other Town vehicles are considered non-exempt and the non-cash fringe benefit value for commuting to and from work must be estimated by the Town and included in the employee's year-end gross income (W-2 form) for income tax purposes. The Town accounts for the commuting use by including an appropriate amount as specified in the treasury regulations. The employee may be required to substantiate the non-taxable use of assigned vehicle. For non-exempt town vehicles used for commuting purposes, the employee shall be responsible for recording daily mileage use and submitting such information to the Town monthly. The Town shall be responsible for estimating and completing social security payroll deductions during the year and including an estimated benefit value in the employee's W-2 form based upon the prevailing rate for actual annual personal commuting use. The Town shall exclude all of the employee's days out of work during the year including holidays, vacation, sick days and personal days.

5.94 Use of Alcohol/Illegal Drugs

Use of alcohol or illegal drugs while driving Town Vehicles is prohibited.

SECTION 6 – EMPLOYEE BENEFITS

6.00 General

The Town will evaluate all employee benefits on a level of benefit basis and not on an individual benefit basis in determining a fair and competitive benefits program.

6.10 Group Insurance

The Town provides the following group insurance coverage for full-time and other eligible part-time employees:

(1) Group medical and life insurance is offered to eligible employees and their families. Such plans are contributory, with the Town paying 75% and the employee paying 25% of the medical insurance, and the Town and employee each paying 50% of the life insurance.

(2) Group short term and long term disability insurance is offered to eligible employees, with the Town paying 100% of the cost.

Details of insurance coverage are described in separate brochures.

6.11 Additional Insurance
The Town may offer additional life, dental or disability insurance to employees.

6.20 Worcester Regional Retirement System
All town employees who work twenty (20) hours or more per week throughout the year (1,040 hours per year) shall join the Worcester Regional Retirement System. Membership is optional for elected officials. Employees shall be excluded if they are over the age of 65 or are receiving an allowance for retirement or disability under any retirement system for public employees in Massachusetts, or are members of the Federal Civil Service Retirement System.

Employee contributions shall be based upon the date of membership into the system

Membership Date	Percentage of Gross Regular Compensation
Prior to Jan. 1, 1975	5%
Jan. 1, 1975 – Dec. 31, 1983	7%
Jan. 1, 1984 – June 30, 1996	8%
Jan. 1, 1996 and after	9%

If membership began on or after January 1, 1979 and the annual rate of regular compensation is $30,000 or more, an additional 2% will be withheld for that portion of the regular rate of compensation which is in excess of $30,000.

6.30 Training
The Town considers employee development an integral part of each department head's responsibility. The objective of this policy is to provide each employee with long-term personal growth opportunities and the Town with qualified and promotable individuals.

6.31 Cost Paid by Town of Ashburnham
Employees may request approval of their Department Head and Department Heads may request approval of the Town Administrator to enroll in job-related seminars and other educational programs designed to meet specific development objectives. All costs for this training are paid by the Town.

6.32 Tuition Reimbursement
The Town subscribes to the principle that every employee should be given equal opportunity to continue educational activities.

The tuition reimbursement program shall be available to all full-time employees. Educational assistance is available for job related courses taken at an accredited school or college. Each employee shall be reimbursed as follows:

"A" grade or equivalent	100%
"B" grade or equivalent	75%

"C" grade or pass in a pass/fail system or equivalent 50%

for all tuition, registration fees, books, and any related expenses up to a total of $1,000 per fiscal year after submitting written documentation from the institution regarding expenses paid and grade received. Such requests shall require the written approval of the Town Administrator and department head in advance of course registration.

6.40 Permanent Part-Time Employment Benefits

Permanent part-time employees as defined in Section 1.4 of this By-Law, and who have satisfactorily completed their probationary period, are eligible for the following benefits:

(1) Pro-rated pay for holidays as established in this By-Law.
(2) Pro-rated vacation pay based upon the vacation schedule contained in this By-Law.
(3) Pro-rated sick pay as established in this By-Law.
(4) Pro-rated personal days as established in this By-Law.
(5) Pro-rated funeral leave as established in this By-Law.
(6) Pro-rated paid leave of absence as established in this By-Law.
(7) Pro-rated maternity leave as established in this By-Law.
(8) Pro-rated military leave as established in this By-Law.
(9) Tuition reimbursement as established in this By-law

6.41 Temporary/Seasonal Employment Benefits

Temporary or seasonal employees as defined in Section 1.4 are not eligible for benefits noted in this By-law, except that, a temporary/seasonal employee who has completed the probationary period and who is scheduled to work more than 1,200 hours in a single fiscal year, is eligible for 6 days of paid vacation, 1 day of paid personal time, and paid holidays that fall within his/her regular work schedule. A day, for purposes of this section shall be defined as the employee's regular, average work day.

6.50 Longevity

In recognition of their value to the Town, employees who have completed defined terms of service with the Town shall receive an annual, lump-sum longevity payment on their employment anniversary date in accordance with the following schedule:

Completion of 5 yrs. service: $250
Completion of 10 yrs. service: $500
Completion of 15 yrs. service: $750
Completion of 20 yrs. service: $1,000

SECTION 7 – PERSONNEL RECORDS

7.10 Personnel Records

The Town Administrator or an appropriately designated representative shall be responsible for the maintenance of personnel records for each employee, including the original application for employment, the results of all tests and examinations taken to demonstrate qualifications, history of salary, attendance and leave records, commendations, record of disciplinary actions, training records, and any other records

pertinent to the employee's service. Employees are responsible for notifying their supervisor of any change in their personal status including address changes, telephone number, dependents, marital status, or name change. No departmental personnel records are authorized, it being the intent of this by-law that there shall be one and only one official personnel file for each employee.

7.11 Access to Employee Personnel Records

All employees, upon request to the Town Administrator shall have access to their own personnel records. Department heads shall also have access to the personnel records of their employees only as is necessary in the performance of their duties. No other employees, officers, or officials of the Town, except as may be designated by the Town Administrator and necessary to the conduct of town affairs, shall have access to an employee's personnel record. Requests for information from parties outside Town government, whether for active or terminated employees shall contain no individually identifiable information without the written authorization of such employee except where the information is limited to the verification of dates of employment and the employee's title or position, and wage or salary, where information is given pursuant to proper subpoena, a government audit, or an apparent medical emergency.

7.12 Employee Attendance/Payroll Sheets

Federal and State laws require the Town to keep accurate records of time worked as evidence that the Town is conforming with the law. Any misstatement of the time worked is a violation of law. Each non-exempt employee is required to fill in or punch in the number of hours worked. At the end of each workday or pay period, the Department Head shall sign the attendance/payroll sheets to approve the hours worked. Exempt employees shall not complete time sheets but shall allocate their hours worked each week by work/leave category. All forms for recording hours worked by non-exempt employees, and work/leave categories for exempt employees shall be standardized on forms provided by the Town Treasurer.

Employees are forbidden to punch in/out or sign in/out for another employee. Violation of this rule shall be grounds for dismissal.

7.20 Injury Reports

If an employee is injured while working for the Town, such employee shall immediately inform the Department Head on forms provided by the Town for this purpose. It is important that every injury be reported. Worker's compensation laws provide benefits for employees injured on the job. Medical expenses and the amount of compensation to which an employee is entitled for lost time are set by state law. All injuries must be reported immediately in order that necessary reports may be completed. If medical attention for the injury is required, a medical statement shall be required before the employee returns to work.

7.30 Records Retention

The following personnel and payroll records are to be retained by the Town:

- Employee Applications, Resumes
- Employment List, Exams
- Employee Attendance Sheets Overtime Records

- Employee Files including Performance Evaluations

SECTION 8 – EMPLOYEE STATUS CHANGE

8.10 Promotion Policy

The Town encourages employees to develop skills, attain greater knowledge of their work, and make known their qualifications for promotion to more responsible and difficult positions. No supervisor shall deny an employee permission to apply for a promotional opportunity in any town office or department. Promotion to a higher-level position shall be based upon merit and qualifications.

8.11 Transfer Policy

Transfer of an employee from one position to another without change in pay grade may occur when:

- The employee meets the qualification requirements.
- It is in the best interests of the Town.
- Further training and development of an employee in another position would be beneficial to the future staffing potential of the Town.

8.12 Demotion Policy

An employee may be demoted to a position of a lower pay grade, for which that employee is qualified, for any of the following reasons:

- When an employee would otherwise be laid off because the position is being abolished, the position is reclassified to a lower grade, lack of funds, or because of the return to work from authorized leave of another employee to such position in accordance with these rules.
- When an employee does not possess the necessary qualifications to render satisfactory service in the position held.
- When an employee voluntarily requests such demotion.

8.13 Separations

All separations of employees from positions in the classified service shall be designated as one of the following types and accomplished in accordance with the manner indicated:

- Resignations
- Layoff
- Disability
- Death
- Retirement
- Dismissal (see Section 10)

The Town Administrator may grant severance pay to employees who are involuntarily terminated depending upon cause.

8.14 Conditions of Separation

At the time of separation and prior to final payment, all records, assets, or other items of Town property in the employee's custody shall be transferred to the appropriate department head. In the event of a shortage in the above, an amount representing the value of unreturned property shall be calculated and withheld from the employee's final compensation or collected through other appropriate action.

8.15 Payment of Earned Compensation and Leave Upon Separation

Employees who separate from the Town service in good standing shall receive payment for all earned salary, vacation leave, and accrued sick leave, all in accordance with the appropriate sections of this by-law, subject to normal deductions and any indebtedness. The Worcester County Retirement Plan administrators shall be notified if the employee is a member.

8.16 Resignation

An employee may resign from the Town service in good standing by submitting, in writing, the reasons and the effective date to the department head at least 14 calendar days in advance. The department head may permit a shorter period of notice because of extenuating circumstances. The resignation shall be forwarded to the Town Administrator with a statement by the department head as to the resigned employee's service performance and pertinent information concerning the cause of resignation. Department heads and exempt personnel are required to give 30 days notice. Failure to comply with this rule may be cause for denying future employment with the Town, as well as the payment of earned compensation as noted in Section 8.15 above.

8.17 Lay-Offs

When a position must be discontinued or abolished because of a change in duties, reorganization, lack of work, or lack of funds, the Department Head shall submit a report to the Town Administrator together with a recommendation as to the employee(s) to be laid off.

The Town Administrator shall determine the order of lay-off of employees on the basis of employee performance.

Regular employees subject to lay-off shall be notified in writing not less that one (1) calendar week prior to the effective date, except in cases of emergency over which the Town has no control.

Employees laid off from work may be eligible for state unemployment compensation. Such employee will be issued an unemployment form upon termination of employment.

8.18 Disability

An employee may be separated for a non-job disability when that employee cannot adequately perform the full duties of the position because of physical or mental impairment. Such separations may be initiated by the employee, the Town or an authorized legal representative of either, but in all cases the disability must be supported by medical evidence acceptable to the Town Administrator. The Town may require an

examination at the Town's expense to be performed by a physician of its choice. Job related injuries are subject to the State worker's compensation laws or other appropriate laws.

8.19 Death

Separation shall be effective as of the date of the death of an employee. All compensation due shall be paid as soon as possible to the estate of the employee, except for such sums, which by law, may be paid to the surviving spouse.

8.20 Retirement

A pension plan, known, as the Worcester Regional Retirement System is available for employees scheduled to work twenty (20) hours or more per week throughout the year. The plan, including eligibility, is described separately in the retirement system booklet.

8.21 Dismissal Procedures

If, after remedial disciplinary measures have been implemented, an employee's performance, conduct, or other unsatisfactory behavior does not improve, it may be necessary to discharge the employee. Certain offenses may occur which are of such seriousness that immediate dismissal of an employee may be necessary. The Town Administrator may dismiss an employee upon giving the employee written notice of the reasons for the discharge and the effective date (see Section 10).

8.22 Exit Interviews

Each separating regular full-time employee shall be interviewed in an exit interview as near as possible to the close of the last day of work, prior to the issuance of the employee's final pay check.

The objectives of an exit interview conducted by the Department Head or the Town Administrator are:

1. To identify problems and determine any trends which are developing in a particular department.
2. To establish an orderly picture of the real reasons for the termination as seen by the employee.
3. To obtain information which will improve screening of job applicants.
4. To determine the impact on employees of Town personnel policies and practices.
5. To assure that the employee has returned all Town property.
6. To insure the greatest possible measure of good will toward the Town on the part of the separating employees.

8.23 Confidential Nature

Most exit interviews are of a routine nature. However, occasionally an interview develops information of a confidential nature. Such information shall be kept strictly confidential, except as necessary to protect the interests of the Town. A record shall be made of each interview and a report of the exit interview shall be maintained on file.

8.24 Unemployment Compensation

The Town pays the cost established by the State of Massachusetts to provide unemployment compensation for its employees.

8.25 Termination Information

All information regarding terminating employees must be forwarded promptly to the Town Administrator including signed letters of resignation.

8.26 "COBRA Benefits"

As of July 1, 1986, employees and their dependents have a right under the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) to continue group health coverage beyond when they normally would have been eligible for coverage under the Town's group plans. Details of all COBRA benefits are contained in the Town's COBRA Plan on file in the office of the Town Treasurer.

SECTION 9 – LEAVES OF ABSENCE

9.0 General Policy

Leave is defined as any authorized absence during regularly scheduled work hours, which is approved by proper authority. Leave may be authorized with or without pay and shall be granted in accordance with these rules on the basis of the work requirements of the departments and, whenever possible, the personal wishes of the employee.

9.10 Procedure for Requesting Leave

All leaves other than holiday, sick or injury leave shall be requested and approved by the Town Administrator for Department heads and by Department Heads for employees that report to them, prior to the taking of leave. In the case of a request for sick leave, employees shall notify the Department Head. Requests for leave without pay shall be made in writing and recommended by the Department Head and Town Administrator. An employee shall not be paid for any absence from scheduled working hours unless such absence is approved in advance by the Town Administrator.

9.11 Leave With Pay

Holidays: The following 13 holidays for regular full-time and regular part-time employees shall be granted with pay:

New Year's Day
Martin Luther King Day
President's Day
Patriot's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day
Thanksgiving Day

Friday after Thanksgiving Day
Christmas Day
1 Floating Holiday

Employees will be paid for the above listed holidays provided the following conditions are met:

- The employee must have worked the last scheduled workday prior to and the next scheduled workday after such holiday unless the absences are approved by the Town Administrator or appointing authority.
- If not on leave of absence.

9.12 Personal Leave

All regular employees of all town departments, excluding the school department, shall be entitled to personal leave not to exceed a maximum of three days per fiscal year and granted at the start of the fiscal year.

9.13 Vacation Leave

All full-time and permanent part-time (20 hours or more per week) employees shall earn annual vacation at their current rate of pay based upon length of service as of their anniversary date.

Vacation pay for hourly employees shall be based upon the normally scheduled work hours.

9.14 Vacation Earning Schedule

All vacation time shall be taken in the anniversary year in which it is earned. The amount of vacation earned shall be in accordance with the following schedule:

First year of service after completion of the probationary period*……(12 days/yr)
Completion of 1 year to completion of 5 years…….....(15 days/yr)
Completion of 5 years to completion of 10 years…….…….....(21 days/yr)
Completion of 10 years to completion of 20 years ……....(24 days/yr)
Completion of 20 Years …….....(28 days/yr)

* 12 days must be taken within the last 6 months of the first year of employment

9.15 Vacation leave may not be accrued beyond the fiscal year in which it is earned unless a written request to rollover unused vacation is made 30 days prior to the anniversary date. Employees shall have the right to roll-over up to five (5) days vacation, but in no event shall vacation rollover in excess of 5 days be approved.

In the event of any separation from Town service (with proper notice, if applicable) the accrued vacation at the time of termination shall be paid.

9.16 Payment of Salary in Lieu of Vacation

Because the purpose of a vacation is rest and relaxation, no vacation shall be bought back from an employee in lieu of vacation time without approval of the Town Administrator.

9.17 Re-hire Employees

Vacation time shall be determined by the length of continuous service. For purposes of computing vacation time, employees who leave the Town's service and are later reinstated, shall be considered new employees unless they were separated from Town service by lay-off and later rehired.

9.18 Holiday Celebrated During Vacation

Observed holidays established by this by-law shall not be considered as part of vacation time.

9.19 Advanced Vacation Pay

Employees wishing vacation pay in advance of actual vacation use shall submit the request to their department head who will notify the Town Administrator in writing of the request. The notification shall be made no later than the Friday before the payroll distribution date on which the employee wishes to receive vacation pay.

9.20 Sick Leave

Regular full-time or permanent part-time (as defined in this Bylaw) employees shall be eligible to earn a total not to exceed eight (8) leave days with pay during each calendar year. One sick leave day will be accrued and credited to an employee's account for each month of service on or about the 1st day of each month of service, not to exceed eight (8) leave days.

Sick leave shall be used only with the approval of the employee's department head and only for personal illness, personal injury, doctor appointments for employees, spouses, and dependents that cannot be scheduled during non-working hours; and for family emergencies up to a maximum of three days per occurrence. Family emergencies are defined as a sudden unanticipated and serious illness or injury of a spouse or dependent, which requires the employee to be absent from work.

An employee shall, after three (3) consecutive sick days, submit a doctor's certificate stating the nature of the illness or injury and the expected duration. Failure to provide such certificate shall be sufficient to deny further use of sick leave.

9.21 Sick Leave Accrual/Buy-Back

Unused sick leave may not be accrued in excess of eight (8) days, and may only be used for a purpose noted in 9.20 above.

Eligible employees, as of December 1, 2009 will have accrued unused sick time credited to an employee's account, up to 120 days, for 60 days pay at their rate as of December 1, 2009, to be paid upon retirement or death from Town service.

Employees at their discretion may use time either from their buyback account or sick bank account to supplement any Short Term or Long Term disability payments not to exceed 100% of regular pay. Time used from the sick bank or buyback accounts will be deducted from any retirement payout option.

9.22 Abuse of Sick Leave

Abuse of sick leave shall be considered sufficient cause for disciplinary action pursuant to Section 10 of this by-law. Sick leave shall only be used in those situations described in Section 9.20 of this by-law.

9.23 Monday/Friday Abuse Pattern

Abuse of sick leave shall be automatically established if an employee engages in a "Monday/Friday" use pattern, or has a large number of one or two day absences in a single or multiple year, without a valid health-related explanation.

9.30 Injury Leave

Injury leave, as distinguished from sick leave, shall mean paid leave given to an employee due to absence from duty caused by an accident, injury, or occupational disease which occurred while the employee was engaged in the performance of employment duties. Employees of the Town shall be covered by worker's compensation or other statutory provisions and are paid the required amounts due to injuries sustained on the job. For on the job injuries that result in loss time, less then five (5) days, the employee's accumulated sick time will be used for all absences. All injuries shall be reported immediately to the supervisor or department head and proper forms completed to qualify for insurance coverage, which is regulated by the State.

9.40 Civil Leave (Jury Duty)

An employee shall be granted leaves of absence, designated as civil leave, for jury or other civic duty requiring the appearance before a court or other public body. Such leave shall only be during that part of the day that such appearance is required. Such employees shall receive their regular salary. Fees received from the court or other sources shall be turned in to the Town. The Town will reimburse employees for parking expenses upon presentation of a receipt. Such paid leave excludes court time as a result of personal activities where the employee is a party to the proceeding.

9.50 Funeral Leave

Regular full-time and permanent part-time employees shall be granted a leave of absence with pay for a period of up to five (5) days when a death has occurred in their immediate family upon request to their Department Head for attendance at the memorial service and for a period of bereavement. Immediate family shall be defined as mother, father, brother, sister, spouse, child, mother/father in-law, or foster parent/child. Funeral leave of up to three (3) days is authorized to attend the memorial service and for a period of bereavement for the death of a sister/brother in-law, aunt, uncle, niece, nephew, grandparent or grandchild. Funeral leave of one (1) day is authorized for the death of a cousin. Greater bereavement leave may be taken with approval of the department head. Leave so granted will be charged to the employee's accrued sick leave.

9.60 Leave of Absence With Pay

Regular full-time employees and permanent part-time employees may request a leave of absence with pay for up to five (5) days by written request to the Town Administrator. Such leave shall be granted not more frequently than once every other fiscal year to allow the employee the opportunity to take care of major personal issues such as marriage, personal property loss, financial transactions, death of a close friend, attending a wedding, graduations, etc. Employees who are granted such leave will be required to makeup all time taken, but may do so using a "flexible schedule", subject to the approval of the Department Head, during the six (6) months following such leave.

Employees requesting a leave of absence shall state in writing the reasons for such request and the time requested. Failure to return to work after the expiration date shall be deemed sufficient reason for terminating employment.

9.70 Maternity Leave

Paid maternity leave of absence for up to one (1) month shall be granted to a regular full-time or permanent part-time female employee providing the employee has completed an initial 6-month probationary period. The employee must give eight (8) weeks notice of the expected departure date and a notice of intention to return to work.

Accrued sick leave benefits shall be provided for maternity leave purposes under the same terms and conditions, which apply to other temporary medical disabilities.

Upon return to work, the employee is entitled to return to the same or a similar position with no reduction in pay or benefits for which she was eligible on the date her leave commenced.

9.71 Paternity Leave

Paid paternity leave of up to one (1) week shall be granted to a regular full-time or permanent part-time employee following the birth of a child.

9.80 Military Leave

Employees of the Town who are members of a reserve unit of the Army, Navy, Marine Corps, Coast Guard, or Air Force of the United States or Massachusetts, shall be entitled to fifteen (15) days of annual paid military leave to attend training in such a unit. No such employee shall be subjected to any loss or reduction of seniority, or any other benefit to which they would otherwise be entitled. A current copy of the employee's Military ID card will be maintained in his or her personnel file.

9.81 Reinstatement

Employees who leave the service of the Town for the purpose of entering the armed forces of the United States shall be reinstated in their position and duties, provided the employee makes application for return to such service within ninety (90) days after they have received a certificate of satisfactory service from the armed forces. The Town Administrator shall certify in writing that such employee is able and qualified to perform the work required and that there is work available. In considering the factor of

availability of work, the Town shall replace by the returning employee, any employee, with less service, who was employed for the purpose of filling the position vacated by such returning employee. Any employee returning to the service of the town shall be credited with the period of such service in the armed forces to the same extent as though it had been a part of the term of service to the Town.

If the laws of the United States or Mass. provide for more extensive military leave rights than the provisions herein, the federal laws shall prevail and the greater rights shall be granted.

9.90 Absence Without Leave

An absence of an employee from work, including an absence for a whole or part of a day, that is not authorized by a specific grant of leave of absence under the provisions of this by-law shall be deemed an absence without leave. Any such absence shall be without pay and may be subject to disciplinary action.

SECTION 10 – DISCIPLINARY ACTIONS

10.00 Discipline

It is the responsibility of all employees to observe the laws, policies, rules and regulations necessary for the proper operation of the departments in the Town of Ashburnham. Department Heads are responsible for the proper and efficient operation of their departments and for enforcing Town laws, policies, rules and regulations. Department Heads are authorized to apply, with the approval of the Town Administrator, such disciplinary measures as may be necessary. It is the intent of Ashburnham's use of discipline, to help an employee understand their mistake(s) and perform at a higher or more acceptable level.

10.10 Types of Disciplinary Action

The type of disciplinary action will vary with the severity of the situation and may include the following measures: oral and/or written reprimand, disciplinary probation, suspension, discharge.

10.11 Reasons for Disciplinary Action

Disciplinary action may be imposed upon an employee for conduct or actions, which interfere with or prevent the Town from effectively and efficiently discharging its responsibilities to the public. The following shall be sufficient cause for disciplinary actions. The list is illustrative only and shall not be considered to include all reasons for disciplinary action:

- Activities prohibited by the Town Bylaws, rules and regulations, charter, ordinance, or State law.
- Failure to meet prescribed standards of work, morality, or ethics to an extent that makes an employee unsuitable for employment in the town services.
- Theft, willful misuse, misappropriation, negligence or destruction of Town property, or conversion of Town property for personal use or gain.

- Incompetence, inefficiency, or negligence in the performance of duties.
- Insubordination.
- Unwillingness or inability to perform normal quality and quantity of work.
- Conviction of a criminal offense.
- The use of abusive language toward a superior, another employee, or the public.
- Unsuitable personal conduct.
- Fraudulently obtaining sick or injury leave.
- Unauthorized absences or abuse of leave privileges.
- Habitual use of, sales of, or possession of, intoxicating beverages to excess, or abuse of narcotics, drugs, or other controlled substances as to interfere with performance or the efficiency to Town service.
- Use of alcoholic beverages, narcotics, drugs, or other controlled substances while on duty or on Town property.
- Acceptance of any valuable consideration (greater than $50), which was given, with the expectation of influencing the employee in the performance of employment duties.
- Falsification of records or use of official position for personal advantage.
- Dishonesty, deliberate untruthfulness, intoxication, recklessness on the job, habitual tardiness, misconduct, and attitudes, which constitute an unwholesome influence on other employees.
- Action or conduct affecting or impairing the efficiency of the Town service or which may bring the Town into disrepute.

10.20 Progressive Discipline

It is the Town policy to make every effort to avoid unwarranted discharges. However, it is necessary to enforce laws, policies, rules and regulations fairly and consistently. Violations shall result in one or more of the following disciplinary actions according to the frequency, seriousness and circumstances of the offense.

10.21 Verbal Warning

The Department Head shall review the facts of the alleged violation in private with the employee involved. The employee shall be told what action will be taken if another violation occurs.

10.22 The employer shall keep a record of the verbal warning given by having a copy placed in the employee's personnel file.

10.23 Written Warning

The Department Head shall review the facts of the alleged violation with the employee involved.

10.24 A record of the meeting, stating the facts that were reviewed with the employee and the action taken or to be taken, shall be prepared by the Department Head. The Department Head shall then review the warning memo with the employee, give a copy to the employee, and send copies to the Town Administrator to be place in the employee's file.

10.25 Suspension With or Without Pay

When an employee's behavior or actions are so egregious to require immediate disciplinary action, (such as reporting for work improperly clothed, exhibiting altered behavior suggesting substance abuse, gross insubordination, etc.) the Department Head may order the employee to leave work on an unpaid basis for up to three (3) days.

When an employee's behavior or actions have previously been the subject of a verbal and/or written warning, or when an employee's actions are sufficiently serious to justify a potential suspension without pay, or when it has been necessary to take immediate action as outlined in Section 10.21 above, the Department Head will, within 24 hours of the subject behavior or action, submit to the Town Administrator a memo requesting a formal disciplinary hearing.

10.26 Disciplinary Hearing

When a suspension hearing has been recommended, or in the case of a more serious incident and reduction in pay or termination is considered, the Town Administrator will conduct a disciplinary hearing. The employee will be given a letter outlining the offending actions or behavior to be the subject of the hearing, the date, time and place of the hearing, the employee's right to be represented by counsel, the right to present witnesses in their own behalf and the right to cross-examine witnesses presented against them. The Town Administrator shall have the authority to compel any Town employee to attend the hearing and to be questioned. Following the hearing, within 10 days the Town Administrator will decide what action is to be taken, from the following list:

1. dismiss all charges;
2. uphold, amend or rescind any earlier unpaid suspension imposed by the Dep't Head
3. demote the employee to a lower paid position or;
4. terminate the employee.

The Town Administrator's decision will be transmitted to the employee via first class mail, explaining the decision made and the reasons therefore. A copy of the letter and any related material shall be placed in the employee's personnel file. The Town Administrator's decision shall be final. In the event a dismissal, suspension or any other disciplinary action by the Town Administrator shall cause legal proceedings against the Town, further procedures will be at the approval of the Board of Selectmen according to the Town's Charter, Section 10 (k).

CHAPTER XXVIII: LOW IMPACT DEVELOPMENT (LID) BYLAW

Introduction

Land uses in Town affect our streams, lakes and water supplies. Careful planning of new development and redevelopment will protect the quality and health of these important water resources. Therefore, the Town of Ashburnham enacts this Low Impact Development bylaw to provide guidance that will prevent harmful impacts from land development activities.

1.0 PURPOSES

A) The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to manage stormwater runoff, promote groundwater recharge and to prevent water pollution from new development and redevelopment. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish regulations for land development activities that preserve the health of water resources;

2. Require that the amount and quality of stormwater runoff from new development is equal to or better than pre-development conditions in order to reduce flooding, stream erosion, pollution, property damage and harm to aquatic life;

3. Establish LID management standards and design criteria to control the quantity and quality of stormwater runoff;

4. Encourage the use of "low-impact development practices," such as reducing impervious cover and preserving greenspace and other natural areas;

5. Establish maintenance provisions to ensure that stormwater treatment practices will continue to function as designed and pose no threat to public safety;

6. Establish procedures for the Town's review of low impact development plans and for the Town's inspection of approved stormwater treatment practices;

B) Nothing in this Bylaw is intended to replace the requirements of either, the Town of Ashburnham Wetlands Protection Bylaw, Open Space Residential Development Bylaw, or any other Bylaw that may be adopted by the Town of Ashburnham. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each.

2.0 AUTHORITY

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the federal Clean Water Act, and as authorized by the residents of the Town of Ashburnham at Town Meeting, dated November 15, 2007.

3.0 SCOPE AND APPLICABILITY

A) This Bylaw shall be applicable to all new development and redevelopment, including, site plan review applications, subdivision applications and subdivision applications where approval is not required under the Subdivision Control Law. The Bylaw shall apply to any activities that will result in an increased amount of stormwater runoff or pollutants from a parcel of land, or that will alter the drainage characteristics of a parcel of land, unless exempt under Section 3B of this Bylaw. All new development and redevelopment, under the jurisdiction of this Bylaw, shall be required to obtain a LID

Permit. The LID Permit process shall be coordinated with existing permitting, where applicable.

An alteration, redevelopment, or conversion of land use or activities to those with higher potential pollutant loadings such as: auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas, shall require a LID Permit.

B) Exemptions

No person shall alter land within the Town of Ashburnham without having obtained a LID Permit for the property with the following exceptions:

1. Any activity that will disturb an area less than 7,500 square feet;

2. Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act, 310 CMR 10.04 and MGL Chapter 40A Section 3.

3. Timber harvesting conducted under the terms of an approved Forest Cutting Plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL Chapter 132 Sections 40 through 46.

4. Maintenance of existing landscaping, gardens or lawn areas associated with a single family dwelling;

5. Repair or replacement of an existing septic system;

6. Repair or replacement of an existing roof of a single-family dwelling;

7. The construction of any fence that will not alter existing terrain or drainage patterns;

8. Construction of a deck, patio, addition, garage, retaining wall, driveway expansion, accessory building, shed, swimming pool, tennis or basketball court associated with an existing single-family dwelling provided that the resulting runoff does not discharge untreated into a resource area;

9. Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns;

10. Emergency repairs to any Stormwater Management facility or practice that poses a threat to public health or safety, or as deemed necessary by the Planning Board;

11. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw.

4.0 DEFINITIONS

The definitions are in Appendix A of this Bylaw and shall apply in the interpretation and implementation of the Bylaw. Terms not defined in this Appendix shall be understood according to their customary and usual meaning. Additional definitions may be adopted by separate regulation.

5.0 ADMINISTRATION

A) The Planning Board is hereby designated as the LID Authority. The Planning Board shall administer, implement and enforce this Bylaw. Any powers granted or duties imposed upon the Planning Board may be delegated in writing by the Planning Board to its employees or agents.

B) LID Regulations. The Planning Board shall adopt, and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this LID Bylaw by majority vote of the Planning Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. After public notice, public hearing and review by a Registered Professional Engineer, the Planning Board may issue rules and regulations to fulfill the purposes of this Bylaw. Failure by the Planning Board to issue such rules and regulations or a legal declaration of their invalidity by a court shall not suspend or invalidate the effect of this Bylaw.

C) Simplified LID Regulations. The Planning Board shall adopt and implement a Simplified LID Permit program for specific types of projects associated with a single-family residence. The purpose of the Simplified LID Permit is to streamline the permitting process under this Bylaw by eliminating many of the standard requirements for minor residential projects. The Simplified LID Permit Application form and Simplified LID Permit requirements shall be defined and included in the LID Regulations.

D) The Planning Board shall, with the concurrence of the Applicant, designate another Town Board, including the Conservation Commission, Zoning Board of Appeals, Department of Public Works, and Board of Health, as its authorized agent for the purposes of reviewing all LID submittals and approving LID permits for any project within that particular Board's jurisdiction.

E) Stormwater Management Handbooks. The Planning Board will use the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Policy to execute the provisions of this Bylaw. This Policy includes a list of acceptable stormwater treatment practices, including specific design criteria for each. The Policy may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically altered in the LID Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design

and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

F) Actions by the Planning Board. The Planning Board may take any of the following actions as a result of an application for a LID Permit: Approval, Approval with Conditions, Disapproval, or Disapproval without Prejudice.

G) Appeals of Action by the Planning Board. A decision of the Planning Board shall be final. Further relief of a decision by the Planning Board made under this Bylaw shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with M.G.L. Ch. 249 § 4.

H) LID Credit System. The Planning Board may adopt a LID Credit System through the Regulations authorized by this LID Bylaw. This credit system will allow applicants the option, if approved by the Planning Board, to take credit for the use of stormwater better site design practices to reduce some of the requirements specified in the criteria section of the Regulations Failure by the Planning Board to issue such a credit system through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

6.0 PROCEDURES

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations issued as permitted under Section 5 of this Bylaw.

7.0 ENFORCEMENT

The Planning Board or an authorized agent of the Planning Board shall enforce this Bylaw regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. Enforcement shall be further defined and included as part of any LID Regulations issued as permitted under Section 5 of this Bylaw.

8.0 SEVERABILITY

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.

APPENDIX A DEFINITIONS

APPLICANT: A property owner or agent of a property owner who has filed an application for a LID permit.

BEST MANAGEMENT PRACTICE (BMP): 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 quality and protection of the environment. “Structural” BMP’s are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. “Nonstructural” BMP’s 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: Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural LID Management practices. Better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover, and using natural features for LID Management.

FOREST CUTTING PLAN: A plan for the cutting of trees on forest land, which is prepared and submitted in accordance with M.G.L. Chapter 132 Sections 40-46A. The forest cutting plan requires approval by a Service Forester of the Massachusetts Department of Conservation and Recreation, as provided under 304 CMR 11.04.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved parking lots, sidewalks, roof tops, driveways, patios, and paved, gravel and compacted dirt surfaced roads.

LID AUTHORITY: Town of Ashburnham Planning Board that has the authority to administer, implement, and enforce these LID Bylaws. The Planning Board is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments participate in the review process as defined in Section 5 of these LID Bylaws.

LID CREDIT SYSTEM: A form of incentive for developers to promote conservation of natural and open space areas. Projects that comply with prescribed requirements are allowed reductions in stormwater management requirements when they use techniques to reduce stormwater runoff at the site.

LOW IMPACT DEVELOPMENT PERMIT (LIDP): A permit issued by the Planning Board, for projects in the categories and meeting the standards defined in this Bylaw, after review of an application, plans, calculations, and other supporting documents. Projects in these categories that meet these generic standards and are properly implemented are assumed to meet the requirements and intent of this Bylaw which is designed to protect the environment of the Town of Ashburnham from the deleterious affects of uncontrolled and untreated stormwater runoff.

MASSACHUSETTS STORMWATER MANAGEMENT POLICY: The Policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state Bylaws promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, § 23-56. The Policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

NONPOINT SOURCE POLLUTION: Pollution from many diffuse sources caused by rainfall or snowmelt 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: 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, the Town of Ashburnham, and any other legal entity, its legal representatives, agents, or assigns.

POST-DEVELOPMENT: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity 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.

PRE-DEVELOPMENT: The conditions that exist at the time that plans for the land development of a tract of land are submitted to the Planning Board. 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.

RECHARGE: The replenishment of underground water reserves.

REDEVELOPMENT: Any construction, alteration, transportation, improvement exceeding land disturbance of 7,500 square feet, where the existing land use is commercial, industrial, institutional, or multi-family residential.

RESOURCE AREA: Any area protected under including without limitation: the Massachusetts Wetlands Protection Act, Massachusetts Rivers Act, or Town of Ashburnham Wetlands Protection Bylaw. For the purposes of this Bylaw a resource area includes all land lying within 100 feet of a wetland and 200 feet of a perennial stream.

Chapter XXIX: Affordable Housing Trust Fund

SECTION 1: Name of the Trust
The trust shall be called the Town of Ashburnham Affordable Housing Trust Fund.

SECTION 2: Purpose
The purpose of the Trust shall be to provide for the preservation and creation of affordable housing in the Town of Ashburnham for the benefit of low and moderate-income households. In furtherance of this purpose, the Trustees are hereby authorized, in accordance with the procedures set forth herein, including Article 5th, to acquire by gift, purchase or otherwise real estate and personal property, both tangible and intangible, of every sort and description; to use such property both real and personal, in such manner as the Trustees shall deem most appropriate to carry out such purpose, provided however, that all property held by the Trust and the net earnings thereof shall be used exclusively for the preservation and creation in the Town of Ashburnham of affordable housing for the purposes for which this Trust was formed.

SECTION 3: Tenure of Trustees
There shall be a Board of Trustees consisting of not less than five nor more than seven Trustees who shall be appointed by the Board of Selectmen. One of the Trustees shall be the Town Administrator. Only persons who are residents of the Town of Ashburnham shall be eligible to hold the office of Trustee. Trustees shall serve for a term of three years, except that two of the initial trustee appointments shall be for a term of three years, two for two years, and one for one year, and may be re appointed at the discretion of the Board of Selectmen. Any Trustee who ceases to be a resident of the Town of Ashburnham shall cease to be a Trustee hereunder and shall promptly provide a written notification of the change in residence to the Board and to the Town Clerk. Any Trustee may resign by written instrument signed and acknowledged by such

Trustee and duly filed with the Town Clerk. If a Trustee shall resign, or for any other reason cease to be a Trustee hereunder before his her term of office expires, a successor shall be appointed by the Board of Selectmen to fill such vacancy provided that in each case the said appointment and acceptance in writing by the Trustee so appointed is filed with the Town Clerk No such appointment shall be required so long as there are five Trustees in office. Upon the appointment of any succeeding Trustee and the filing of such appointment the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder.

SECTION 4: Meetings of the Trust

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law G L Chapter 39 Sections 23A 23B and 23C. A quorum at any meeting shall be a majority of the Trustees qualified and present in person.

SECTION 5: Powers of Trustees

The Board of Trustees shall have the following powers which shall be carried out in accordance with and in furtherance of the provisions of G. L. Chapter 44 Section 55C as modified under Chapter 109 of the Acts of 2006.

1. With the approval of the Board of Selectmen to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation, or other public or private entity, including without limitation, grants of funds or other property tendered to the trust in connection with provisions of any zoning by law or any other by law;

2. With the approval of the Board of Selectmen and Town Meeting, to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

3. With the approval of the Board of Selectmen and Town Meeting to sell, lease, exchange, transfer, or convey any real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust real property as the Trustees deem advisable notwithstanding the length of any such lease or contract;

4. With the approval of the Board of Selectmen, to sell, lease, exchange, transfer, or convey any personal property at public auction or by private contract for such consideration and on such terms as to credit or otherwise, and to make such contracts and enter into such undertakings relative to trust personal property notwithstanding the length of any such lease or contract;

5. With the approval of Town Counsel, to execute, acknowledge and deliver deeds, assignments, transfers pledges, leases, covenants, contracts, promissory notes, releases and other instruments, sealed or unsealed, necessary proper or incident to any transaction in which the board engages for the accomplishment of the purposes of the trust;

6. To employ advisors and agents such as accountants, appraisers, and lawyers as the trustees deem necessary;

7. To pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the trustees deem advisable;

8. With the approval of the Board of Selectmen, 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. With the approval of the Board of Selectmen, to deposit any security with any protective reorganization committee, and to delegate to such committee such powers and authority with relation thereto as the trustees may deem proper and to pay, out of trust property, such portion of expenses and compensation of such committee as the board, with the approval of the Board of Selectmen, may deem necessary and appropriate;

10. To carry property for accounting purposes other than acquisition date values;

11. With the approval the Board of Selectmen and the approval of Town Meeting by a two thirds majority vote, to incur debt, to borrow money on such terms and conditions and from such sources as the trustees deem advisable, and to mortgage and pledge trust assets as collateral;

12. With the approval of the Board of Selectmen to disburse trust funds for the purpose of making loans or grants in furtherance of the creation or preservation of affordable housing in Ashburnham upon such terms as the Trustees shall deem most appropriate to carry out such purposes;

13. To make distributions or divisions of principal in kind;

14. To comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor 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 G L Chapter 44, Section 5SC, to continue to hold the same for such period of time as the board may deem appropriate;

15. To manage or improve real property and with the approval of the Board of Selectmen and Town Meeting, to abandon any property which the trustees determine not to be worth retaining;

16. To hold all or part of the trust property uninvested for such purposes and for such time as the trustees may deem appropriate; and

17. To extend the time for payment of any obligation to the trust.

SECTION 6: Funds Paid to the Trust

Notwithstanding any general or special law to the contrary all moneys paid to the trust in accordance with any zoning by law, exaction fee, or private contribution shall be paid directly into the trust and need not be appropriated or accepted and approved into the trust. General revenues appropriated into the trust become trust property and these funds need not be further appropriated to be expended. All moneys remaining in the trust at the end of any fiscal year remain trust property.

SECTION 7: Acts of Trustees

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder and may execute on behalf of the Trustees any and all instruments with the same effect as though

executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate.

SECTION 8: Liability
Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of G. L. Chapter 268A. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of G L Chapter 268A.

SECTION 9: Taxes
The Trust is exempt from G L Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any subdivision thereto.

SECTION 10: Custodian of Funds
The Town Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities.

SECTION 11: Governmental Body
The Trust is a governmental body for purposes of Sections 23A 23B and 23C of G. L. Chapter 39.

SECTION 12: Board of the Town
The Trust is a board of the Town for purposes of G. L. Chapter 30B and Section 15A of G. L. Chapter 40; but agreements and conveyances between the trust and agencies, boards, commissions, authorities, departments, and public instrumentalities of the town shall be exempt from said Chapter 30B.

SECTION 13: Duration of the Trust
This Trust shall be of indefinite duration until terminated in accordance with applicable law. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof or they may distribute any of the assets in kind. The powers of the Trustees shall continue until the affairs of the Trust are concluded.

SECTION 14:
The Board of Selectmen may authorize the Trustees to execute, deliver, and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

SECTION 15: Titles
The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

The Board of Selectmen for themselves and their successors, hereby acknowledge and agree to the terms of this Trust, and the Trustees named hereunder, hereby acknowledge and agree for themselves and their successors to hold the trust property for the purposes hereof in trust for the benefit of all of the Inhabitants of the Town of Ashburnham, Massachusetts, in the manner and under the terms and conditions set forth herein.