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# GENERAL BY-LAWS FOR LEICESTER

AS AMENDED THROUGH May 11, 2021

## CHAPTER 1: GENERAL PROVISIONS FOR BY-LAWS

### SECTION 1.

The following provisions shall constitute the General By-Laws of the Town of Leicester, Massachusetts, which shall be in lieu of all By-Laws heretofore in force.

### SECTION 2.

The repeal of a by-law shall not thereby have the effect of reviving any By-Laws theretofore repealed.

### SECTION 3.

Words and phrases specifying or naming any officer, board or committee of the town, shall be construed as including the lawful successor, or the person or persons having the powers and performing the duties of such officer, board or committee.

### SECTION 4.

When in a by-law anything is prohibited from being done without the license or permission of a certain officer, board or committee, such officer, board or committee shall have the right to license or permit such thing to be done.

### SECTION 5.

Any or all of these By-Laws may be repealed or amended, or other By-Laws may be adopted at any Town Meeting by a majority vote of the voters present and voting, an article or articles for that purpose having been inserted in the warrant for such meeting by the Select Board. All proposed By-Laws and changes in By-Laws must be submitted, in writing, to the By-Law Committee not less than forty-five days prior to the business session of the Annual Town Meeting or forty-five days prior to a Special Town Meeting at which they shall be considered. The Moderator shall solicit recommendations from the By-Law Committee at the Town Meeting when said By-Laws or By-Law changes are considered.

### SECTION 6.

Whoever violates any of the provisions of these By-Laws whereby any act or thing is enjoined or prohibited shall be subject to the following terms of enforcement:

- a. **Criminal Complaint** Whoever violates any provision of these By-Laws may be penalized by indictment or on complaint brought in the district court. Except as may be otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation, or offense, brought in such a manner, shall be three hundred (\$300) dollars.
- b. **Noncriminal Disposition** Whoever violates any provisions of these By-Laws, the violation of which is subject to specific penalty, may be subject to a non-criminal proceeding as provided in General Laws, Chapter 40, Sections 21 and 21D.

**SECTION 6.1.**

Whoever violates any by-law, rule or regulation of any municipal officer, board or department, the violation of which is subject to a specific penalty, shall be subject to a non-criminal proceeding as provided in General Laws, Chapter 40, Section 21 and 21D. The penalty for each violation, or offense, of the lawful by-law, rule or regulation of such municipal officer, board or department shall not exceed three hundred (\$300) dollars and shall be the specific amount set forth in the by-law, rule or regulation. Unless otherwise specified in the by-law, rule or regulation, enforcement shall be by the Select Board. Nothing contained in this paragraph shall preclude, prohibit or prevent such municipal officer, board or department from pursuing any lawful means of enforcement, penalty, injunction or disposition as otherwise provided by General Law.

## **CHAPTER 2: TOWN MEETINGS**

### **SECTION 1.**

There shall be an Annual Town Election for the election of town officers and a Town Moderator on the second Tuesday in June of each year. Such matters as are required by law to be determined by ballot may also be acted upon at such election.

#### **SECTION 1.1**

The term of the Moderator shall be for three (3) years.

### **SECTION 2.**

The polls shall be open during such hours as the Select Board shall specify in the warrant.

### **SECTION 3.**

There shall be an Annual Town Meeting on the first Tuesday in May of each year for the consideration of all town business properly before the meeting.

#### **SECTION 1.3 MGL 53, Section 18B approved at a STM held on 10-30-2018**

MGL 53, SECTION 18B, which will allow information on town ballot questions to be addressed via written arguments from question proponents and opponents, be vetted by Town Counsel, and made available to the voters of the Town.

### **SECTION 4.**

Notice of every Town Meeting shall be given by posting attested copies of the warrant therefor in at least one public place in each precinct of the Town, on the Town Clerk's bulletin board, and on the bulletin board in the front entry of the Town Hall Building, not less than 14 days before the day fixed for such meeting. A town meeting notice including the date, time and place shall be published in a local newspaper as a legal advertisement a reasonable time in advance and to be published once before the meeting.

### **SECTION 5.**

At least seven days before the day fixed in the warrant for the Annual Town Meeting, the Select Board shall cause to be made available in a public place in each precinct copies of the report of the Advisory Committee and of the Annual Town Report.

### **SECTION 6.**

As soon as practicable after the adjournment of any town meeting, on a vote to adjourn to another day, the clerk shall cause a brief statement of the day and hour to which the adjournment voted and of the business remaining to come before the meeting, to be posted in at least one public place in each precinct of the Town and on the Town Clerk's bulletin board, and on the bulletin board in the front entry of the Town Hall Building.

### **SECTION 7.**

The number of voters necessary to constitute a quorum at any Town Meeting shall be fifty; provided, however, that a number less than a quorum may from time to time adjourn the same. This section shall not apply to such parts of meetings as are devoted exclusively to the election of Town officers.

**SECTION 8.**

Copies of the warrant shall be made available by the Select Board to the voters at all Town Meetings.

**SECTION 9.**

No person whose name does not appear upon the list of registered voters shall be admitted to the hall where a Town Meeting is being held, except with the permission of the Moderator, who shall determine the bounds of such hall.

**SECTION 10.**

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

**SECTION 11.**

All motions and amendments shall be presented in writing except those specified in Section 13 following.

**SECTION 12.**

If a motion is susceptible of division, it shall be divided and the question shall be put separately upon each part thereof, if six voters so request.

**SECTION 13.**

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

**SECTION 14.**

On motions and proposed amendments involving sums of money, the smaller or smallest amount shall be put to the question first, and an affirmative vote thereon shall be a negative vote on any larger amount.

**SECTION 15.**

Any person who is employed as an attorney by another interested in any matter under discussion at a Town Meeting shall disclose the fact of his employment before speaking thereon.

**SECTION 16.**

When a question is put, the sense of the meeting shall be determined by a show of hands, and the Moderator shall declare the vote as it appears to him. If the decision of the chair is doubted, or a division of the house is called for by seven or more voters, the Moderator shall request all persons in the house be seated and may appoint tellers. The question shall then be distinctly stated, and those voting in the affirmative and negative respectively, shall raise one of their hands and hold it aloft until they have been counted by the Moderator or tellers.

**SECTION 17.**

The meeting may order that the vote on any motion shall be taken by a secret ballot and check list of at least seven (7) Town Meeting members vote in the affirmative to do so, and all votes on the appropriation of money in excess of three thousand dollars shall be taken by ballot, unless said appropriation shall have been recommended or approved by the Advisory Committee.

**SECTION 18.**

No person shall speak more than once on any question to the exclusion of any other person who may desire to speak thereon, nor more than twice without first obtaining leave of the meeting, except in either case for the brief correction of an error in or misunderstanding of his previous statement, or to answer an inquiry.

**SECTION 19.**

No person shall speak for more than ten minutes on any question unless his time shall be extended by vote of the meeting.

**SECTION 20.**

No vote of the meeting shall be reconsidered unless notice of intention to ask for reconsideration shall have been given within one hour after the vote to which such notice relates has been passed. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be reconsidered on a motion to adjourn, to lay on the table, or for the previous question.

**SECTION 21.**

All committees shall report as directed by the Town. Vacancies in all committees and boards regardless of how appointed and consisting of two or more members shall after notice to the Select Board be filled by the remainder of said committee or board and the Select Board members. Committees failing to report at the Annual Meeting shall automatically be discharged. The Meeting may continue said committee by a majority vote from the floor.

**SECTION 22.**

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

## **CHAPTER 3: SELECT BOARD, TOWN CLERK, ASSESSOR**

### **SECTION 1.**

The Select Board shall have the general direction and management of the property and affairs of the Town in all matters not otherwise provided by law or these By-Laws. The Select Board shall order flags flown at half-mast when in their opinion it would be appropriate.

### **SECTION 2.**

It shall be the duty of the Town Clerk immediately after every Town Meeting to notify in writing all members of committees who may be elected or appointed at such meeting, stating the business upon which they are to act and the names of the persons composing the committees, and also to notify all officers, boards, and committees of all votes passed at such meeting in any way affecting them; and further, after each Annual Meeting to post and maintain on the bulletin board in the Town Hall a corrected list of all elected and appointed officers of the Town.

### **SECTION 3.**

It shall be the duty of the Assessors of the Town to appraise all the property belonging to the Town in the month of December in each year and enter the sum in a book to be kept for the purpose. They shall give a copy of said appraisals to the Select Board, who shall report the same to the Town in connection with their Annual Report.

### **SECTION 4**

#### **Section 4.1**

The Town, acting through its Select Board, may provide an employment contract for appointed department heads for period of up to five (5) years, to provide for the salary, fringe benefits and other conditions of employment, including but not limited to severance pay, relocation expenses, reimbursement of expenses incurred in the performance of duties or office, liability and disability insurance and leaves of absence.

#### **Section 4.2**

Such an employment contract shall prevail over and preempt any provision of any local Personnel By-Law, rule or regulation covering the subject matter of the employment contract.

#### **Section 4.3**

Funding of the employment contract shall be subject to annual appropriation by the Town Meeting.

#### **Section 4.4**

Nothing contained in this section shall affect the appointment or removal powers of the Select Board over the Department Heads. This section does not grant tenure.

#### **Section 4.5**

From time to time, the Select Board may adopt rules and regulations relative to the administration of this section.



## **CHAPTER 4: ADVISORY & BY-LAW COMMITTEES**

### **SECTION 1.**

There shall be an Advisory Committee consisting of seven (7) legal voters of the Town, who shall be appointed as herein provided. A quorum of the Advisory Committee shall consist of a majority of the membership of the Committee. No elected or appointed Town official shall be eligible on said Committee.

### **SECTION 2.**

Following adoption of this by-law, a Committee comprised of the Moderator, the Chairperson of the Select Board or designee and the Chairperson of the Advisory Committee or designee shall appoint three (3) members to three-year terms. Said appointments shall be made prior to August 31. The terms of office of said members shall commence immediately upon qualification and shall expire on June 30th. Such committee shall choose its own officers and shall serve without pay and it shall cause to be kept a true record of its proceedings. A Committee comprised of the Moderator, the Chairperson of the Select Board or designee and the chairperson of the Advisory Committee or designee shall fill any unexpired terms to the Advisory Committee as soon as possible after the Town Clerk has been notified that a vacancy exists. No employee of the Town of Leicester will be eligible to serve on the Advisory Board.

### **SECTION 3.**

Any article in any warrant for a Town meeting shall be referred to the Advisory Committee for its consideration by the Select Board at the Select Board's first meeting following the submission of the article. The Select Board after drawing any such warrant shall transmit immediately a copy thereof to each member of said committee. A public hearing shall be held at least twenty-four hours before the Annual Town Meeting upon all such articles, unless a public hearing by some other tribunal is required by law, and a notice of such hearing shall be posted in at least four public places in the Town. Said committee shall, after due consideration of the subject matter of such articles, report thereon to the Annual Town Meeting, in writing, such recommendations as it deems best to the interest of the Town and its citizens. Should a petition for a public hearing, signed by at least ten (10) legal voters of the Town, be presented to the Chairman of the Advisory Committee at least six days prior to any Special Town Meeting, then the Advisory Committee shall hold a public hearing, in accordance with this section.

### **SECTION 4.**

There shall be a By-Law Committee consisting of five (5) legal voters of the Town who shall be appointed as herein provided.

### **SECTION 5.**

The Select Board, following the adoption of this by-law, shall by July 1st appoint two (2) members of said committee for a term of three (3) years, two (2) members for a term of two (2) years, and one (1) member for a term of one (1) year. Thereafter the appointments shall be for a period of three (3) years.

### **SECTION 6.**

Unless otherwise governed by Mass General Laws and Town bylaws a member of a committee appointed by the Town Meeting or the Select Board or a member of the Committee as described in Chapter 4 Section 2. who is absent from three (3) posted meetings of the committee may in the

discretion of the Committee chairperson be deemed to have vacated his or her appointment on the committee and the committee chairperson shall declare a vacancy in the position and report the vacancy to the Town Clerk. In the case of an appointment made by the Select Board, the Select Board shall make a new appointment to fill the vacant position and in the case of an appointment made by the Town Meeting, the Moderator shall make a new appointment to fill the vacant position.

## **CHAPTER 5: ACCOUNTANT, TOWN CLERK, TREASURER**

### **SECTION 1.**

An audit of the accounts of the Town shall be made annually under the supervision of the State Division of Accounts as provided by section thirty-five of Chapter forty-four of the General Laws.

### **SECTION 2.**

Except as otherwise provided by law, the Town Clerk shall have custody of deeds, easements and other similar documents owned by the Town, except that the bond given by the Town Treasurer to the Town shall be in the custody of the Select Board.

### **SECTION 3.**

The Treasurer may pay without approval of the Select Board the several amounts becoming annually due on the State and County taxes, Town notes and interest on Town notes.

## **CHAPTER 6: CONTRACTS**

### **SECTION 1.**

No contract involving an obligation of the Town in excess of Two Hundred Dollars shall be binding upon the Town unless it is in writing and is signed by at least a majority of the board or committee duly authorized or having control of the appropriation against which such obligation is incurred; and such board or committee shall make a record of every such contract in a book which shall be the property of the Town.

### **SECTION 2(a).**

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 materials, supplies or equipment, shall be made, the estimated cost of which in either case is Ten Thousand Dollars or more, unless competitive bids have been obtained, therefore. Such bids shall be invited (by posting of notice of such proposed purchase or contract in a conspicuous place in the Town) by the sending of letters of invitation to a sufficient number of vendors, contractors or other qualified persons to ensure fair competition, and by the publishing of a notice of such proposed purchase or contract in a newspaper having general circulation in the Town. Such invitation shall state where plans and specifications for the proposed work or purchases may be obtained, and the time and place at which bids will be opened in public. No purchase, and no service or work for which a contract is proposed, shall be split, or divided for the purpose of evading the provisions of this section.

### **SECTION 2(b).**

The Select Board may exempt a purchase or contract from any or all the provisions of the preceding section when, in their opinion, an emergency exists requiring immediate action on such purchases or contract to protect the health and safety of person or property, or when no reasonable substitution can be obtained for the article or service to be purchased or contracted for. Evidence that such an emergency exists, or that no reasonable substitute for a purchase or service can be obtained, shall be furnished to the Select Board in writing by the officer, board or committee making such purchase or contract, and shall be kept on file with other records or such transactions.

### **SECTION 3.**

The Select Board, by a majority vote of said Board, may from time to time, regulate and set the fees for such municipal services, licenses, permits, filing entry fees and the like which are not otherwise established by the General Laws of the Commonwealth, previous Town vote, or another Town Board or agency acting under statutory authority. Prior to setting any such fees, the Select Board shall advertise by posting in the Town Hall a proposed list of the fee schedule the Board intends to adopt. The effective date of the fee schedule shall be determined by the Select Board at the time the schedule is adopted by majority vote of the Board. The Board shall cause a true copy of said fee schedule to be posted in the Town Clerk's office as well as the Select Board Office.

## **CHAPTER 7: COURT ACTION & TOWN COUNSEL**

### **SECTION 1.**

The Select Board shall be agents of the Town to institute, prosecute and defend any and all claims, actions and proceeding to which the Town is a party or in which the interest of the Town are or may be involved. The Select Board may at their discretion compromise or settle any claims or suits of which the Town is a party which does not require the payment by the Town of an amount in excess of Five Hundred (\$500) Dollars. No settlement of a claim or suit obligating the Town shall be made except by law or without the consent of a Town Meeting.

### **SECTION 2.**

The Select Board in their annual report shall state what actions have been brought against, and on behalf of the town, and the current standing of all suits at law involving the Town or any of its interest.

### **SECTION 3.**

The Select Board shall by June 30 of each year, effective July 1st, appoint a person who is a member of the bar in good standing, to serve as the legal counsel for the Town for a term of one (1) year. They shall likewise fill any vacancy in said office for the unexpired term, and may employ special counsel to assist the said Town Counsel whenever, in their judgment, necessity therefore arises.

### **SECTION 4.**

It shall be the duty of the Town Counsel to conduct the prosecution, defense or compromise of claims, actions and proceedings to which the Town is a party, and the prosecution of actions or proceedings by or on behalf of any town officer, board or committee as such; to conduct the defense of any action or proceeding brought against any town officer, board or committee as such when the Select Board having determined that any right or interest of the Town are or may be involved therein, shall so request; to conduct proceedings brought by or against the Assessors before the Board of Tax Appeals; to assist in the prosecution of complaints or 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 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.

### **SECTION 5.**

The following, authorized under Massachusetts General Laws Chapter 40, Section 57, and accepted by the Town of Leicester on May 3, 1993.

#### **"A By-Law relative to suspension or revocation of licenses and permits for failure to pay town taxes, assessments, betterments and other municipal charges:**

**(1.)** 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 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.

**(2.)** 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 purposes of such proceeding and shall not be relevant to or introduced in any other 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 license authority receives a certificate issued by the tax collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges, payable to the municipality as the date of issuance of said certificate.

**(3.)** Any party shall be given an opportunity to enter into a 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.

**(4.)** The Select Board may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholder, 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.

**(5.)** This By-Law shall not apply to the following licenses and permits: 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 licenses, 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 8: RECORDS & REPORTS**

### **SECTION 1.**

All officers, boards, and committees of the Town shall cause records of their doings and accounts to be kept in suitable books. Said books shall be kept in their respective places in the Town Offices and shall not be removed therefrom. Said books shall, unless otherwise provided by law, be opened to public inspection at any reasonable time but shall remain during such inspection under supervision of the officer, board or committee having custody thereof.

### **SECTION 2.**

All officers, boards, standing committees and special committees of the Town having charge of the expenditures of Town money shall annually report thereon in writing in such manner as to give the citizens a fair and full understanding of the objects and methods of such expenditures, referring, however, to the report of the Town Accountant for statements in detail of receipts and payments, and may make therein such recommendations as they deem proper. Such reports shall be submitted to the Select Board for inclusion in the Annual Town Report on or before the fifteenth day of January of each year, and such report is to include a statement of the total gross earnings paid all employees and officials.

### **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 into and paid out of the Town treasury in the financial year next preceding, showing separately payments made from the proceeds of loans as capital outlays for permanent improvements; the report of the Collector of Taxes, of receipts, payments and abatements, statements of all funds belonging to the Town or held for the benefit of its inhabitants; a statement of the liabilities of the Town on bonds, notes, certificates of indebtedness, or otherwise, and of indebtedness authorized but not incurred, and the purpose thereof; a statement of transfers made to or from any appropriation; abstracts of the records of the meetings of the Town held since publication of the last annual report, and such other matters as the said report is required by law to contain, or as may be inserted by the Select Board under the discretion granted by law.

## **CHAPTER 9: SAFETY & ORDER**

### **SECTION 1.**

No building shall be removed over a public street without a permit from the Select Board.

### **SECTION 2.**

If any building shall be removed over or through any public street, the Select Board may require the owner of said building or the person moving it or both, to file with the Town Clerk a bond with satisfactory sureties to save the Town harmless from loss, costs, or damage for which the Town might be held liable.

### **SECTION 3.**

No person shall place or cause to be placed in any of the public streets or squares anything tending to obstruct the streets, without a written license from the Select Board. No person shall place any snow upon a street or way, except for immediate removal.

### **SECTION 4.**

No person shall break or dig up the ground in any street or square in the Town or set up any posts, fence, tree or edge stone, in any street or square in the Town, without a license from the Select Board.

### **SECTION 5.**

Persons shall not congregate or stand upon any sidewalk or street so as to obstruct the free passage thereof.

### **SECTION 6.**

It shall be the duty of any Constable or Police Officer of the Town, to order any person offending against the provisions of the previous section to move on, and if said order is not obeyed may act in his official capacity.

### **SECTION 7.**

No person except a fireman in legitimate discharge of his duties as a fireman of the Town of Leicester shall open any hydrant without the consent of the Water Commissioners, and no person shall park a vehicle or place anything so as to hinder the free access to the use of any hydrant.

### **SECTION 8.**

No person shall behave in a rude or disorderly manner, or use any indecent, profane, or insulting language in any street, highway or other public place in the Town, or be or remain upon any doorstep, portico, or other projection from any house or other building not his own, or any church, meeting house, railroad depot, or platform public hall, or entrance thereto, to the annoyance or disturbance of any person, nor shall any person at or near or upon any such dwelling, house, building, sidewalk, doorstep, portico fence or projection or such, meeting house, public hall, railroad depot, or platform or entrance thereto, commit any nuisance.

### **SECTION 9.**

No person shall pasture any animals upon any street or way in the Town, with or without keeper,



except within the limit of such way adjoining his own premises, and on the same side of the street therewith.

**SECTION 10.**

No person shall post up, or affix in any manner any bill, placard, or notice, either written or printed, upon the fence, posts or guide boards, walls, bridges, trees, stones, rocks, or any other object or upon any part of any building in the Town, without the previous consent of the occupant or the occupants, or those having charge thereof, or if there be no occupant, without the previous consent of the owner thereof. And no person shall make any indecent figures or write any indecent or obscene words upon any building structure, or public place in this Town.

**SECTION 11.**

No person shall throw stones, snowballs or other missiles, nor coast or slide down, in or along any of the sidewalks or streets of the Town, upon any sled, boards, or otherwise, or ride a bicycle on the sidewalks within the Town, except at such places and under such restrictions and regulations as the Select Board shall designate.

**SECTION 12.**

No person shall cut down, remove, mutilate, or otherwise injure or destroy any fruit, shade or ornamental tree now growing, or which may hereafter be growing in any park or street, common ground or cemetery in this Town, or shall deface, disfigure, mutilate or destroy the fence or enclosure or proprietor thereof in writing first had and obtained.

**SECTION 13.**

Whenever the words "Streets or Street" are mentioned in these By-Laws, it should be understood as including any place to which the public has a right or access, as determined by Chapter 90 of the Massachusetts General Laws.

**SECTION 14.**

No person shall bathe or swim in any of the waters within the Town, in a state of nudity, in places exposed to public view, in the immediate sight of the occupant or occupants of any building.

**SECTION 15.**

The Select Board (or the Chief of Police) shall have the power to designate, in their discretion, certain areas where there shall be no parking, or limited parking, of motor vehicles.

**SECTION 16.**

The Select Board of the Town may license suitable persons to be collectors of, dealers in or keepers of shops for the purchase, sale or barter of junk, old metals or second hand articles, may make rules and regulations relative to their business and may provide the supervision thereof. Said licensing board may make additional rules, regulations and restrictions which shall be expressed in all licenses. Said licenses may be revoked at the pleasure of the said board only after a public hearing on said license.

**SECTION 17.**

The Town of Leicester hereby adopts the provisions of Chapter 76, Section 1 of the General Laws, so far as applicable to truant children and absentees from school.

**SECTION 18.**

No person shall keep any dog which by biting, howling, barking or in any other manner disturbs the peace and quiet of any neighborhood or endangers the safety of any person in a congested area.

**SECTION 19**

(1). For the purpose of preserving peace and good order, no person shall have any intoxicating liquor in his possession in any park, dance hall, or other public place in this Town, unless pursuant to General Laws, Chapter 138, a license or permit shall have been issued with respect to such place.

(2). Any person violating this By-Law shall be punished by a fine not exceeding fifty dollars (\$50.00).

**SECTION 20.**

In order to protect the health and safety of the inhabitants of the Town of Leicester, it is illegal to ride, lead, or otherwise allow a horse or horses to roam upon any sidewalk located within the Town of Leicester, wherever the sidewalks may be located. Violations of the by-law may be punishable by a fine not to exceed twenty dollars (\$20.00) for each offense.

**SECTION 21.**

No person or persons, as defined by Chapter 93A, Section 1A of the General Laws, shall solicit, canvass, or distribute with intent to sell for commercial purpose any item or product door to door within the Town of Leicester, unless said person or persons have received a license permitting the soliciting, canvassing or distributing with intent to sell for commercial purpose from the Chief of Police. A license shall be granted upon a showing that such solicitation, canvassing and distribution with intent to sell for commercial purposes is in conformance with the Laws of the State of Massachusetts and does not constitute an unethical, illegal or deceptive practice as defined by Massachusetts General Laws, Chapter 93A and 101, and any rules and regulations promulgated by the Attorney General's Office. Such soliciting, canvassing and distributing with intent to sell for commercial purposes shall be limited to weekdays only, between the hours of 10:00 A.M. and 4:30 P.M. A license, when issued, shall be granted for specific dates. Whoever violates this section shall be punishable by a fine not to exceed fifty dollars (\$50.00).

A temporary business or transient vendor as defined in G.L. Ch. 101 § 1 shall be subject to licensing from the Select Board. This license may be granted after a hearing before the Select Board at which the applicant shall demonstrate that such business is in conformance with the laws of the Commonwealth, that the business does not pose a hazard or inconvenience to public safety and street traffic, that the applicant is in compliance with all applicable revenue and tax laws. Prior to the issuance of the license herein, the Select Board may require a period of up to but not more than 60 days from the date of filing the application for the Board to inquire into the safety and compliance requirements of the application including but not limited to a criminal record inquiry.

## **SECTION 22.**

Any person applying to the Town Clerk for a Dog License under the statutes of the Commonwealth of Massachusetts is required to show proof that all local bylaws and regulatory requirements have been complied with prior to the issuance of said license.

Applicants for Kennel Licenses shall complete and submit the Town's Permit/License form. Kennel inspections shall be required in accordance with MGL Ch. 140-sec. 137A.

## **SECTION 23. ANIMAL CONTROL BYLAW**

*Adopted by Town Meeting on May 3, 2016 to replace Section 23; effective April 1, 2017*

### **1. Authority and purpose.**

This bylaw is adopted pursuant to the authority of MGL c. 140 and any other relevant statutes and regulations promulgated pursuant thereto. The purpose of this bylaw is to establish regulations for the keeping of dogs and cats in the Town of Leicester in a manner consistent with such statutes. All references in this bylaw to any statute shall mean such statute as such may be amended from time to time and any successor statute to same. Nothing in this bylaw is intended to, nor shall, preclude or limit any enforcement officer or agent, nor any Town board or official, from utilizing any procedure or exercising any right provided by any such statute. This bylaw does not purport to set forth or reference all such statutes, and anyone reading the bylaw is also bound by all applicable statutes and should consult same.

### **2. Licenses and tags; fees; penalty.**

**A.** The owner or keeper of a dog six (6) months old or over shall purchase a license from the Town Clerk and shall attach the license to a collar or harness of said dog. If any such tag is lost, the owner or keeper of such dog shall secure a substitute tag from the Town Clerk.

**B.** Any person residing in the Town of Leicester, who at the beginning of the license period April 1st to March 31st is, or who during the license period becomes, the owner or keeper of a dog six (6) months old or over, shall cause the dog to be licensed within thirty (30) days.

**C.** Any owner or keeper of a dog who moves into the Town of Leicester and has a valid dog license for his/her dog from another city or town in the Commonwealth shall, within thirty (30) days, obtain a transfer license and a tag for such dog in accordance with MGL c. 140§ 146 upon producing evidence of the previous license.

**D.** The annual fee for every dog license, including dogs in personal kennels, except as otherwise provided for by law, shall be as follows:

- Male - \$20
- Female - \$20
- Neutered male - \$10 (must show documentation)
- Spayed female - \$10 (must show documentation)
- Substitute tag - \$1
- Transfer license - \$1

Any housing unit with 5 or more dogs must obtain a personal kennel license which is only issued after passing a kennel inspection.

**E.** Any owner or keeper of a dog failing to license it by June 1 shall pay a late fee of twenty-five (\$25) dollars per dog. Failure to license by September 1 shall result in an additional penalty of fifty (\$50) dollars per dog in accordance with MGL c. 140, § 141.

**F.** Per MGL c. 140, § 139(c), no fee shall be charged for a license issued for a service animal as defined by the Americans with Disabilities Act or regulations promulgated thereunder.

**G.** Any person seventy (70) years of age or older, upon proof of age, shall be exempt from the annual fee for one (1) dog per year. The owner of a commercial kennel license age seventy (70) years of age or older shall be excluded from this exemption.

**H.** When applying for a dog license the applicant must show proof, by a licensed veterinarian's certificate, that the dog has been vaccinated against rabies, as required by MGL c. 140, §§137 and 145B, or must provide certification per said statutes that such animal is exempt from this requirement. In accordance with MGL c. 140, §145B, an owner or keeper failing to vaccinate a dog against rabies shall be assessed a penalty of \$100.00.

**I.** The fee for each commercial kennel license shall be \$100.00. Per MGL c. 140, § 137A(c), there shall be no kennel fee charged a domestic charitable corporation incorporated exclusively for the purpose of protecting animals from cruelty, neglect, or abuse or for the relief of suffering.

**J.** Per MGL c. 140, § 139(c), no license fee or any part thereof shall be refunded because of subsequent death, loss, spaying, neutering or removal from the Commonwealth or other disposal of the dog.

**L.** Dog licenses shall be issued in conformance with the Town's Zoning Bylaws.

### **3. DEFINITIONS**

**A.** To the extent that MGL c. 140, §§ 136A to 137A, contain definitions of words used herein, all words and terms as used herein shall be as set forth in said statutes.

**B.** Unless otherwise defined by such statutes, the terms as used in this bylaw shall mean the following unless the context otherwise indicates:

**COMMERCIAL KENNEL** — A pack or collection of dogs on a single premise including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel or veterinary kennel as defined in MGL c. 140, § 136A.

**CONFINE** — To limit in area, effectively restricted to private property, by means of a fence, pen or other device or structure.

**EFFECTIVELY RESTRAIN** — To deprive of freedom, to limit or restrict by means of leash, harness or lead or to maintain full control over the dog in compliance with humane requirements.

**FULL CONTROL** — Dog will respond to the command, order or signal of the owner or keeper responsible for the dog.

**KEEPER** — Any person or society, other than the owner, harboring or having in his possession a dog.

**NUISANCE DOG** — As defined in MGL c. 140, § 136A, shall mean a dog that:

(1) Has threatened or attacked livestock, a domestic animal or a person, but such threat or attack was not a grossly disproportionate reaction under all the circumstances.

(1) By excessive barking or other disturbance, is a source of annoyance to a sick person residing in the vicinity; or

(2) By excessive barking, causing damage or other interference, a reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment; or

**OWNER** — Any person or persons, firm, association, or corporation owning, keeping or harboring a dog, as herein defined.

**PERSONAL KENNEL** — A pack or collection of more than 4 dogs, 3 months old or older, owned or kept under single ownership, for private personal use as further defined in MGL c. 140 § 136A.

**RUN-AT-LARGE** — Any dog which is permitted to wander on private property of others or on public ways without proper restraint.

#### **4. RULES AND PROHIBITIONS**

A. No owner or keeper shall violate any provision of this bylaw, nor permit any dog, to be unlicensed, uncollared or untagged, to become a "nuisance dog" or to "run-at-large" within the Town of Leicester at any time day or night.

B. An owner or keeper of a dog in the Town must "confine" any dog on the owner's property with the knowledge and permission of such property's owner.

C. An owner or keeper of a dog must "effectively restrain" such dog while accompanied by the person responsible for said dog within or on a public way, street or property of the Town of Leicester or on private property.

D. No person owning or keeping a dog shall chain or tether a dog to a stationary object, including, but not limited to, a structure, doghouse, pole or tree for longer than twenty-four (24) consecutive hours. An owner or keeper must abide by all other requirements and prohibitions as to restraint, access to clean water and appropriate shelter and other matters addressed in MGL c. 140, § 174E. As specified in Section 174E, any person who violates same shall, for a first offense, be issued a written warning or punished by a fine of not more than fifty dollars (\$50), for a second offense, be punished by a fine of not more than one hundred dollars (\$100) and for a third or subsequent offense, be punished by a fine of not more than three hundred dollars (\$300), and be subject to impoundment of the dog in a local shelter at the owner's or guardian's expense pending compliance with this section, or loss of ownership of the dog.

E. An owner or keeper of a dog shall immediately remove any feces left by the dog on a highway or roadway, on any public property including parks and on any private property other than the property of the owner or keeper of the dog.

## **5. VIOLATIONS AND PENALTIES**

Any owner or keeper found in violation of this bylaw shall be subject to a fine according to the following schedule, unless the fine for a violation is otherwise established by state law:

First offense	Written Warning
Second offense	\$25
Third offense	\$35
Fourth offense	\$50
Fifth and each subsequent offense (within a 12-month period)	\$100 and forfeiture of license

## **6. NOTICE TO OWNER AND REDEMPTION**

The Animal Control Officer shall immediately notify the owner or keeper of any dog or cat impounded under the provisions of the bylaw if such owner or keeper is known. The owner or keeper may then reclaim the dog or cat by reimbursing the Town of Leicester for expenses, fines and fees, and for boarding and care of the impounded dog or cat per MGL c. 140, § 151A(a). However, as required by MGL c. 140, §§ 137 and 145B, each dog six (6) months old or older must have been vaccinated for rabies and licensed and each cat six (6) months old or older must have been vaccinated for rabies before the Animal Control Officer may release it to its owner absent certification per said statutes that such animal is exempt.

## **7. DISPOSITION OF UNCLAIMED DOGS AND CATS**

Any dog which has been impounded and has not been redeemed by the owner within seven (7) days shall be disposed of as provided by MGL c. 140, § 151A, and any amendment thereto. Any unclaimed dog or cat adopted from the Town of Leicester shall be spayed or neutered and vaccinated for rabies at the adopter's expense absent certification per MGL c. 140, §§ 137 and 145B, that such animal is exempt or unless a written agreement is entered into and a deposit of \$40 is paid to the Town of Leicester in accordance with MGL c. 140 § 139A which is refundable upon receiving proof that the dog or cat has been spayed or neutered by a licensed veterinarian within sixty (60) days of adoption.

## **8. NONWAIVER OF STATUTORY REMEDIES**

The provisions of this bylaw are intended to be in addition to and not in lieu of those contained in MGL c. 140, § 136A et seq., as amended by Chapter 193 of Legislative Acts of 2012, and as such may later be further amended. Nothing contained in this bylaw shall deprive the Town or any enforcement officer from exercising its or their rights and employing the remedies provided in those sections, including but not limited to disposition of a dog found to be a dangerous dog or nuisance dog, as provided in MGL c. 140, § 157, as so amended.

## **9. POLICIES AND PROCEDURES**

The Select Board may establish policies and procedures to implement this bylaw as necessary.

### **SECTION 24.**

No person shall either maintain, or allow to be maintained, more than one unregistered motor vehicle on any parcel of land within the Town of Leicester. Motor vehicles kept within a storage building or garage, and farm vehicles shall be excluded.

### **SECTION 25.**

Notwithstanding Section 24, every owner or operator of a public garage for the repair or storage of motor vehicles shall apply to the Select Board for a license.

### **SECTION 26.**

The Select Board may issue licenses to public garages for the repair and storage of motor vehicles. Said licenses may carry reasonable restrictions and limitations. The fee for said license shall be set by the Select Board after a public hearing.

### **SECTION 27.**

All swimming pools, constructed entirely or substantially below the surface of the ground, shall be fully enclosed by a fence having no horizontal opening over three inches. The fence shall be not less than four feet in height. A gate in the fence shall have a positive self-latching lock.

### **SECTION 28.**

Violations of this chapter may be processed pursuant to Section 6.1 of Chapter 1 (General Provisions) of these bylaws. Fines for violations shall be levied according to the following schedule:

First violation	\$ 25.00
Second violation	\$ 50.00
Third and subsequent violations	\$100.00

Enforcement shall be by any person so designated by the Select Board or by any person having Police powers within the Town of Leicester. This section shall not apply to Section 23 above.

### **SECTION 29.**

Prohibition of motorized scooters and other similar motorized vehicles on public property

No person shall operate a motorized go-cart, motorized scooter, motorized skateboard, motorized miniature motor-cycle, or other similar motorized vehicles on public ways, sidewalks, playgrounds, parks, or on any other property owned by the Town of Leicester.

For the purpose of this section, "motorized" is defined as a vehicle powered by an internal combustion engine and/or electric motor.

The following vehicles will be exempt from the provision of the bylaw:

Vehicles registered and/or licensed by the Commonwealth of Massachusetts as motor vehicles

Vehicles used by handicapped persons - Landscaping and maintenance equipment

Police Officers are authorized to tow, at the owner's expense, any motorized vehicle operated in violation of this by-law.

## **SECTION 30.**

### **ALARM SYSTEM BY-LAW (Bylaw accepted 5-7-07) (Amendment 5-4-10)**

#### **Section 1. Title and Purpose**

**(A)** This by-law shall be known as the Alarm System By-Law and shall regulate alarms which cause a message to be transmitted to Police and/or Fire Departments.

**(B)** The purpose of this by-law is to encourage alarm users to maintain the operational reliability of their alarm systems, to reduce or eliminate false alarm dispatch requests, to establish a system of regulations and fees with respect to alarm systems, and to provide for penalties for violations of this by-law.

#### **Section 2. Definitions**

**(A) Chief of Police** – The term “Chief of Police” means the Chief of Police of the Town of Leicester or his/her designated representative.

**(B) Fire Chief** – The term “Fire Chief” means the Chief of the Fire Department of the Town of Leicester or his/her designated representative.

**(C) Police or Police Department** – The term “Police or Police Department” means the Town of Leicester Police Department or any authorized agent thereof.

**(D) Fire Department** – The term “Fire Department” means the Town of Leicester Fire Department or any authorized agent thereof.

**(E) Town** – The term “Town” means the Town of Leicester.

**(F) Alarm Administrator** – The term “Alarm Administrator” means the Chief of Police of the Town of Leicester or his/her designated representative.

**(G) Town Administrator** – The term “Town Administrator” means the Town Administrator of Leicester or his/her designated representative.

**(H) S Board**– The term “Select Board” means the Select Board of the Town of Leicester.

**(I) Alarm User** – The term “Alarm User” means: Any person on whose premises an alarm system is maintained within the Town. The owner of any premises on which an alarm device is used, provided that an occupant that expressly accepts responsibility for an alarm device by registration pursuant to: Section 3 (Registration Requirements) of this bylaw shall be deemed the alarm user.

**(J) False Alarm** – The term “False Alarm” means: (a) the activation of an alarm system or device through mechanical failure, malfunction, improper installation or negligence of the user of an alarm system or his/her employees or agents; (b) any signal or oral communication transmitted to the Leicester Police Department requesting, or requiring, or resulting in a response on the part of the police department when in fact there has been no unauthorized intrusion or attempted unauthorized intrusion into a premises or no attempted robbery or burglary at a premises; (c) any signal or oral communication transmitted to the Leicester Fire or Police Department requesting, or requiring, or resulting in a response on the part of the fire department when in fact there has been no fire, or potential hazardous or life threatening situation or circumstance at a premises. Excluded from the definition is activation of



alarm systems caused solely by a criminal offense, a fire, or other emergency, power outages or extreme weather conditions.

**(K) Alarm System** – The term “Alarm System” means: An assembly of equipment and devices or a single device which when activated calls for a response by police or fire personnel: (a) transmits a signal to the Leicester Police or Fire Departments; (b) transmits a signal to a person who relays information to the Leicester Police or Fire Departments; or (c) produces an audible or visible signal to which police or fire personnel are expected to respond.

### **Section 3. Registration Requirements**

**(A)** No alarm user shall operate, or cause to be operated, an alarm System without a valid registration issued in accordance with this by-law. A separate registration is required for each alarm site. There may be a one- time registration fee set by the licensing authority.

**(B)** The registration form format shall be determined by the Chiefs of the Police and Fire Departments and made available at Police and Fire Stations.

**(C)** Failure to comply with this section (3A) shall result in a \$100.00 fine.

**(D)** There is a \$50.00 inspection fee for commercial fire alarms

### **Section 4. Alarm System Operation and Maintenance**

**(A)** The alarm user shall maintain the alarm site and alarm system in a manner that will minimize or eliminate false alarm dispatches.

**(B)** The alarm user shall make every reasonable effort to respond or cause a representative to respond within twenty (20) minutes, when notified to deactivate a malfunctioning alarm system or to provide access to the alarm site.

**(C)** Alarm Reset - The alarm user shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of an alarm site will sound for no longer than 15 minutes after being activated.

**(D)** Fire alarms must be reset manually by a responsible party.

**(E)** The alarm business performing monitoring services shall attempt to verify every alarm signal, except for duress, hold-up alarm activation, or a fire alarm before requesting a police, fire or EMS response before requesting a police response to an alarm signal. In the case of a duress, hold-up or fire alarm the Leicester Police Department’s Communications center shall be notified immediately (first call).

**(F)** An alarm system does not include an alarm installed in a vehicle or an alarm designed to alert only the inhabitants of a premise that does not have a sound device which can be heard on the exterior of the alarm site.

**(G)** Automatic Dialers to the Police or Fire Departments are prohibited. Any alarm system currently using an automatic must discontinue automatic dialer service by July 1, 2008.

- a. Failure to comply with this section (4F) shall result in a \$100.00 fine.
- (H) The Police or Fire Departments shall not serve as alarm monitors.
- (I) All new commercial fire alarms systems shall include a key lock box system meeting Leicester Fire Department specifications.
- (J) All current commercial fire alarms systems shall install a key lock box system meeting Leicester Fire Department specifications by July 1, 2009.

**Section 5. Determination of False Alarms**

(A) The Police Chief, Fire Chief or their designee shall determine if alarm activation is false. Their determination shall serve as the basis for the issuing of a false alarm violation.

**Section 6. Fines**

(A) Effective July 1, 2007 an alarm user shall be subject to warnings and fines depending on the number and/or type of false alarms emitted from the alarm system within a calendar year based on the following Schedule.

**False Burglar Alarms Fines**

**(Commercial & Residential)**

<b>Number of False Alarm Dispatches</b>	<b>Action Taken</b>	<b>Fine</b>
(1)	Warning	None
(2)	Warning	None
(3)	3rd Offense	\$ 50.00
(4)	4th Offense	\$ 75.00
(5)	5th Offense	\$100.00
(6)	6th & Subsequent Offense	\$200.00

  

Failure to Register an Alarm	\$100.00
Prohibited Use of an Auto Dialer	\$100.00

**(Residential)**

**3 Residential Units or Less**

<b>Number of False Alarm Dispatches</b>	<b>Action Taken</b>	<b>Fine</b>
(1)	Warning	None
(2)	Warning	None
(3)	3rd Offense	\$ 50.00

<b>(4)</b>	4th Offense	\$ 75.00
<b>(5)</b>	5th & Subsequent Offense	\$100.00

Failure to Register an Alarm \$100.00

Prohibited Use of an Auto Dialer \$100.00

### **False Fire Alarm Fines (Commercial)**

4 or more Residential Units, Group Housing, Commercial and Industrial Establishments

<b>Number of False Alarm Dispatches</b>	<b>Action Taken</b>	<b>Fine</b>
1	Warning	None
2	2nd Offense	\$100.00
3	3rd Offense	\$200.00
4	4th & Subsequent Offense	\$300.00
	Failure to Register an Alarm	\$100.00
	Prohibited Use of an Auto Dialer	\$100.00

**(A)** Non-Registered Alarms - Any persons operating an alarm system without a registration issued in accordance with this by-law shall be subject to an additional fine of \$100.00 for each false alarm dispatch.

**(B)** An alarm dispatch request caused by a criminal offense, a fire or other emergency, or an alarm resulting solely from power outages or extreme weather conditions shall not be counted as a false alarm dispatch. The Police Chief, Fire Chief or their designee shall be responsible for making this determination.

**(C)** All fines and fees resulting from the enforcement of the provisions of this by-law shall be collected in the form of a personal check, money order or registered check, made payable to the Town of Leicester and should be forwarded to the Police Department, 90 South Main Street, Leicester, MA 01524.

**(D)** State and municipal entities shall be exempt from the provisions of this by-law.

**(E)** All fines shall be paid within 21 days of receipt of a non-criminal violation notice.

### **Section 7. General Provisions**

**(A)** Except as otherwise required by law, the information furnished and secured pursuant to this by-law shall be confidential in character and shall not be subject to public inspection.

**(B)** The alarm user may appeal the decision of the alarm administrator by filing an appeal to the District Court as set forth under the Massachusetts General Law Chapter 40, Section 21.

**(C)** The Chief of Police, Fire Chief or his designee shall serve as the alarm administrator to: administer, control and review alarm applications, registrations and alarm dispatch requests, develop a procedure to accept verified cancellation of alarm dispatch requests, promulgate such regulations as may be necessary or required to implement this by-law.

## **Section 8. Applicability**

This by-law shall be subject to the provisions of M.G.L. Chapter 40 section 21D for non-criminal enforcement.

## **Section 9. Limitation of Liability**

Notwithstanding the provisions of this By-law, the Town, its departments, officers, agents and employees shall be under no obligation whatsoever concerning the adequacy, operation or maintenance of any alarm system or of alarm monitoring facilities. No Liability whatsoever is assumed for the failure of such alarm devices for monitoring facilities or for failure to respond to alarms or for any other act or omission in connection with such alarm devices. Each alarm user shall be deemed to hold and save harmless the Town, its departments, officers, agents, and employees from liability in connection with the alarm user's alarm device.

## **Section 10. Separability**

If any clause, sentence, paragraph, or part of this local bylaw or the application thereof to any person or circumstance shall for any reason be adjudged by a Court to be invalid, such judgment shall not affect, impair or invalidate the remainder and the application thereof to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the intent of the Town of Leicester that this enactment would have been adopted had such invalid provision not been included therein.

## **SECTION 31. NUMBER OF CLASS II LICENCES**

(New bylaw accepted **STM-Oct. 27, 2009**)

The total number of Class II (used car) Licenses in Leicester shall be limited to twenty-two (22). The Select Board shall formulate regulations and a written policy on the location and distribution of Class II Licenses in Town.

## **SECTION 32. DRIVING CONTROL BYLAW (New bylaw accepted @ ATM- May 5, 2008)**

### **Section 1. Title and Purpose**

- (A)** This by-law shall be known as the Driving Control By-Law and shall further regulate driving on public town ways and private ways open to public travel in the Town of Leicester.
- (B)** The purpose of this by-law is to encourage drivers to observe safer practices on town ways for the protection of the general public, and to provide meaningful and effective enforcement mechanisms to help achieve that purpose. Many of the substantive provisions below have been modeled on those of 720 Code of Mass. Regulations 9.06, which regulate driving on Commonwealth highways.

### **Section 2. Substantive Provisions**

#### **A. Operation of Vehicles**

**(1) Drive Within Marked Lanes.** When any roadway is divided into lanes, the driver of a vehicle shall so drive that the vehicle shall be entirely within a single lane, and s/he shall not move from the lane in which s/he is driving until s/he has first ascertained if such movement can be made with safety.

**(2) Use Right Lane.** Upon all roadways, the driver of a vehicle shall drive in the lane nearest the right side of the roadway when said lane is available for travel, except when overtaking another vehicle or when preparing for a left turn.

**(3) Overtaking Other Vehicles.** The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof and shall not cut in ahead of such other vehicle until safely clear of it.

**(4) Overtake Only When There is a Space Ahead.** The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the road- way to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead or with- out causing the driver of any such vehicle to change his speed or alter his course, except as provided in subsection (5) immediately below.

**(5) Vehicle Being Passed.** Subject to the provisions of M.G.L. c. 89, § 2, the driver of a vehicle when about to be overtaken and passed by another vehicle approaching from the rear shall give way to the right when practicable in favor of the overtaking vehicle, on suitable and visible signal being given by the driver of the overtaking vehicle, and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

[Note: G.L. c. 89, § 2 as of the date of adoption of this By-law provides as follows:

“Except as herein otherwise provided, the driver of a vehicle passing another vehicle traveling in the same direction shall drive a safe distance to the left of such other vehicle; and, if the way is of sufficient width for the two vehicles to pass, the driver of the leading one shall not unnecessarily obstruct the other. Except when overtaking and passing on the right is permitted; the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on visible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

The driver of a vehicle may, if the roadway is free from obstruction and of sufficient width for two or more lines of moving vehicles, overtake and pass upon the right of another vehicle when the vehicle overtaken is

- (a) making or about to make a left turn,
- (b) upon a one-way street, or
- (c) upon any roadway on which traffic is restricted to one direction of movement.”]

**(6) Obstructing Traffic.**

(a) No person shall drive in such a manner as to obstruct unnecessarily the normal movement of traffic upon any street or way. Officers are hereby authorized to require any driver who fails to comply with this subsection (6) to drive to the side of the roadway and wait until such traffic as has been delayed has passed.

**(b)** Subject to the provisions of M.G.L. c. 89, § 11, no driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle s/he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

**[Note: G.L. c. 89, § 11 as of the date of adoption of this By-law provides as follows:**

“When traffic control signals are not in place or not in operation the driver of a vehicle shall yield the right of way, slowing down or stopping if need be so to yield, to a pedestrian crossing the roadway within a crosswalk marked in accordance with standards established by the department of highways if the pedestrian is on that half of the traveled part of the way on which the vehicle is traveling or if the pedestrian approaches from the opposite half of the traveled part of the way to within 10 feet of that half of the traveled part of the way on which said vehicle is traveling.

No driver of a vehicle shall pass any other vehicle which has stopped at a marked crosswalk to permit a pedestrian to cross, nor shall any such operator enter a marked crosswalk while a pedestrian is crossing or until there is a sufficient space beyond the crosswalk to accommodate the vehicle he is operating, notwithstanding that a traffic control signal may indicate that vehicles may proceed.

Whoever violates any provision of this section shall be punished by a fine of not more than \$200.

Whenever a pedestrian is injured by a motor vehicle in a marked crosswalk, the department of state police or the municipal police department with jurisdiction of the street, in consultation with department of state police if deemed appropriate, shall conduct an investigation into the cause of the injury and any violation of this section or other law or ordinance and shall issue the appropriate civil or criminal citation or file an application for the appropriate criminal complaint, if any. This section shall not limit the ability of a district attorney or the attorney general to seek an indictment in connection with the operation of a motor vehicle which causes injury or death and which violates this section.”]

**(7) Following Too Closely.** The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the way.

**(8) Slow Vehicles to Stay 200 Feet Apart.** Upon ways less than 27 feet wide and upon which vehicular traffic is permitted to operate in both directions, the driver of any slow-moving commercial vehicle when traveling outside of a business or residential district shall not follow another slow-moving commercial vehicle within 200 feet, but this shall not be construed to prevent such slow-moving commercial vehicle from overtaking and passing another slow-moving commercial vehicle. The provisions of this subsection (8) shall not apply to funerals or other lawful processions.

**(9) Care in Starting, Stopping, Turning or Backing.** Except as otherwise provided in 720 CMR 9.08(3) the driver of any vehicle before starting, stopping, turning from a direct line, or backing shall first see that such movement can be made in safety. If such movement cannot be made in safety or if it interferes unduly with the normal movement or other traffic, said driver shall wait for a more favorable opportunity to make such a movement. If the operation of another vehicle should be affected by a stopping or turning movement, the driver of such other vehicle shall be given a plainly visible signal, as required by M.G.L. c. 90, § 14B.

**[Note: 720 CMR 9.08(3) as of the date of adoption of this By-law provides as follows:**

Backing Prohibitions. No person shall back a vehicle for the purpose of gaining entrance to any express state Highway off ramp. Exit from the highway shall be made only at succeeding exits. No person shall back a vehicle from any ramp which provides entrance or exit for an express state highway.”]

**[Note further: G.L. c. 89, § 11 as of the date of adoption of this By-law provides as follows:**

Every person operating a motor vehicle, before stopping said vehicle or making any turning movement which would affect the operation of any other vehicle, shall give a plainly visible signal by activating the brake lights or directional lights or signal as provided on said vehicle; and in the event electrical or mechanical signals are not operating or not provided on the vehicle, a plainly visible signal by means of the hand and arm shall be made. Hand and arm signals shall be made as follows: —

1. An intention to turn to the left shall be indicated by hand and arm extended horizontally.
2. An intention to turn to the right shall be indicated by hand and arm extended upward.
3. An intention to stop or decrease speed shall be indicated by hand and arm extended Downward.

Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five dollars for each offense. “]

**(10) Obedience to Traffic Control Signals.** Colors and arrow indications in traffic control signals shall have the commands ascribed to them in this subsection (10), including paragraphs (a) through and including (h) below, and no other meanings, and every driver of a vehicle, railway car or other conveyance shall comply therewith, except when otherwise directed by an officer or by a lawful traffic regulating sign (other than a “stop” sign), signal or device or except as provided in subsection (24) (b) below. In no case shall a driver enter or proceed through an intersection without due regard to the safety of other persons within the intersection, regardless of what indications may be given by traffic control signals.

**(a) Green.** While the green lens is illuminated, drivers facing the signal may proceed through the intersection, but shall yield the right of way to pedestrians and vehicles lawfully within a crosswalk or the intersection at the time such a signal was exhibited. Drivers of vehicles making a right or left turn shall yield the right of way to pedestrians crossing with the flow of traffic.

**(b) Right, Left and Vertical Green Arrows.** When a right green arrow is illuminated, drivers facing said signal may turn right. When a left green arrow is illuminated, drivers facing said signal may turn left. When a vertical green arrow is illuminated, drivers facing said signal may go straight ahead. When a green arrow is exhibited together with a red or yellow lens, drivers may enter the intersection to make the movement permitted by the arrow but shall yield the right of way to vehicles proceeding from another direction on a green indication, and to pedestrians legally within a marked crosswalk.

**(c) Yellow.** While the yellow lens is illuminated, waiting drivers shall not proceed, and any driver approaching the intersection or a marked stop line shall stop at such point unless so close to the intersection that a stop cannot be made in safety; provided, however, that if a green arrow is

illuminated at the same time drivers may enter the intersection to make the movement permitted by such arrow.

**(d) Right and Left Yellow Arrows.** When yellow arrows are illuminated, drivers are warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

**(e) Red.** While the red lens is illuminated, drivers facing the signal shall stop outside of the intersection or at such point as may be clearly marked by a sign or line; provided, however, that if a green arrow is illuminated at the same time drivers may enter the intersection to make the movement permitted by such arrow.

**(f) Right and Left Red Arrows.** Vehicular traffic facing a steady red arrow signal shall not enter the intersection to make the movement indicated by the arrow and, unless entering the intersection to make a movement permitted by another signal, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection, and shall remain standing until an indication permitting the movement indicated by such red arrow shown. Except when a sign is in place prohibiting a turn, vehicular traffic facing any steady red signal may cautiously enter the intersection to turn right, or to turn left from a one-way street into a one-way street, after stopping. Such vehicular traffic shall yield the right of way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

**(g) Flashing Red (Stop Signal).** When a red lens is illuminated by rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a Stop line when marked, and the Right to proceed shall be subject to provisions of M.G.L. c. 89, § 8. [Note further: G.L. c. 89 § 8 as of the Date of adoption of this By-law provides as follows:

“When two vehicles approach or enter an intersection of any ways, as defined in section one of chapter ninety, at approximately the same instant, the operator of the vehicle on the left shall yield the right-of-way to the vehicle on the right. Any operator intending to turn left, in an intersection, across the path or lane of vehicles approaching from the opposite direction shall, before turning, yield the right-of-way until such time as the left turn can be made with reasonable safety. Any operator of a vehicle entering a rotary intersection shall yield the right-of-way to any vehicle already in the intersection. The foregoing provisions of this section shall not apply when an operator is otherwise directed by a police officer, or by a traffic regulating sign, device or signal lawfully erected and maintained in accordance with the provisions of section two of chapter eighty-five and, where so required with the written approval of the department of highways and while such approval is in effect.

At any intersection on ways, as defined in section one of chapter ninety, in which vehicular traffic is facing a steady red indication in a traffic control signal, the driver of a vehicle which is stopped as close as practicable at the entrance to the crosswalk or the near side of the intersections or, if none, then at the entrance to the intersection in obedience to such red or stop signal, may make either (1) a right turn or (2) if on a one-way street may make a left turn to another one-way street, but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at said intersection, except that a city or town, subject to section two of chapter eighty-five, by rules, orders, ordinances, or by-laws, and the department of highways on state highways or on ways at their intersections with a state highway, may prohibit any such turns against a red or stop signal at any such intersection, and such prohibition



shall be effective when a sign is erected at such intersection giving notice thereof. Any person who violates the provisions of this paragraph shall be punished by a fine of not less than thirty-five dollars.”]

**(h) Flashing Yellow (Caution Signal).** When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

**(11) Lane -Direction -Control Signals.**

When lane-direction-control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown but shall not enter or travel in any lane over which a red signal is shown.

**(12) Lane Control Signals.**

When Traffic Control Signals are located and operated over or adjacent to the individual lanes of a street or highway within an area designated as a Lane Traffic Control Area, vehicles shall be operated in obedience to the command given by the signal indication shown over or adjacent to the lane in which the vehicle is being operated. A Lane Traffic Control Area is that portion of a way designated by Official Traffic Signs installed not less than 1000 feet in advance of Lane Traffic Control Signal installations.

**(13) Obedience to Isolated Stop Signs.**

Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign or a flashing red signal indication shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways. This subsection (13) shall not apply when the traffic is otherwise directed by an officer or by a lawful traffic-regulating sign, signal or device or as provided in subsection (24) (C) below.

**(14) Obedience to “Yield” Signs.**

Every driver of a vehicle or other conveyance approaching an intersection of ways, where there exists facing him an official sign bearing the word “Yield”, said sign having been erected in accordance with the written approval of the Mass. Highway Department to the extent legally required, and such approval being in effect, shall surrender to oncoming traffic his right to enter the intersection until such time as s/he has brought her or his vehicle or other conveyance to a complete stop at a point between the said “Yield” sign and the nearer line of the street intersection, provided, however, that this requirement to stop before entering the intersection shall not apply when a driver approaching a “Yield” sign can enter the intersection in safety without causing interference to approaching traffic. This subsection (14) shall not apply when the traffic is otherwise directed by an officer or by a lawful traffic regulating sign, signal or device or as provided in subsection (24) (C) below.

**(15) Sound Horn When Necessary.**

The driver of a vehicle shall give an audible warning with her or his horn or other suitable warning device whenever necessary to insure safe operation.

**(16) Keep to the Right of Roadway Division.**

Upon such ways as are divided by a parkway, grass plot, reservation, viaduct, subway or by any structure or areas, drivers shall keep to the right of such division, and shall cross such parkway, grass plot or reservation only at a crossover. In the case of a way which has no crossovers, access to the adjoining roadway shall be gained only by the proper use of under or overpasses and ramps. The foregoing provisions shall not apply when drivers are otherwise directed by an officer, or official signs, signals or markings.

**(17) Operation at Under or Over Passes and at Intersections with Islands.**

At any junction or crossing of ways where the roadway grades have been separated and where the ways are connected by ramps, and at any intersection of ways in which there are channelizing islands, drivers of vehicles shall proceed only as indicated by signs, signals or markings.

**(18) Driving on Road Surface Under Construction or Repair.**

No operator shall enter upon the road surface of anyway or section thereof when, by reason of construction, surface treatment, maintenance or the like, or because of some unprotected hazard, such road surface is closed to travel, and one or more signs, lights or signals have been erected to indicate that all or part of the road surface of the way is not to be used, or when so advised by an officer, watchman, member of a local or state highway crew or employee of the Police Department, or of the MA Highway Department if apt, either audibly or by signals.

**(19) No Driving on Sidewalks.**

The driver of a vehicle shall not drive upon any sidewalk except at a permanent or temporary driveway.

**(20) Emerging from Alley or Private Driveway.**

The driver of a vehicle emerging from a private way, driveway or garage shall stop such vehicle immediately prior to driving upon the sidewalk area extending across such drive- way or garage, and where no such sidewalk exists the stop shall be made at the building or property line as the case may be and upon entering the way shall yield the right of way to vehicles approaching on the way.

**(21) Certain Turns Prohibited.**

The driver of a vehicle or other conveyance shall not make a turn from the way in which s/he is driving into another way or driveway, at any point in the way, where such a movement is prohibited by signs.

**(22) Driving or Parking on Channelizing Island.**

No person shall drive over or park a motor vehicle upon any channelizing island, as defined in section 3 below, unless directed to do so by a police officer.

**(23) Obedience to Traffic Signs, Signals and Markings.**

The driver of any vehicle or of any streetcar shall obey the instructions of any official traffic control sign, signal, device, marking or legend unless otherwise directed by a police officer.

**(24) Rights and Duties of Drivers in Funerals or Other Processions.**

**(a)** It shall be the duty of each driver in a funeral or other procession to keep as near to the right edge of the way as is feasible and to follow the vehicle ahead as closely as practicable and safe.

**(b)** At an intersection where a traffic control signal is operating the driver of the first vehicle in a funeral or other procession shall be the only one required to stop for a red or red and yellow indication.

(c) At an intersection where a lawful isolated stop sign or signal exists, the driver of the first vehicle in a funeral or other procession shall be the only one required to stop before proceeding through the intersection.

**(25) Men and Equipment in way.**

Whenever traffic signs are erected or warning lights are displayed in or adjacent to a way to notify of the presence of men and equipment, in such way every motorist shall regulate the speed of her or his vehicle in a manner and to a degree consistent with the condition.

**(26) U Turns Prohibited.**

No operator shall back or turn a vehicle so as to proceed in a direction opposite to that in which said vehicle is headed or traveling wherever signs notifying of such a restriction have been erected.

**(27) Vehicle Operation at Crosswalks.**

(a) Subject to the provisions of M.G.L. c. 89, § 11, when traffic control signals are not in place or not in operation the driver of a vehicle, which for the purposes of this By-law shall include bicycles, shall yield the right of way, slowing down or stopping if need be so to yield, to a pedestrian crossing the way within a marked crosswalk when the pedestrian is upon the half of the way upon which the vehicle is traveling or when the pedestrian approaches from the opposite half of the way to within five feet of that half of the way upon which the vehicle is traveling.

(b) Subject to the provisions of M.G.L. c. 89, § 11, no operator of a vehicle shall pass any other vehicle which has been stopped at a marked crosswalk to permit a pedestrian to cross a way, nor shall any operator enter a marked crosswalk until there is sufficient space on the other side of the crosswalk to accommodate the vehicle, he is operating notwithstanding any traffic control signal indication to proceed.

**(28) Operators to Exercise Due Care.**

The provisions of this By-law shall in no way abrogate the provisions of M.G.L. c 90, §§ 14 and 14A which provide: "Precautions for Safety of Other Travelers" and for the "Protection of Blind Persons Crossing Ways", Furthermore, notwithstanding the provisions of this By-law every operator of a vehicle shall exercise due care to avoid colliding with any pedestrian upon the way and shall give warning by sounding the horn when necessary and shall exercise proper precautions which may become necessary for safe operation.

**Section 3. Definitions**

For the purpose of this By-law the words and phrases used herein shall have the following meanings, except in those instances where the context clearly indicates a different meaning:

**Bicycle.** Any wheeled vehicle propelled by pedals and operated by one or more persons.

**Bus.** Every vehicle designed for carrying more than eight passengers and used primarily for the transportation of persons either for compensation, as a service, or as an adjunct to a school program.

**Bus Stop.** An area in a way set aside for the boarding of or alighting from buses.

**Caution Signal.** A flashing yellow signal having the same general function as a warning sign.

**Channelizing Island.** A traffic island located to guide traffic streams along certain definite paths and to prevent the promiscuous movement of vehicles in what would otherwise be a widely extended way area.

**Commercial Vehicle.** Any vehicle registered for commercial purposes and designed and used primarily for the transportation of goods, wares or merchandise.

**Container.** Any drum, barrel, cylinder, bag, carboy or other shipping vessel (other than a tank vehicle) used for the transportation of dangerous articles.

**Crossover.** An opening in a channelizing island that connects both sides of a divided highway.

**Crosswalk.** That portion of a way ordinarily included within the extensions of the sidewalk lines, or, if none then the footpath lines, and, at any place in a way, clearly indicated for pedestrian crossing by lines or markers upon the way surface.

**Curb Marking.** That portion of a curbing which has been painted by the Town or MA Highway Department.

**MA Highway Department.** The Commonwealth of Massachusetts Department of Highways.

**Divided way.** A way with separated roadways for traffic in opposite directions.

**Emergency Vehicle.** Vehicles of the Fire Department (Fire Patrol), police vehicles and such ambulances and emergency vehicles of federal, state or municipal departments or public service corporations as are commonly recognized as such.

**Express State Highway.** A divided arterial highway of the Commonwealth for through traffic with full or partial control of access and generally with grade separations at intersections.

**Highway.** The entire width between property lines of any state highway or lawful through way designated by the MA Highway Department.

**Intersection.** The area embraced within the extensions of lateral curb lines, or, if none, then the lateral boundary lines, of intersection or intersecting ways as defined in M.G.L. c. 90, s. 1, including divided ways. This By-law shall apply at any place along any way at which drivers are to be controlled by traffic control signals whether or not such place is an intersection as herein defined, subject to state law.

**Lane.** A longitudinal division of a way of sufficient width to accommodate the passage of a single line of vehicles, whether or not such lane is indicated by pavement markings or longitudinal construction joints.

**Limited Access Highway.** An express state highway with full control of access.

**Officer.** Any police officer or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

**Official Signs. Signals, markings and devices.** All signs, signals, markings and devices installed or maintained by the Town, with approval of the MA Highway Department where required, or by the MA Highway Department itself.

**One-Way Ways or Streets.** Ways designated by the Town, with the approval of the MA Highway Department where required by law, or by the MA Highway Department itself, as one-way and upon which vehicular traffic may move only in the direction indicated by signs.

**Parking.** The stopping or standing of a vehicle whether occupied or not, otherwise than temporarily, except that a vehicle shall not be deemed parked when stopped or standing for the purpose of and while actually engaged in loading or unloading or in obedience to an officer or traffic control signs or signals, or while making emergency repairs or, if disabled, while arrangements are being made to move such vehicle.

**Pedestrian.** Any person afoot or riding on a conveyance moved by human power, except bicycles or tricycles.

**Rotary Traffic.** The counterclockwise operation of a vehicle around an island or other structure in a way.

**Sidewalk.** That portion of a way set aside for pedestrian travel.

**Stop Signal.** A Flashing Red Signal having the same function as a stop sign and erected by the Town, with the approval of the MA Highway Department where required by law, or by the MA Highway Department itself.

**Street Marking.** Any painted line, legend, marking or marker of any description painted or placed on any way by the Town, with the approval of the MA Highway Department where required by law, or by the MA Highway Department itself, and which purports to direct or regulate traffic.

**Tank Vehicle.** Any tank type motor vehicle with cargo tank, portable tank or bulk pyramided cylinders, used for the transportation of liquids or gases.

**Traffic.** Pedestrians, ridden or herded animals, vehicles, street cars or other conveyances either singly or together while using any way for the purpose of travel.

**Traffic Signals.** Any power-operated traffic control device, except a sign, by which traffic is warned or is directed to take some specific action, and which has been erected by or with the approval of the MA Highway Department if required by law.

**Traffic Control Signal.** A traffic signal which, through its indications, alternately directs traffic to stop and permits it to proceed and which has been erected by or with the approval of the MA Highway Department if required by law.

**Traffic Island.** Any area or space set aside, within a roadway, which is not intended for use by vehicular traffic.

**U Turn.** The turning of a vehicle by means of a continuous left turn whereby the direction of such vehicle is reversed.

**Urban Area or Downtown Area.** The territory contiguous to and including any street which is built up with structures devoted to business, industry or dwelling houses situated at intervals of less than 100 feet for a distance of a quarter of a mile or more.

**Vehicle.** Every device in, upon or by which any person or property is or may be transported or drawn upon a way, including bicycles when the provisions of this By-law are applicable to them, except other devices moved by human power or used exclusively upon stationary rails or tracks and devices which derive their power for operation from stationary overhead wires.

**Way.** That portion of a way between regularly established curb lines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.

[**Editorial note:** The above inclusion in this By-law of the text of (as contrasted with references to) certain provisions of the Mass. General Laws and the Code of Mass. Regulations as they read as of the date of adoption hereof by Town Meeting is intended for informational purposes only, and any subsequent amendments to such statutory provisions, of which all persons as a matter of law are deemed to be on notice, shall apply, as shall any other, applicable law. Therefore, it is important that any person reading the By-law also read the current version of such statutes in order to fully understand the applicable law.]

## **Section 4. Exemptions, Enforcement and Fines**

### **A. Exemptions**

The provisions of this By-law shall not apply to persons acting in conformity with the direction of an officer, to persons or drivers actually engaged in work upon a way closed to travel or under construction or repair when the nature of their work necessitates a departure from any part of the By-law, to officers when engaged in the performance of public duties which necessitates a departure from any part of same, nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties which necessitate a departure there from, nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties which necessitate a departure there from. These exemptions shall not, however, protect the driver of any vehicle from the consequence of a reckless disregard of the safety of others, though the By-law shall not be deemed to create any private cause of action by virtue of any such action or omission.

### **B. Obedience to Police**

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer in regard to the direction, control or regulation of traffic. Any person acting in conformity with any such order or direction shall be relieved from the observance of any provision of this By-law with which the order or direction may conflict.

### **C. Obedience to Signs, etc.**

No person shall disobey the instructions of any official sign, signal, marking or marker.

### **D. Penalties**

Unless otherwise specified herein or by the Mass. General Laws or state regulations promulgated hereunder, the penalty for any violation of this bylaw shall be a twenty dollar (\$20.00) fine for each offence. In the event of any conflict between the section and the Mass. General Laws or state regulations, such laws and regulations shall control.

### **E. Enforcing Officers**

This bylaw shall be enforced by any police officer.

## **F. Enforcement**

This Bylaw shall be enforced exclusively pursuant to the provisions of Chapter 90C of the Massachusetts General Laws.

### **Section 5. Select Board Rules and Regulations**

The Town of Leicester Select Board is hereby authorized to adopt such rules and regulations, so long as inconsistent with neither the Mass. General Laws nor this By-law, as it deems necessary or advisable for the purpose of effectuating the provisions of this By-law. Nothing in this Bylaw shall derogate from the authority vested in the Town or its boards, commissions, departments, officers, employees or agents by any other provision of law, the provisions hereof being intended to be in addition to all such rather than to in any way limit same.

### **Section 6. Severability**

The invalidity of any part or parts of this by-law shall not affect the validity of the remaining parts.

## **SECTION 33. Police Towing Administrative Fee (New bylaw accepted @ ATM- May 4, 2010)**

### **1.0 - Definitions**

**Police Ordered Tow** – A vehicle being towed at the direction of the Leicester Police Department (excluding motor vehicle accidents) as authorized by a federal, state or local law and/or ordinance.

**Motor Vehicle Violation** – A violation of a federal, state, or local law and/or ordinance involving the operation, permitting the operation of and/or use of a motor vehicle. This shall include vehicle safety and equipment violations as well as any violations pertaining to the registration and insurance requirements which are lawfully required for motor vehicles.

**Parking Violation** - A violation of any federal, state, or local law and/or ordinance involving parking of a motor vehicle and/or a motor vehicle obstructing a public way or a way which the public has the right of access.

**Arrest or Custodial Detention** – Anyone taken into custody by the Leicester Police Department or any agency assisting or receiving assistance from the Leicester Police Department for a violation(s) of a federal, state, or local ordinance violation or an arrest warrant. This shall include individuals taken into protective custody, detained for mental health evaluations, or warrants of apprehension. This shall also include vehicles towed as the result of the initiation or the result of civil proceedings (including asset forfeitures).

**Illegal Activity** – Any violation of federal, state, or local criminal/civil ordinances which police are statutorily authorized to enforce.

### **2.0 - Fees**

The Town of Leicester hereby imposes, upon the owner of any vehicle moved or towed to a convenient place under the provisions of this Bylaw, the following fees:

1. **Removal or Towing Fee** – Fees are not to exceed that which is authorized by Massachusetts General

Laws and/or the Code of Massachusetts Regulations and are payable to the tow company directly.

2. **Storage Fees** – Fees are not to exceed that which is authorized by Massachusetts General Laws and/or the Code of Massachusetts Regulations and are payable to the tow company directly.

3. **Administrative Fee** – An administrative fee of \$25.00 shall be collected on any motor vehicle that was the subject of a police ordered tow resulting from a motor vehicle or parking violation, arrests, or illegal activity (excluding motor vehicle accidents) as ordered by the Leicester Police Department. The Town of Leicester Select Board to make fee adjustments in the future.

Said Administrative Fee shall be paid by cash or money order; credit/debit cards and any acceptable form of online/electronic payment utilized by the Town of Leicester and/or the Leicester Police Department in the future. at the Leicester Police Department prior to the re-lease of the vehicle to the owner can also be made at locations designated by the Chief of Police. The Administrative Fee for towing shall be deposited by the Police Department into and a receipt shall be issued. Payments the Town's General Fund.



## **CHAPTER 10: PENALTY**

### **SECTION 1.**

Whoever violates any of the provisions of this By-Law shall be subject to court procedure and costs, therefore.

### **AMENDMENTS TO BY-LAWS**

ADOPTED: May 3, 1980, Annual Town Meeting      APPROVED: By Attorney General, August 21, 1980

The Forest Fire Department shall be integrated into the Fire Department, and the Fire Chief will be designated as the Forest Fire Warden.

ADOPTED: May 3, 1980, Annual Town Meeting      APPROVED: By Attorney General, August 21, 1980

The present six-member Planning Board shall be reduced to a five-member board by eliminating one of the two elected positions to this office in the 1983 Town Elections, and further move that effective the Town Election in 1981, all subsequent terms to this office shall be reduced from a five year to a three-year term.

### **SPECIAL LEGISLATION**

ADOPTED: May 2, 2005 Annual Town Meeting      SIGNED: By Governor on June 9, 2005

To withdraw funds from General Stabilization Account a 9/10 vote needed. Other Stabilization accounts need a 2/3 vote.

# CHAPTER 11: TOWN ADMINISTRATOR

(9-18-80) (Amended 10-10-95)

## APPOINTMENT - QUALIFICATIONS - TERM

The Select Board shall appoint or reappoint a Town Administrator from candidates submitted by a screening committee composed of two members from the Personnel Board, one from the Advisory Board, and two at large to be appointed by the moderator and fix his/her compensation within the amount appropriated by the Town. The Town Administrator shall be especially fitted by education, training or previous experience in public administration. The Town Administrator need not be a resident of the Town at the time of his/her appointment but must establish residency in the Town or in a community within the County of Worcester and/or 30 air miles from the border of Leicester within 12 months following initial appointment. The Town Administrator shall serve at the pleasure of the Select Board.

**JOB DESCRIPTION** (The essential functions or duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statement of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.) The Town Administrator shall:

- Attend all regular and special meetings of the Select Board, unless excused at his/her request.
- Attend all sessions of the Town Meeting and answer questions and provide information as requested.
- Inform the Select Board of the need for long-range goals and general policies to guide the performance of Town departments at the direction of the Select Board, and present drafts of said goals and policies for their consideration.
- Review and make recommendations on the preparation of the Annual operating and capital items for departments under the authority of the Select Board and submit budgets to them for approval.
- Partner with the Town Treasurer/Tax Collector and Town Accountant in analyzing the town's financial status in order to develop short- and long-term financial planning including, debt service, capital projects and associated bonding.
- Be responsible for assembling Town Meeting articles and Town Warrants in concert with Town Counsel, and for compilation of the Town report.
- Be responsible for the day-to-day administration of the personnel system as outlined by the Personnel Board and Personnel By-Laws.
- Shall formulate personnel guidelines applicable to personnel with the Town Hall for the purpose of effecting standardized, efficient and equitable personnel procedures in conjunction with appointive authorities.

- Search for economies that may accrue to the Town through joint purchasing of material, property or services by two or more municipalities, or two or more departments, offices, board, or commissions and committees.
- Through adequate reports filed by the Town Accountant, keep the Select Board informed as to the financial conditions and needs of the Town and make recommendations to the Select Board as necessary.
- Keep the Select Board aware of the need to fill appointed positions and shall recommend for appointment and removal members of Board, Commissions, subordinates and Department Heads for whose appointment the Select Board are responsible.
- Administer the policies of the Select Board and those Committees reporting to the Board of Select- men; and the administration of the Select Board's office.
- Be responsible for maintaining full and complete records of administrative activities of the Town and render a full report to the Select Board as they require.
- Keep a full inventory of all real and personal property of the Town. This inventory will be updated annually.
- Coordinate labor contract negotiations with authorities as designated by the Select Board, with final approval by said Board.
- Review and make recommendations on the status of all license applications under the Select Board and shall make site inspections as necessary.
- Diligently pursue opportunities to obtain Federal and State financial grants and will recommend the necessary measures needed to the Select Board to obtain the potentially most promising grants.
- Perform any other duties as required by By-Law votes of the Town Meeting, or votes of the Select Board.

## CHAPTER 12: PERSONNEL BYLAW (5-5-79)

(Amendment accepted @ ATM May 4, 2009) (Amended ATM May 6, 2014) (Nov 17, 2020)

### SECTION 1: PURPOSE

This bylaw shall be known as and cited as "The Town of Leicester Personnel Bylaw." Its purpose is to establish personnel policies which may be adopted by the Town under provisions of Massachusetts General Laws, Chapter 41, Section 108A, and the Home Rule Amendment. These policies shall encompass a Job Classification and Compensation Plan and leave benefits.

### SECTION 2: DEFINITIONS

For the purpose of this Bylaw, the words and phrases used herein shall have the following meaning, except in those instances where the context clearly indicates a different meaning:

- **ACTING:** Performing the duties and having the responsibilities of another position on a temporary basis without having officially been appointed to the position.
- **APPOINTING AUTHORITY:** Any person, board, or commission having the power of appointment or employment pursuant to Massachusetts General Laws.
- **BOARD:** The Select Board, serving as the Personnel Board.
- **CASUAL EMPLOYEE:** An individual employed in a position calling for work which does not constitute regular employment; the work being rendered occasionally and without regularity on an ad hoc basis, according to the demands, therefore as determined by appointing authority.
- **CLASSIFICATION:** A job title of a position or a group of positions similar in duties, authority, responsibility, and qualifications.
- **CLASSIFICATION DATE:** First day of employment in a given classification.
- **CLASSIFICATION PLAN:** A listing of all approved job titles and an occupational grouping of classifications.
- **COMPENSATION PLAN:** A listing of wages designated to job classifications.
- **CONTINUOUS SERVICE:** Paid full-time and part-time employment in the service of the Town, which is not interrupted by resignation, termination, or dismissal. "Continuous service" shall include all leave with pay.
- **DAY:** One-fifth (1/5) the total number of regularly scheduled hours in one work week.
- **DEPARTMENT HEAD:** The officer, board, or other body having immediate charge and control of a department or agency.
- **FULL-TIME EMPLOYEE:** An individual in the employ of the Town regularly scheduled for an average of not less than thirty-two (32) hours per week for fifty-two (52) weeks per annum.
- **HIRE DATE:** First day of employment with the Town.
- **INTERMITTENT EMPLOYEE:** An individual employed in a position whose service, although regular, is not rendered for prescribed working hours, either daily, weekly, or annually, but is rendered as required according to the department head or appointing authority.
- **ON-CALL EMPLOYEE:** An individual in the employ of the Town who has been designated as available for duty as needed.
- **PART-TIME EMPLOYEE:** An individual in the employ of the Town regularly scheduled for less than thirty-two (32) hours per week for fifty-two (52) weeks per annum. Part-time employees

regularly scheduled for a minimum of twenty (20) hours per week for fifty-two (52) weeks per annum qualify for certain benefits as defined by this Bylaw.

- **PROBATIONARY EMPLOYEE:** Any new employee whose tenure in the Town service has not exceeded 90 days; such employees have limited rights during this stage of their employment and may be discharged at any point at which the level of performance is determined to be unacceptable by the appointing authority. At the end of the probationary period, a written review shall be prepared by the department head which will state whether the probationary employee has performed satisfactorily to be accepted as a regular Town employee. If the performance is not acceptable, the reason or reasons will be stated. The original 90 probationary period may be extended with the written approval of the Town Administrator.
- **RATE:** Amount of money designated as compensation for a job classification
- **TOWN:** The Town of Leicester.
- **WORK WEEK:** The total number of regularly scheduled hours from Sunday to the following Saturday.

### **SECTION 3: SELECT BOARD as PERSONNEL BOARD**

The Personnel Bylaw shall be administered by the Select Board who shall serve the Town as the Personnel Board.

### **SECTION 4: DUTIES OF BOARD**

1. The Board shall review and approve written position descriptions and personnel policies, which shall be drafted by the Town Administrator. The descriptions shall not be interpreted as complete or limiting definitions, and employees shall continue to perform duties assigned by their supervisors.
2. The Town Administrator and department heads shall keep such records of Town employees as the Board may require. The Board shall keep such records of its own, as it considers appropriate
3. The Board shall review the job classification and compensation plan under its jurisdiction at intervals of not more than three (3) years. The Board may review and approve existing job classifications as drafted by the Town Administrator. No new classification(s) shall be established without a report of the Board, no new classification shall permanently exist until such ratification

### **SECTION 5: APPLICATIONS**

1. The provisions of this Bylaw shall apply to all employees in the service of the Town of Leicester, except for positions filled by popular election, positions under the jurisdiction of the School Committee, positions covered by collective bargaining units of the Town pursuant to Chapter 150E of the General Laws, and positions covered under other contracts. This Bylaw may be used as a guide for authorized officials in determining the compensation of, and personnel policies for those employees that are not specifically governed under this bylaw.
2. Nothing in this Bylaw or the Administrative rules and regulations adopted by the Board shall limit any rights of employees under Massachusetts General Laws, Chapter 150E, or Chapter 31.
3. Subject to the General Bylaws of the Town and this Bylaw, the Town Administrator shall be responsible for the day-to-day administration of the personnel system, in accordance with the policies of the Board. The Town Administrator may formulate, with the approval of the Board,

personnel guidelines and directives for the purpose of effecting standardized, efficient, and equitable personnel procedures and practices. The Town Administrator may obtain such information or records as may be necessary from department heads in order to carry out his/her duties under this Bylaw.

4. The Appointing Authority shall notify the Board upon selection of an applicant to a position with the Town and shall provide all pertinent information for the records of the Board.

## **SECTION 6: CONFLICT AND MODIFICATION**

If any of the provisions of this Bylaw conflict with any relevant state law, the conflicting provision of this Bylaw shall be deemed modified by the law or regulation sufficiently only to end the conflict.

If any provision of this Bylaw, or application thereof, is determined to be invalid under state or federal law, such determination shall not be construed to affect the validity of any other provision of this Bylaw, or application thereof.

## **SECTION 7: AMENDMENTS**

This Bylaw may be amended by vote of the Town at any Annual or Special Town Meeting. The Board shall make a report and recommendation to the Town prior to the taking of any action by the Town on any proposed amendment. Failure of the Board to report shall not prevent the Town from taking action on the proposal of this Bylaw, or application thereof.

## **SECTION 8: POLICIES AND PROCEDURES**

The Personnel Board shall establish, adopt, and maintain such policies, procedures, rules, and regulations as it deems necessary for the implementation and administration of this Bylaw.

## **SECTION 9: SICK LEAVE**

Full-time and part-time employees of the Town subject to this Bylaw shall be allowed, without loss of pay, sick leave for personal illness as provided for in this section.

**9.1 RATE OF ACCUMULATION** Full-time and part-time benefit-eligible employees shall accrue and accumulate earned sick leave credit for personal illness at the rate of one-fifth (1/5) the total regular weekly scheduled hours x 1¼ for each full month of service.

**9.2 MAXIMUM ACCUMULATION** Full-time and part-time employees may earn and accumulate sick leave up to a maximum of ninety (90) days.

**9.3 USE OF SICK LEAVE** No sick leave with pay shall be granted during the first three (3) months of employment. The Town will allow an employee to use up to five (5) days of sick leave per calendar year for the purpose of caring for a spouse, child, or parent of either the employee or the employee's spouse, or for any person living under the same roof as part of the family, who is seriously ill or injured. A seriously ill or injured person is defined as any person under the care of a doctor who has been confined to a home or hospital with a serious verifiable medical condition.

**9.4 SICK LEAVE EXTENSION** A full-time employee with ten (10) years of service and seventy (70) days of earned sick leave at the date of first absence for illness or disability of a prolonged and uninterrupted nature, shall be compensated at 60% of base pay while absent from work for said sickness for the period of time commencing upon exhaustion of sick leave and all other paid leaves, and ending on the first anniversary date of the illness. If prior to the first day of an extended illness, a full-time employee with five (5) years of service has been credited with thirty-five (35) or more days of accrued sick leave, then upon exhaustion of sick leave and all other paid leaves, the employee shall be compensated at 30% of his/her base weekly salary or wage until the first anniversary date of the extended illness. Employees on worker's compensation shall not be eligible for compensation under this provision.

**9.5 DEDUCTIONS** Any compensated sick leave actually taken by any employee shall be deducted from his/her sick leave credit. Holidays and days not included in the employee's normal workweek shall not be deducted from sick leave credit. Loss of time directly attributed to injury incurred while performing regular duties and qualifying for workers compensation shall not be charged to sick leave.

**9.6 WITHIN TOWN SERVICES** No transfer within the service of the Town shall affect the amount of earned sick leave credit and accumulations to which an employee has been entitled under this Bylaw. Upon transfer to another department, the employee's former department head shall transfer the employee's sick leave record to the employee's new department head.

**9.7 UPON RETIREMENT** Upon retirement from the Town, an employee with a minimum of twenty (20) years of service shall be entitled to payment of twenty (20) days of accrued sick leave credits. If a retiree with twenty years of service has fewer than 20 days of accrued sick leave credits, he/she shall be paid the balance of said accrual. One (1) day would be equal to one-fifth (1/5) of the regularly scheduled hours per week.

**9.8 ABSENCES** For absences on account of sickness in excess of three (3) consecutive working days, the department head may request a physician's certificate. For absences on account of sickness in excess of five (5) consecutive working days, the department head shall require a physician's certificate.

**9.9 EARNING SICK LEAVE WHILE ON LEAVE OR WORKERS' COMPENSATION** All employees entitled to sick leave under this Bylaw shall earn sick leave credit even while in the status of paid sick leave. Employees entitled to sick leave under this Bylaw shall earn sick leave credit up to one year from the anniversary of the illness while in the status of Workers' Compensation. No sick leave will accrue while on unpaid leave. Accrual will resume upon return to work.

## **Section 10: VACATION LEAVE**

### **10.1 ELIGIBILITY**

Upon completion of the 180-day probationary period, full-time and part-time benefited employees as defined in this Bylaw shall be entitled to paid vacation in accordance with the following schedule.

The vacation year of the Town shall be the period of July 1 to June 30, inclusive. Any Town employee working twenty (20) or more hours per week will be credited as of June 30<sup>th</sup>, with vacation leave with pay for the subsequent year not to exceed the following:

### 10.1.1 VACATION LEAVE FIRST YEAR OF SERVICE

For any employee with less than one (1) years' service, the following schedule will be used to determine vacation for the first fiscal year:

#### INCLUSIVE HIRE DATES

From	Through	Vacation Hours Earned (1 <sup>st</sup> years' service only)
Jul 1	Jul 1	2.00 X Weekly Authorized Hours
Jul 2	Aug 1	1.80 X Weekly Authorized Hours
Aug 2	Sep 1	1.60 X Weekly Authorized Hours
Sep 2	Oct 1	1.40 X Weekly Authorized Hours
Oct 2	Nov 1	1.20 X Weekly Authorized Hours
Nov 2	Dec 1	1.00 X Weekly Authorized Hours
Dec 2	Jan 1	0.80 X Weekly Authorized Hours
Jan 2	Feb 1	0.60 X Weekly Authorized Hours
Feb 2	Mar 1	0.40 X Weekly Authorized Hours
Mar 2	Apr 1	0.20 X Weekly Authorized Hours
Apr 2	Jun 30	0.00 X Weekly Authorized Hours

### 10.1.2 ACCRUAL OF VACATION LEAVE AFTER FIRST YEAR OF SERVICE

For service after July 1 after the first year of employment up to and including four full years of service completed June 30, vacation leave is two (2) times the weekly authorized hours. If a person enters municipal service on the first working day of a vacation year, that year shall constitute the first of four (4) years completed.

For five (5) through nine (9) years of service, inclusive, completed on June 30 the vacation leave is three (3) times the weekly authorized hours.

For ten (10) through nineteen (19) years of service, inclusive, completed on June 30 the vacation leave is four (4) times the weekly authorized hours.

For twenty (20) years or greater of service, inclusive, completed on June 30 the vacation leave is five (5) times the weekly authorized hours.

One (1) week shall be the total number of regularly scheduled hours between Sunday and Saturday.

Temporary employees or employees working fewer than 20 hours per week are not entitled to Vacation Leave.



## **10.2 USE OF VACATION LEAVE**

Vacations shall be scheduled with the approval of the department head and Town Administrator for such time as best serves the needs of the department and the public. Although vacation accruals begin from date of hire, vacation entitlement and use commence upon completion of the 180-day probationary period.

Vacation leave is not cumulative from year-to-year, except upon the written approval of the Town Administrator. The Town Administrator may, in his/her sole discretion, authorize a carryover of not more than ten (10) days based upon the employee's regularly scheduled hours.

**NOTE: There will be a period of adjustment with a higher maximum carryover permitted for FY15 to allow use of previously earned vacation accruals under the previous provisions of this bylaw.**

## **10.4 TERMINATION OF EMPLOYMENT**

Upon termination of employment with the Town, an employee shall be entitled to payment of all unused accrued vacation credit prorated to the date of separation.

## **10.5 EARNING VACATION WHILE ON LEAVE OR WORKERS' COMPENSATION**

Employees will continue to earn vacation credit while on paid leave. An employee will continue to earn vacation credit while in the status of workers' compensation for up to one year from the anniversary date of the injury. No vacation credit will accrue while on unpaid leave. Accrual will resume upon return to work.

## **10.6 RATE OF PAY FOR VACATION LEAVE**

Vacation Leave will be paid at the employee's base pay rate at the time of vacation.

# **SECTION 11: OTHER LEAVES**

## **11.1 MILITARY TRAINING**

Full-time employees who are required to report for temporary summer, or a like period of training in the military forces of the nation or the Commonwealth, shall be paid an amount equal to the difference between compensation for a normal working period and the amount paid for military training; provided that the employee furnish to his/her Department head an authenticated copy of the orders issued to him/her and an authenticated certificate showing the date or dates on which such duty was performed. Instead, an employee, on his/her request, may schedule his/her regular vacation during his/her period of military leave. The maximum amount of military training allowed in a fiscal year is seventeen (17) working days.

## **11.2 JURY DUTY**

An employee required to serve on a jury on days he/she is scheduled to work, shall be paid his/her regular wages for the first three (3) days, or part thereof, of such juror service, at his/her regular straight time rate. For fourth and subsequent days of such juror service, the employee shall be paid the difference between the amount received as juror compensation (excluding travel allowance) and the employee's straight time wage.

An employee seeking compensation in accordance with this Section shall notify the Department head after receipt of the notice of selection for jury duty and shall furnish a written statement to the Town showing dates of juror service, time served, and the amount of juror compensation received.

If an employee is required to appear in Court as a defendant or witness in an action arising out of the performance of his/her duties for the Town, the employee shall be construed to be on duty for the Town if such time as he/she is officially required to be in court falls within his/her regularly scheduled working hours. The employee shall provide prior notice to his/her Department head of such court appearance and such documentation as may be requested by the Department head.

### **11.3 MATERNITY LEAVE**

All qualified full-time and part-time employees, as defined in this Bylaw and covered by MGL Chapter 149, Section 105D, shall be entitled to maternity benefits.

### **11.4 FAMILY AND MEDICAL LEAVE:**

The Town of Leicester shall provide its employees Family and Medical Leave in accordance with provisions of the Federal Family and Medical Leave Act and the Massachusetts Small Necessities Act. The Select Board may issue such rules, regulations, and policies as may be necessary to carry out the Acts. The Town Administrator shall administer the leave program.

### **11.5 BEREAVEMENT**

In the event of a death in the immediate family of a full-time or part-time employee, he/she will be entitled to a maximum of one (1) regularly scheduled work week of Bereavement Leave. Paid bereavement begins the first day following death and is payable according to the following:

☐ **One (1) work week:** Employee's spouse or domestic partner, child, step-child, parent, step-parent, brother, sister, step-brother, step-sister.

☐ **Three (3) consecutive days:** Employee's grandparents, grandparents-in-law, grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law.

☐ **One (1) day:** Employee's brother-in-law, sister-in-law, aunt, uncle, nephew, niece, first cousin.

Bereavement Leave is normally granted immediately following a death in the family. If funeral arrangements are postponed or when other unusual circumstances exist, the employee may, with supervisory approval, defer the Bereavement Leave to a later date. Bereavement Leave cannot be paid in addition to any other paid time off such as Holiday, Vacation, Sick, or Personal Leave. However, if an employee is being paid Sick, Vacation, and/or Personal Leave, he/she may request to be paid Bereavement Leave.

If an employee is regularly scheduled to work on a day on which a holiday falls and is on Bereavement Leave, he/she will be paid Bereavement Leave for his/her regularly scheduled hours and will receive Holiday Compensatory Leave for his/her regularly scheduled hours.

## 11.6 PERSONAL LEAVE

a. Full-time and part-time benefited employees will accrue personal leave *annually*. This shall be calculated as follows: Eligible employees will accrue 0.75x their average regularly scheduled hours per work week annually.

During the first year of employment each such employee will be eligible for the following Personal Leave:

- ☐ Hired between July 1-October 30 – 1.0x annual accrual
- ☐ Hired between November 1-February 28(29) – 0.33x annual accrual
- ☐ Hired between March 1-June 30 – 0.00x annual accrual

Personal Leave shall be scheduled with prior approval of the department head subject to the operating and staffing needs of the department as determined by the department head. Personal Leave must be used during the fiscal year in which it is awarded and cannot be carried over from fiscal year to fiscal year. Personal Leave not used by the end of the fiscal year shall be forfeited and may not be converted to cash. Upon termination or retirement Personal Leave may not be converted to cash.

## 11.7 HOLIDAY LEAVE. This section effective upon approval at 2009 Town Meeting (June 16-09).

Full-time and part-time benefited employees shall be paid for each of the following holidays as outlined below:

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

### If a full-time or part-time employee is:

1. regularly scheduled to work on a day on which a holiday falls, he/she will be paid for his/her regularly scheduled hours.
2. regularly scheduled and required to work on a day on which a holiday falls, he/she will be paid straight time for hours worked and receive holiday pay for his/her regularly scheduled hours.
3. not regularly scheduled to work on a day on which a holiday falls but is required to work (with the exception of department heads), he/she will be paid straight time (or according to overtime rules, if applicable) for hours

4. not regularly scheduled to work on a day on which a holiday falls but is required to work (with the exception of department heads), he/she will be paid straight time (or according to overtime rules, if applicable) for hours worked and receive Holiday Compensatory Leave at one-fifth (1/5) the total number of hours he/she is regularly scheduled to work during a normal work week.

**NOTE: Holiday Compensatory Leave will be scheduled at the discretion of the department head and must be taken within six (6) months.**

#### **11.8 AUTHORIZED LEAVE WITHOUT PAY**

Leaves of absence without pay may be granted only after the written recommendation of the department head and the approval of the Select Board. The Select Board shall consider whether the leave is scheduled for such time as best serves the needs of the department and the public.

#### **11.9 UNAUTHORIZED LEAVE WITHOUT PAY**

Any absence which has not been authorized by law, this Bylaw, or by administrative rules and regulations shall be unauthorized leave without pay. Any employee who is absent for a period of five (5) consecutive workdays without specific authorization for such absence shall be deemed to have permanently vacated his/her position, unless authorization is subsequently granted by the Town Administrator.

## **PART II: SALARY/WAGES**

### **SECTION 12: COMPENSATION**

All employees included in the Job Classification and Compensation Plan shall be eligible to receive pay based upon their job classifications. All job classification adjustments shall be subject to written recommendation of the appointing authority with the approval of the Board.

The recommendation must substantiate that the candidate possesses prior job experience, extra qualifications, and/or education that directly relates to the job classification.

**12.1 PERFORMANCE REVIEW** A written evaluation of each employee's performance shall be conducted annually by the department head on such form as the Town Administrator shall require. The purpose of the performance review is to provide a periodic, formal process to review the employee's performance matched against prior mutually agreed upon goals and objectives. The written performance evaluation shall be reviewed with the employee and signed by both parties attesting to the review; however, the employee only attests to the review itself, not necessarily its contents.

Base Wage increases are based on merit and ability as determined through the annual performance review process. They are not automatic. The department head shall perform the evaluation, and the Town Administrator shall review it. Employees who receive a satisfactory or better evaluation shall be eligible for a base wage increase. The Town Administrator shall determine the amount of any increase in light of the availability of appropriated funds and the employee's overall performance. If the employee receives a satisfactory or better review from

his department head and funds have been appropriated, the employee may appeal the Town Administrator's decision to award a base wage increase below the average on a percentage basis (including the decision to award the employee no base wage increase) to the Board for ratification.

**SECTION 13: CLASSIFICATION: Refer to the Town's "Classification and Compensation Plan."**

**SECTION 14: PAY SCHEDULE: Refer to the Town's "Classification and Compensation Plan."**

**SECTION 15: HEALTH FUND AGREEMENT AND TRUST**

**A.** Non-bargaining unit members shall be eligible to participate in the Town's Health Fund Agreement and Trust, established pursuant to Section 15 of Chapter 32B, where non-bargaining unit members live outside of the HMO service area and who were full-time employees retiring after November 1, 1994 from the service of the Town.

**B.** To be eligible for benefits under the Trust, a retired employee must be participating in the Town's health insurance program unless said employee is located in an area where it is unavailable and must be actually retired under Chapter 32 of the Massachusetts General Laws.

**C.** The Town's minimum financial contribution and liability under the Trust shall not be less than 50%. The Select Board shall have the right to adjust the Town's level of contribution and to set a financial cost ceiling on the Town's contribution under the Trust.

**D.** No person receiving benefits under this bylaw may pyramid health insurance benefits with another health insurance program of the Town.

**E.** The Select Board may adopt appropriate rules and regulations to implement this bylaw.

## **CHAPTER 13: FOREST CUTTING (STM 10-13-82)**

- 1.** No person shall engage in major forest cutting operations with the Town of Leicester before obtaining a permit from the Leicester Conservation Commission.
- 2.** Major forest cutting operation shall be defined as the cutting of more than 30% of the standing timber over 8" Diameter Breast High (DBH) per acre, or clear cutting of more than 10 acres within 2 weeks or any cutting which included 30 acres or more.
- 3.** Person shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof administrative agency, public or quasi-public corporation, or body, or any other legal entity or its legal representative, agents or assigns excluding state and federal governments operating on state or federal lands.
- 4.** Any person may obtain from the Leicester Conservation Commission an exemption from this by-law by demonstrating possession of (1) an approved cutting plan issued by the State of Massachusetts Forester under the Massachusetts Forest Cutting Practices Act G.L. Chapter 132, Section 41 or (2) a final order of conditions issued under the Wetland's Protection Act, G.L. Chapter 131, Section 40 which, in the Conservation Commission's opinion adequately covers the forestry activity proposed.
- 5.** The applicant shall apply in writing, including a copy of the proposed cutting plan, to the Conservation Commission by Certified Mail or hand delivery to the Town Clerk for the Town of Leicester to be forwarded to the Conservation Commission. A public hearing will be held within 14 days after 5 days' notice of hearing is published in a local newspaper. The cost of the newspaper notice will be paid by the applicant.
- 6.** The Conservation Commission will issue a permit, when the required cutting plan is in compliance with Massachusetts General Laws Chapter 132, Section 40, and all Forest Practices adopted under Chapter 132 Section 41, or a denial of permit, with written reasons within 5 days of the public hearing.
- 7.** If a major forest cutting operation involves the removal, filling, dredging, or altering of any bank, freshwater wetland, flat, marsh, meadow, bog, swamp, creek, river, stream, pond, or land, under said waters of any land subject to flooding, a Notice of Intent must be filed under Massachusetts General Laws Chapter 131, Section 40, prior to issuance of a permit. Definitions set forth in said chapter and section are hereby made a part of this by-law.
- 8.** The permit, if issued, shall contain conditions necessary to protect the public health, safety and welfare, the environment, future forest growth, recreation, wildlife habitat and aesthetics.
- 9.** The Conservation Commission may require posting of a bond with surety, running to the municipality, to secure faithful and satisfactory performance of work, in such sum and upon such conditions as the Conservation Commission may require. The amount of such bond shall not exceed the estimated cost of work required or the restoration of affected lands and properties if the work is not performed as required, whichever is greater. Forfeiture of any such bond shall be recoverable at the suit of the municipality in Superior Court. Such bond shall be released upon completion of the major forest cutting operation as per the proposed cutting plan previously submitted.

**10.** Any person aggrieved by a decision of the Conservation Commission, may within 10 days from said Commission's decision, appeal such decision to Superior Court. The Party making such appeal shall at the same time send a copy thereof by certified mail or hand delivery to the Town Clerk for the Town of Leicester to be forwarded to the Commission who conducted the hearing hereunder.

**11.** Whoever violates any provision of this by-law section shall be punishable by a fine of not more than one hundred dollars per acre violated. Each day or portion thereof of continuing violation shall constitute a separate offense.

**12.** The Leicester Conservation Commission may at a later date submit to town meeting for vote, an amount to establish a reasonable permit fee. Such fee can be charged only by vote of town meeting.

## **CHAPTER 14: WETLANDS**

(STM 10-13-82, Replacement accepted @ ATM May 5, 2008, and Amended Section IV @ ATM May 5, 2015)

### **WETLANDS PROTECTION BYLAW/ORDINANCE**

#### **I. Purpose**

The purpose of this bylaw is to protect the wetlands, water resources, flood prone areas, and adjoining upland areas in the Town of Leicester by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect on resource area values, including but not limited to the following: public or private water supply, groundwater supply, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention and control of pollution, fisheries, wildlife habitat, rare species habitat including rare plant and animal species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “resource area values protected by this bylaw”).

This bylaw is intended to utilize the Home Rule authority of this municipality so as to protect the resource areas under the Wetlands Protection Act (G.L. Ch.131 §40; the Act) to a greater degree, to protect additional resource areas beyond the Act recognized by the Town as significant, to protect all resource areas for their additional values beyond those recognized in the Act, and to impose in local regulations and permits additional standards and

procedures stricter than those of the Act and regulations there under (310 CMR 10.00), subject, however, to the rights and benefits accorded to agricultural uses and structures of all kinds under the laws of the Commonwealth and other relevant bylaws of the Town of Leicester.

#### **II. Jurisdiction**

Except as permitted by the Conservation Commission no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any freshwater wetlands, marshes, wet meadows, bogs, swamps, vernal pools, springs, banks, reservoirs, lakes, ponds of any size, beaches, dunes, estuaries, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of 100 feet, known as the buffer zone; perennial rivers, streams, brooks and creeks; lands adjoining these resource areas out to a distance of 200 feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to flooding (collectively the “resource areas protected by this bylaw”). Said resource areas shall be protected whether or not they border surface waters. The jurisdiction of this bylaw shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquaculture uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.



### **III. Exemptions and Exceptions**

The applications and permits required by this bylaw shall not be required for work performed for normal maintenance or improvement of land in agricultural and aqua cultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.

The applications and permits required by this bylaw shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission. The applications and permits required by this bylaw shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided by this bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures. Other than stated in this bylaw, the exceptions provided in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) shall not apply under this bylaw.

### **IV. Applications and Fees**

#### **A. Application Requirements**

Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this bylaw. The permit application shall include information and plans as required by the Wetlands Protection Act (G.L.Ch.131 §40) and Wetland Regulations (310 CMR 10.00). The Commission may also require additional information to describe proposed activities and their effects on resource areas as specified in the regulations of the Commission.

Any person desiring to know whether or not a proposed activity or an area is subject to this bylaw may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans as required by the Wetlands Protection Act (G.L. Ch. 131 §40), Wetland Regulations (310 CMR 10.00), and as specified in the regulations of the Commission.

**B. Filing Fees.**

At the time of an application, the applicant shall pay a filing fee specified in regulations of the Commission. The fee is in addition to that required by the Wetlands Protection Act and regulations.

**C. Consultant Review Fees**

Pursuant to G.L. Ch. 44 §53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists or other experts in order to aid in the review of proposed projects. Such funds shall be deposited with the town treasurer, who shall create an account specifically for this purpose. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services.

Only costs relating to consultant work done in connection with a project for which a consultant fee has been collected shall be paid from this account, and expenditures may be made at the sole discretion of the Commission. Any consultant hired under this provision shall be selected by, and report exclusively to, the Commission. The Commission shall provide applicants with written notice of the selection of a consultant, identifying the consultant, the amount of the fee to be charged to the applicant, and a request for payment of that fee. Notice shall be deemed to have been given on the date it is mailed or delivered. The applicant may withdraw the application or request within five (5) business days of the date notice is given without incurring any costs or expenses.

The entire fee must be received before the initiation of consulting services. Failure by the applicant to pay the re-quested consultant fee within ten (10) business days of the request for payment shall be cause for the Commission to declare the application administratively incomplete and deny the permit without prejudice, except in the case of an appeal. The Commission shall inform the applicant and Department of Environmental Protection (DEP) of such a decision in writing.

The applicant may appeal the selection of an outside consultant to the select board, who may disqualify the consultant only on the grounds that the consultant has a conflict of interest or is not properly qualified. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue, or a related field. The applicant shall make such an appeal in writing and must be received within ten (10) business days of the date that request for consultant fees was made by the Commission. Such appeal shall extend the applicable time limits for action upon the application.

## **V. Notice and Hearings**

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

The Commission shall conduct a public hearing on any permit application, NOI, RDA, or ANRAD with written notice given at the expense of the applicant, at least five business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within 21 days from receipt of a completed permit application, NOI, RDA, or ANRAD unless an extension is authorized in writing by the applicant.

The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion, based on comments and recommendations of the boards and officials listed in §VI.

The Commission shall issue its permit, other order or determination in writing within 21 days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act (G.L. Ch.131 §40) and regulations (310 CMR 10.00).

## **VI. Coordination with Other Boards**

Any person filing a permit application, RDA, or ANRAD with the Conservation Commission shall provide a copy thereof at the same time, by certified mail (return receipt requested) or hand delivery, to the select board, planning board, board of appeals, board of health, agricultural commission, town engineer, and building inspector. A copy shall be provided in the same manner to the Commission of the adjoining municipality, if the application or RDA pertains to property within 300 feet of that municipality. An affidavit of the person providing notice, with a copy of the notice mailed or delivered, shall be filed with

the Commission. The Commission shall not take final action until the above boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account, but which shall not be binding on the Commission. The applicant shall have the right to receive any comments and recommendations, and to respond to them at a hearing of the Commission, prior to final action.

## **VII. Permits and Conditions**

If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result there from, are likely to have a significant individual or cumulative effect on 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. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.

If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this bylaw. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this bylaw. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that: the Commission finds in writing after said public hearing that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.

In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge,

poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation strips of continuous, undisturbed vegetative cover, unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the bylaw.

In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this bylaw, has proved by a preponderance of the evidence that (1) there is no practicable alternative to the proposed project with less adverse effects, and that (2) such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this bylaw. The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.

To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success, because of the high likelihood of failure of replication.

The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors as proximity to other areas suitable for wildlife, importance of wildlife "corridors" in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

The Commission shall presume that all areas meeting the definition of "vernal pools" under §IX of this bylaw, including the adjacent area, perform essential habitat functions. This presumption may be overcome only by the presentation of credible evidence which, in the judgment of the Commission, demonstrates that the basin or depression does not provide essential habitat functions. Any formal evaluation should be performed by an individual who at least meets the qualifications under the wildlife habitat section of the Wetlands Protection Act regulations.

A permit, Order of Conditions, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) 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 renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.

For good cause the Commission may revoke any permit, Order of Conditions, DOA, or ORAD or any other order, determination or other decision issued under this bylaw after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.

Amendments to permits, Order of Conditions, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies there under.

The Commission in an appropriate case may combine the decision issued under this bylaw with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.

No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected is registered land, in the

registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

## **VIII. Regulations**

After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to

effectuate the purposes of this bylaw, effective when voted and filed 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. At a minimum, these regulations

shall reiterate the terms defined in this bylaw, define additional terms not inconsistent with the bylaw, and impose filing and consultant fees.

## **IX. Definitions**

**The following definitions shall apply in the interpretation and implementation of this bylaw.**

The term **“agriculture”** shall refer to the definition as provided by G.L. Ch. 128 §1A.

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

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

The term **“bank”** shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.

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

The term **“pond”** shall follow the definition of 310 CMR 10.04 except that the size threshold of 10,000 square feet shall not apply.

The term “**rare**” species” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.

The term “**vernal pool**” shall include, in addition to scientific definitions found in the regulations under the Wetlands Protection Act, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Fisheries and Wildlife. The boundary of the resource area for vernal pools shall be 100 feet outward from the mean annual high-water line defining the depression.

Except as otherwise provided in this bylaw or in associated regulations of the Conservation Commission, the

definitions of terms and the procedures in this bylaw shall be as set forth in the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00).

## **X. Security**

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

**A.** By a proper bond, deposit of money or negotiable securities under a written third-party escrow arrangement, 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 COC for work performed pursuant to the permit.

**B.** By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

## **XI. Enforcement**

No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this bylaw, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this bylaw. The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties



under this bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.

The Commission shall have authority to enforce this bylaw, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under G.L. Ch. 40 §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.

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

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

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

As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penal- ties pursuant to the non-criminal disposition procedure set forth in G.L. Ch. 40 §21D, which has been adopted by the Town in § 6.1 of the general bylaws.

## **XII. Burden of Proof**

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

## **XIII. Appeals**

A decision of the Conservation Commission shall be reviewable in the superior court in accordance with G.L. Ch.249 §4

## **XIV. Relation to the Wetlands Protection Act**

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (G.L. Ch. 131 §40) and regulations (310 CMR 10.00) there under. It is the intention of this bylaw that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wet- lands Protection Act and regulations.

## **XV. Severability**

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

# **CHAPTER 15: STORMWATER BYLAW**

**(New bylaws accepted @ ATM May 5, 08)**

## **1.0 PURPOSE**

The purpose of this Bylaw is to protect the public health, safety, and welfare by establishing requirements to better manage stormwater runoff from new development and redevelopment. This Bylaw seeks to meet that purpose through the following objectives:

- 1.** Establish stormwater management standards and design criteria that will prevent or reduce sedimentation, flooding, stream erosion, pollution, property damage, harm to aquatic life, and overloading or clogging of municipal drainage systems.
- 2.** Encourage the use of “low-impact development practices”, such as reducing the amount of impervious area and preserving existing vegetation.
- 3.** Ensure that stormwater management practices will be well-maintained and will continue to function as intended.
- 4.** Establish procedures for issuance of stormwater management permits and for the Town’s inspection of approved stormwater treatment practices.

## **2.0 DEFINITIONS**

Definitions in Appendix A of this Bylaw 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.

## **3.0 ADMINISTRATION**

- A)** The Planning Board shall administer, implement and enforce this Bylaw. Any powers granted to or duties imposed on the Planning Board may be delegated in writing by the Planning Board to its employees or agents, as defined in the regulations adopted for this Bylaw.
- B)** Regulations. The Planning Board may adopt and amend rules and regulations for administration of this Bylaw by majority vote of the Planning Board, after conducting a public hearing to receive comments. Such hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date.
- C)** Stormwater Management Manual. The Planning Board will use specifications and standards that are consistent with the Massachusetts Stormwater Management Policy. This Policy provides criteria for stormwater treatment practices, which are based on engineering, science, monitoring, and maintenance experience. Stormwater treatment practices that are designed, constructed and maintained in accord with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.
- D)** Actions by the Planning Board. The Planning Board may take any of the following actions after reviewing an application for a Stormwater Management Permit - Approval, Approval with Conditions, Disapproval, or Withdrawal without Prejudice.

**E) Appeals.** 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 sixty (60) days thereof, in accordance with M.G.L. Ch. 249 § 4.

**F) Low Impact Design.** The Planning Board may adopt criteria for practices that will qualify as low impact designs, as part of the Regulations authorized by this Bylaw. These criteria will allow applicants the option to use low-impact practices to improve the amount and quality of stormwater runoff.

#### **4.0 APPLICABILITY**

**A.** This Bylaw shall apply to proposed new development including but not limited to residential subdivisions, site plan applications, commercial uses, municipal uses and multi-family dwellings.

This Bylaw shall also apply to other activities that will increase the amount of stormwater runoff or pollutants from a parcel of land or that will alter the drainage characteristics of a parcel of land, unless the activity is listed as an exemption under Section 4.D of this Bylaw.

All new development and redevelopment under the jurisdiction of this Bylaw shall be required to obtain a Stormwater Management Permit from the Planning Board.

**B.** Redevelopment projects will fulfill the Bylaw requirements if the amount and quality of stormwater is improved from existing conditions. Where site conditions prevent reduction in impervious area, stormwater treatment shall improve runoff, as determined by the Planning Board.

**C.** The redevelopment or conversion of land to an automotive salvage yard, fueling facility, storage yard or commercial parking lot, or storage area for road salt or hazardous substances, or other land use with greater potential for pollution, as defined by the Massachusetts Stormwater Policy or the Bylaw regulations, shall require a Stormwater Management Permit.

**D. Exemptions.** No person shall alter land within the Town of Leicester without having obtained a Stormwater Management Permit for the property with the following exceptions:

**1.** Any activity that will affect an area less than 10,000 square feet, or less than 2,500 square feet if the activity is within the Water Resources Protection Overlay.

**2.** Normal maintenance and improvement of land in agricultural use.

**3.** Timber harvesting under an approved Forest Cutting Plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL Chapter 132 Sections 40 through 46, and the Town of Leicester Forest Cutting By-law.

**4.** Construction of a single-family dwelling, where “approval is not required” (ANR), as defined in the Subdivision Control Act. Persons constructing a single-family dwelling are encouraged to use stormwater practices and site planning methods to be described in the Town of Leicester Best Development Practices Guidebook.

**5.** Maintenance of landscaping, gardens or lawn areas associated with residential uses.

**6.** Construction of a house addition, garage, deck, patio, retaining wall, shed, swimming pool, tennis or basketball court associated with residential uses.

7. Repair or replacement of a roof of an existing building.
8. Repair or replacement of an existing septic system.
9. The construction of any fence that will not alter existing terrain or drainage patterns.
10. Construction of utilities (gas, water, electric, telephone, etc.) other than drainage, which will not alter terrain, ground cover, or drainage patterns.
11. Emergency repairs to any stormwater management practice that poses a threat to public health or safety, or as deemed necessary by the Planning Board.
12. Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw.

## **5.0 STORMWATER MANAGEMENT PERMITS**

The Permit Application shall be filed with the Planning Board, and copies shall be provided to other Town Boards, as defined in the regulations adopted for this Bylaw. The permit application shall include information that describes stormwater management practices, including sediment and erosion controls, which will be installed and maintained. Specifications for the application form and the stormwater management information shall be part of the rules and regulations adopted under Section 3 of this Bylaw.

Nothing in this Bylaw is intended to replace the requirements of the Town of Leicester Flood Plain District, Water Resources Protection Overlay District, Wetland Bylaw, or any other Bylaw that may be adopted by the Town of Leicester. Any activity subject to the provisions of the above-cited Bylaws must comply with the specifications of each. A driveway permit from the Highway Superintendent is also required for the construction of any dwelling, as provided in Section 6.2A of the Town of Leicester Zoning Bylaw.

The Stormwater Management Permits will not go into effect until the regulations are adopted by the Planning Board, as provided in Section 3.0 B of this Bylaw.

## **6.0 ENFORCEMENT**

The Planning Board or its authorized agent shall enforce this Bylaw and may pursue all civil and criminal remedies for violations. Enforcement shall be further defined as part of the rules and regulations adopted under Section 3 of this Bylaw.

## **7.0 AUTHORITY**

This Bylaw is adopted under the 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 Leicester at Town Meeting, dated May 5, 2008.

## **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**

### **ALTER:**

Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns.

### **STORMWATER MANAGEMENT PRACTICES:**

Structures and techniques that prevent flooding, reduce pollution, and protect local rivers, streams, lakes and water supplies.

### **BETTER SITE DESIGN:**

Site design techniques that can reduce environmental impacts, such as protecting existing vegetation, reducing impervious areas, and using natural drainage ways for stormwater management.

### **IMPERVIOUS AREA:**

A material or a structure that prevents water from entering the underlying soil, such as paved parking lots, paved roads, sidewalks, and buildings.

### **MASSACHUSETTS STORMWATER MANAGEMENT POLICY:**

The Policy issued by the state Department of Environmental Protection, which provides performance standards to prevent water pollution and control the amount of runoff from new development.

### **PERSON:**

Any individual, group of individuals, association, partnership, corporation, company, trust, estate, a political subdivision of the Commonwealth or the federal government, to the extent subject to the Bylaws of the Town of Leicester.

### **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.

### **POST-DEVELOPMENT:**

The conditions that reasonably may be expected after completion of the land development activity on a specific site or tract of land. Post-development does not refer to the construction phase of a project.

### **REDEVELOPMENT:**

Any construction, alteration, or improvement exceeding land disturbance of 10,000 square feet, where the existing land use is commercial, or institutional.

### **PLANNING BOARD:**

The Town of Leicester Planning Board OR its authorized agent(s). The Planning Board is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments will participate in the permit process as defined in the rules and regulations adopted by the Planning Board.

**STORMWATER MANAGEMENT PERMIT (SMP):**

A permit issued by the Planning Board, which protects the streams, lakes and water supplies in the Town from the adverse effects of uncontrolled and untreated stormwater runoff.

**LOW IMPACT DESIGN:**

Low impact practices allow for the reduction of impervious areas that result in smaller volumes required for stormwater storage. These site design techniques can reduce the size and costs of stormwater collection systems and detention basins.

# CHAPTER 16: Bylaw Governing Illicit Discharges to the Municipal Storm Drain System (ATM 5-6-14)

## SECTION 1: PURPOSE

The purpose of this bylaw is to provide for the health, safety, and general welfare of the citizens of the Town of Leicester through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. The bylaw establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this bylaw are:

1. To prevent pollutants from entering Leicester's municipal separate storm sewer system.
2. To prohibit illicit connections and unauthorized discharges to the MS4.
3. To require the removal of all such illicit discharges.
4. To comply with state and federal regulations relating to storm water discharges; and
5. To establish legal authority to ensure compliance with the provisions of this bylaw through inspection, monitoring, and enforcement.

## SECTION 2: DEFINITIONS

For the purposes of this bylaw, the following shall mean:

**Authorized Enforcement Agency:** The Town of Leicester's Select Board shall administer and implement this bylaw. The Town's Highway Department shall enforce this bylaw. Any powers granted to or duties imposed must be delegated in writing by the Select Board to the appropriate agents of the town, i.e. the employees of and agents of the Highway Department, the Board of Health, the Conservation Commission, District Water and Sewer Superintendents, Building Inspector, and Town Engineer.

**Best Management Practices (BMPs):** Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

**Clean Water Act:** The federal Water Pollution Control Act (33 U.S.C § 1251 et seq.) and any subsequent amendments thereto.

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



**Illegal Discharge:** Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 5 of this bylaw.

**Illicit Connections:** An illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and waste water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

**Industrial Activity:** Activities subject to NPDES Industrial Permits as defined in 40 CFR. Section 122.26 (b)(14).

**National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** A permit issued by EPA that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

**Non-Storm Water Discharge:** Any discharge to the storm drain system that is not composed entirely of storm water.

**Person:** Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

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

**Premises:** Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

**Storm Drain System:** Publically-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

**Storm Water:** Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation and resulting from such precipitation.

**Wastewater:** Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

### **SECTION 3: APPLICABILITY**

This bylaw shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

#### **SECTION 4: RESPONSIBILITY FOR ADMINISTRATION**

The Select Board shall administer and implement the provisions of this bylaw. The Highway Department shall enforce this bylaw. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Chairman of the Select Board to persons or entities acting in the beneficial interest of the Town of Leicester.

#### **SECTION 5: DISCHARGE PROHIBITIONS**

Prohibition of Illegal Discharges: No person shall discharge or cause to be discharged into the municipal separate storm sewer system (MS4) or watercourses any materials, including but not limited to pollutants or waters containing pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

1. The following discharges are exempt from discharge prohibitions established by this bylaw:
  - Water line flushing or other potable water sources
  - Landscape irrigation or lawn watering
  - Diverted stream flows
  - Rising ground water
  - Uncontaminated ground water infiltration from storm drains
  - Uncontaminated pumped ground water
  - Foundation or footing drains
  - Crawl space pumps
  - Air conditioning condensation
  - Springs
  - Individual resident car washing
  - Natural riparian habitat or wet-land flows
  - De-chlorinated Swimming pools
  - Street wash waters
  - Residential building wash waters without detergents
  - Firefighting activities
2. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
3. Dye testing is an allowable discharge but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
4. The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and

regulations, and provided that written approval has been granted for any discharge to the storm drain system.

**Prohibition of Illicit Connections:**

1. The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
2. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
3. A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or watercourse or allows such a connection to continue.

**SECTION 6: NOTIFICATION OF SPILLS**

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the MS4 system, or water of the U.S. said person shall take all the necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies and the Leicester Highway Department. In the event of non-hazardous materials, said person shall notify the Leicester Highway Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Leicester Highway Department within three business days of the phone notice. If the discharge of prohibited material emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

**SECTION 7: MONITORING OF DISCHARGES**

Inspectors authorized by the Select Board shall be permitted to enter and inspect facilities subject to regulation under this bylaw as often as may be necessary to determine compliance with this bylaw. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the authorized inspectors.

**SECTION 8: ENFORCEMENT**

The Select Board through the Highway Department shall enforce this bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations.

**Civil Relief:** If a person violates the provisions of this bylaw, regulations, permit, notice, or order issued thereunder, the Select Board may seek injunctive relief in a court of competent jurisdiction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Orders:** The Select Board or another authorized agent may issue a written order to enforce the provisions of this bylaw or the regulations thereunder, which may include:

1. Elimination of illicit connections or discharges to the MS4;
2. Performance of monitoring, analyses, and reporting;
3. That unlawful discharges, practices, or operations shall cease and desist; and
4. Remediation of contamination in connection therewith.

If the enforcing body determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the enforcing body may, at its option, undertake such work, and expenses thereof shall be charged to the violator.

**Criminal Penalty:** Any person who violates any provision of this bylaw, regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$250.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

**Non-Criminal Disposition:** As an alternative to criminal prosecution or civil action, the Select Board may elect to utilize the non-criminal disposition procedure set forth in G.L. Ch. 40, §21D in which case the Highway Department shall be the enforcing Town department. The penalty for the 1<sup>st</sup> violation shall be \$100.00. The penalty for the 2<sup>nd</sup> violation shall be \$250.00. The penalty for the 3<sup>rd</sup> and subsequent violations shall be \$300.00. Each day or part thereof that such violations occur or continues shall constitute a separate offense.

**Entry to Perform Duties Under This Bylaw:** To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Highway Department, its agents, officers, and employees may enter upon privately owned property for the purpose of performing their duties under the bylaw and regulations and may make or cause to be made such examinations, surveys or sampling as the Department deems reasonably necessary.

**Appeals:** The decisions or orders of the Select Board shall be final. Further relief shall be to a court of competent jurisdiction.

**Remedies Not Exclusive:** The remedies listed in this bylaw are not exclusive of any other remedies available under any applicable federal, state or local law.

## **SECTION 9: SEVERABILITY**

The provisions of this bylaw are hereby declared to be severable. If any provision, paragraph, sentence or clause of this bylaw or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this bylaw.

# **CHAPTER 16: CAPITAL IMPROVEMENT PLANNING COMMITTEE BYLAW [May 5, 1997]**

## **SECTION 1.**

The Select Board shall establish and appoint a committee to be known as the Capital

Improvement Planning Committee composed of one member of the Select Board, one member of the Advisory Committee, one member of the Planning Board, the School Superintendent or his designee and three (3)

inhabitants of the Town of Leicester, who shall serve in an "at large" capacity, and who shall serve in a one (1) year term; a two (2) year term and a three (3) year term respectively and thereafter any subsequent appointments of the three (3) inhabitants shall be for a term of three (3) years. No person employed by the Town of Leicester or the Leicester School Department shall be eligible to serve "at large". The Town Accountant and the Town Administrator shall be "ex-officio" members without the right to vote. The committee shall choose its own officers. All appointments shall be on annual basis except where the appointment is made to a term longer than one year.

## **SECTION 2.**

The Committee shall study proposed capital projects and improvements involving major non- recurring tangible assets and projects which: 1) are purchased or undertaken at intervals of not less than five years: 2) have a useful life of at least five years: and 3) cost over \$10,000. All officers, boards and committees, including the Select Board and the School Committee, shall by 1 January of each year, give to the committee, on forms prepared by it, information concerning all anticipated, projects requiring Town Meeting action during the ensuing six years. The Committee shall consider the relative need, 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 unless the proposed capital improvement is considered in the Committee's report, or the Committee shall first have submitted a report to the Select Board explaining the omission.

## **SECTION 3.**

The Committee shall prepare an annual report recommending a Capital Improvement Budget for the next fiscal year, and a Capital Improvement Program including recommended capital improvements for the following five fiscal years. The report shall be submitted to the Select Board for its consideration and approval. The board shall submit its approved Capital Budget to the Annual Town Meeting for adoption by the Town.

## **SECTION 4.**

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 for preliminary planning for projects to be undertaken more than five years in the future.

**SECTION 5.**

The Committee's report and the Select Board's recommended Capital budget shall be published and made available in a manner consistent with the distribution of the Finance Committee report. The Committee shall deposit its original report with the Town Clerk.

# CHAPTER 17: COLLECTION BOXES FOR NOT FOR PROFIT AND PROFIT ORGANIZATIONS AND INDIVIDUALS

(New Bylaw 5-7-01) (Updated Oct 20, 2015) (11-17-2020)

## SECTION 1:

This General Bylaw shall be known and cited as the “Collection Box Bylaw”. Its purpose is to standardize the placement of collection boxes and maintenance of the area in which the collection boxes are located on real property in the Town of Leicester to promote the health, safety and welfare of the inhabitants of the Town of Leicester by reducing sources of filth, litter and debris caused by the improper placement and maintenance of such collection boxes. Effective the passage of the revised bylaw, this bylaw will be enforced by the Board of Health.

## SECTION 2:

**DEFINITIONS:** For the purpose of this General Bylaw, the words and phrases used herein shall have the following meaning, except in those instances where the context clearly indicates a different meaning:

**APPLICANT:** An Operator, as defined within this bylaw applying to have a collection box installed on a property.

**CERTIFICATE OF COMPLIANCE:** The Certificate of Compliance issued by the Board of Health to an operator of a collection box.

**COLLECTION BOXES:** Any type of self-service device for the collection of used and/or new articles of clothing, shoes; new and/or used articles of household goods including but not limited to bedding, curtains, decorative items such as pictures, and object d’art; books and/or magazines.

**NOT FOR PROFIT ORGANIZATIONS OR AGENCY:** Any entity that has been approved by the Internal Revenue Service as a not-for-profit organization, agency or corporation pursuant to Internal Revenue Code Section 501(c) and is recognized as any legal entity by the Commonwealth of Massachusetts and/or is registered with the Secretary of the Commonwealth, Department of Corporations.

**FOR PROFIT ORGANIZATIONS OR AGENCY:** Any entity that has not been approved by the Internal Revenue Service as a not-for-profit organization, agency or corporation pursuant to Internal Revenue Code Section 501 (c) and is recognized as a legal entity by the Commonwealth of Massachusetts and/or is registered with the Secretary of the Commonwealth, Department of Corporations.

**INDIVIDUAL:** Any person or persons, including any person registered with the Town of Leicester as doing business under another name, who is not a legal entity recognized by the Commonwealth of Massachusetts and/or is not registered with the Secretary of the Commonwealth, Department of Corporations.

**PROPERTY OWNER:** Any individual, not for profit and/or for-profit organization or agency who is the record owner of real estate located within the Town of Leicester and recorded at the Worcester District Registry of Deeds.

**OPERATOR:** Any natural person or other legal entity, including but not limited to, not for profit or for-profit corporations, partnerships, joint ventures who either own, operate or are otherwise in control of the collection box.

### **SECTION 3: PERMITTED LOCATIONS**

Collection boxes are permitted in all zoning districts designated on the Town of Leicester Zoning Map.

### **SECTION 4: GENERAL REQUIREMENTS**

The placement of collection boxes on real estate by an operator is prohibited without the written permission of the property owner.

### **SECTION 5: SITING CRITERIA**

The Board of Health will use the following criteria in determining whether to allow placement of a collection box at a location:

1. The applicant's name, business name, business address and telephone number as well as the name, address and telephone number of the person or persons responsible for maintaining each collection box.
2. Written permission of the owner allowing the placement of the collection box.
3. A sketch plan showing the proposed location of the collection box on the property as well as existing conditions on the property such that there is safe and convenient pedestrian and vehicular access to them. The Board of Health may, by regulation, limit the number of collection boxes within a specific radius from existing collection boxes.
4. That the collection boxes shall be of the type that is enclosed by use of a receiving door and locked so that the contents of the collection box may not be accessed by anyone other than those responsible for the retrieval of the contents.
5. That each collection box must be regularly emptied of its contents so that it does not overflow. Used clothing or other donated goods and materials may not be placed about the surrounding area. All collection boxes must be maintained in a state of good repair and in a neat and clean condition, and free of trash, debris, refuse or like material.
6. Additional information as offered by the Applicant or requested by the Board of Health.

If the applicant satisfies the requirements of the Board of Health as annotated above, the Board of Health shall issue a Certificate of Compliance. If the Operator's application for a Certificate of Compliance is denied, a letter with the reason(s) for denial will be sent to the applicant and the property owner.

### **SECTION 6: ANNUAL APPLICATION**

An annual application shall be filed by the operator by January 31<sup>st</sup> of each year, for placement of collection bins for that calendar year. Applications must contain all of the information list in Section 5 of this bylaw. Upon approval of said application, the Board of Health shall give the operator a certificate of compliance for the approved collection box. The operator shall be required to post said certificate upon the approved collection box.



Bins that are not approved by the Board of Health, or bins that do not bear the Certificate of Compliance shall be subject to actions defined in Section 8 of this bylaw.

#### **SECTION 7: PROPERTY OWNER OBLIGATIONS**

Any property owner who grants permission to an operator for placement of a collection box shall be held responsible for keeping the area around the collection box free from excess articles that do not fit into the collection box or have not been properly placed into the collection box. The property owner will be responsible for the removal and storage of articles that will not fit into the collection box. The property owner shall maintain the area around the collection box daily. The Board of Health may assess fines not to exceed \$100.00 for each offense per Section 8 of this bylaw to the property owner for failure to remove excess articles immediately upon receipt of written notification from the Board of Health. All notices shall be sent to both the property owner and operator.

#### **SECTION 8: OPERATOR OBLIGATIONS**

Collection boxes must be clearly labeled with contact information for the operator on the front of the box including name, address and telephone number. Any operator who fails to obtain and post a Certificate of Compliance upon the collection box or fails to pick up items from the collection box within five (5) calendar days from the Board of Health's written request to remove same shall bear the expense of the collection box removal and storage by the Town of Leicester and/or the property owner. The Board of Health shall enforce compliance with this Bylaw and may enter upon real property for purposes of such compliance. The Board of Health may assess fines not to exceed \$100.00 per Section 8 of this bylaw to the operator for failure to empty and maintain the collection box(es) immediately upon receipt of written notification from the Board of Health. All notices shall be sent to both the property owner and operator.

#### **SECTION 9: VIOLATION**

Any violation of the provisions of this Bylaw shall be punished by a fine not to exceed \$100.00 for each offense. Both the property owner and collection box operator shall be jointly and severally liable for each violation. If within one year from the issue date of the Certificate of Compliance, the Board of Health issues three (3) notices of non-compliance to the property owner and/or operator.

# **CHAPTER 18: DEMOLITION OF HISTORIC STRUCTURES**

**(New Bylaw 5-2-05)**

## **TITLE OF BYLAW**

The Preservation of Historically Significant Buildings

## **INTENT AND PURPOSE**

This by-law is enacted for the purpose of preserving and protecting significant buildings within the Town which constitute or reflect distinctive features of the architectural, cultural, economic, political or social history of the town and to limit the detrimental effect of demolition on the character of the town. Through this bylaw, owners of preferably preserved buildings are encouraged to seek out alternative options that will preserve, rehabilitate or restore such buildings and residents of the town are alerted to impending demolitions of significant buildings. By preserving and protecting significant buildings, streetscapes and neighborhoods, this bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work. To achieve these purposes the Historical Commission is authorized to advise the Building Inspector with respect to demolition permit applications. The issuance of demolition permits is regulated as provided by this by-law.

## **DEFINITIONS**

### **APPLICANT**

Any person or entity who files an application for a demolition permit. If the applicant is not the owner of the premises upon which the building is situated, the owner must indicate on or with the application his/her assent to the filing of the application.

### **APPLICATION**

An application for the demolition of a building.

### **BUILDING**

Any combination of materials forming a shelter for persons, animals, or property.

### **BUILDING COMMISSIONER**

The person occupying the office of Building Commissioner or otherwise authorized to issue demolition permits.

### **COMMISSION**

The Leicester Historical Commission or its designee.

### **DEMOLITION**

Any act of pulling down, destroying, removing, dismantling, or razing a building or commencing the work of total or substantial destruction with the intent of completing the same.

### **DEMOLITION PERMIT**

The building permit issued by the Building Inspector for a demolition of a building, excluding a building permit issued solely for the demolition of the interior of a building.

### **PREFERABLY PRESERVED**

Any significant building which the Commission determines, following a public hearing, that it is in the public interest to be preserved rather than demolished. A preferably preserved building is subject to the six-month demolition delay period of this bylaw.

### **SIGNIFICANT BUILDING**

Any building within the town (city) which is in whole or in part one hundred years or more old and which has been determined by the Commission or its designee to be significant based on any of the following criteria:

- The Building is listed on, or is within an area listed on, the National Register of Historic Places; or
- The Building has been found eligible for the National Register of Historic Places; or
- The Building is importantly associated with one or more historic persons or events, or with the broad architectural, cultural, political, economic, or social history of the Town or the Commonwealth; or
- The Building is historically or architecturally important (in terms of period, style, method of building construction or association with a recognized architect or builder) either by itself or in the context of a group of buildings.

### **PROCEDURE**

No demolition permit for a building which is in whole or in part one hundred years or more old shall be issued with- out following the provisions of this bylaw. If a building is of unknown age, it shall be assumed that the building is over one hundred years old for the purposes of this bylaw.

- An applicant proposing to demolish a building subject to this bylaw shall file with the Building Commissioner an application containing the following information:
- The address of the building to be demolished.
- The owner's name, address, and telephone number. A description of the building.
- The reason for requesting a demolition permit.
- A brief description of the proposed reuse, reconstruction, or replacement. A photograph or photograph(s) of the building.
- The Building Commissioner shall within seven days forward a copy of the application to the Commission. The Commission shall within fifteen days after receipt of the application, make a written determination of whether the building is significant.
- Upon determination by the Commission that the building is not significant, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit. Upon determination by the Commission that the building is significant, the Commission shall so notify the Building Commissioner and the applicant in writing. No demolition permit may be issued at this time. If the Commission does not notify the Building

Commissioner within fifteen days of receipt of the application, the Building Commissioner may proceed to issue the demolition permit.

- If the Commission finds that the building is significant, it shall hold a public hearing within thirty days of the written notification to the Building Commissioner. Public notice of the time, place and purpose of the hearing shall be posted in a conspicuous place in town hall for a period of not less than seven days prior to the date of said hearing and the applicant and the building inspector shall be notified in writing of the meeting time and place.
- The Commission shall decide at the public hearing or within fourteen days after the public hearing whether the building should be preferably preserved. If agreed to in writing by the applicant, the determination of the Commission may be postponed.
- If the Commission determines that the building is not preferably preserved, the Commission shall so notify the Building Commissioner and applicant in writing. The Building Commissioner may then issue the demolition permit.
- 
- If the Commission determines that the building is preferably preserved, the Commission shall notify the Building Commissioner and applicant in writing. No demolition permit may then be issued for a period of six months from the date of the determination unless otherwise agreed to by the Commission. If the Commission does not so notify the Building Commissioner in writing within twenty-one days of the public hearing, the Building Commissioner may issue the demolition permit.
- Upon a determination by the Commission that any building which is the subject of an application is a preferably pre-served building, no building permit for new construction or alterations on the premises shall be issued for a period of six months from the date of the determination unless otherwise agreed to by the Commission.
- No permit for demolition of a building determined to be a preferably preserved building shall be granted until all plans for future use and development of the site have been filed with the Building Commissioner and have found to comply with all laws pertaining to the issuance of a building permit or if for a parking lot, a certificate of occupancy for that site. All approvals necessary for the issuance of such building permit or certificate of occupancy including without limitation any necessary zoning variances or special permits, must be granted and all appeals from the granting of such approvals must be concluded, prior to the issuance of a demolition permit under this section.
- The Building Commissioner may issue a demolition permit or a building permit for a preferably preserved building within the six months if the Commission notifies the Building Commissioner in writing that the Commission finds that the intent and purpose of this bylaw is served even with the issuance of the demolition permit or the building permit. Following the six-month delay period, the Building Commissioner may issue the demolition permit.

## **ADMINISTRATION**

The Commission may adopt such rules and regulations as are necessary to administer the terms of this bylaw.

The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this bylaw.

The Commission may delegate authority to make initial determinations of significance to one or more members of the Commission or to a municipal employee.

The Commission may pro-actively develop a list of significant buildings that will be subject to this bylaw. Buildings proposed for the significant building list shall be added following a public hearing.

### **EMERGENCY DEMOLITION**

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

### **ENFORCEMENT AND REMEDIES**

The Commission and/or the Building Commissioner are each specifically authorized to institute any and all actions and proceedings, in law or equity, as they may deem necessary and appropriate to obtain compliance with the requirements of this by-law or to prevent a threatened violation thereof.

Any owner of a building subject to this bylaw that demolished the building without first obtaining a demolition permit in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until a faithful restoration of the demolished building is completed or unless otherwise agreed to by the Commission.

If a building subject to this bylaw is demolished without first obtaining a demolition permit, no building permit for new structures shall be issued for a period of two years from the date of the demolition on the subject parcel of land or any adjoining parcels of land under common ownership and control unless the building permit is for the faithful restoration referred to above or unless otherwise agreed to by the Commission, or where the Commission determines the demolition occurred due to an event beyond the control of the owner.

### **HISTORIC DISTRICT ACT**

Following a determination that the building is significant and preferably preserved, the Commission may recommend to town meeting that the building be protected through the provisions of Massachusetts General Law, Chapter 40C, the Historic Districts Act. The steps required under M.G.L. Chapter 40C shall be followed prior to the establishment of a local historic district. Nothing in this by-law shall be deemed to conflict with the provisions of the Historic District Act, Massachusetts General Laws Chapter 40C. If any of the provisions of this by-law do so conflict, that act shall prevail.

### **SEVERABILITY**

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

## **CHAPTER 19: Right to Farm Bylaw (ATM 5-4-10)**

### **Section 1. Legislative Purpose and Intent**

The purpose and intent of this Bylaw is to state with emphasis the Right-to-Farm accorded to all citizens of the Commonwealth under Article 97 of the Constitution, and all state statutes and regulations thereunder, including but not limited to Massachusetts General Laws Chapter 40A, Section 3, Paragraph 1; Chapter 90, Section 9; Chapter 111, Section 125A; and Chapter 128, Section 1A. We the citizens of Leicester restate and republish these rights pursuant to the Town's authority conferred by Article 89 of the Articles of Amendment of the Massachusetts Constitution ("Home Rule Amendment").

This General Bylaw encourages the pursuit of agriculture, promotes agriculture-based economic opportunities, and protects farmlands within the Town of Leicester by allowing agricultural uses and related activities to function with minimal conflict with abutters and local agencies.

This Bylaw shall apply to all jurisdictional areas within the Town.

### **Section 2. Definitions**

The word "farm" shall include any parcel or contiguous parcels of land, or water bodies used for the primary purpose of agriculture, or accessory thereto.

The words "**farming**" or "**agriculture**" or their derivatives shall include, but not be limited to the following:

- Farming in all its branches and the cultivation and tillage of the soil.
- Dairying.
- Production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural, viticultural, or horticultural commodities;
- Growing and harvesting of forest products upon forest land, and any other forestry or lumbering operations;
- Raising of livestock including horses;
- Keeping of horses; and
- Keeping and raising of poultry, swine, cattle, sheep, goats, ratites (such as emus, ostriches and rheas) and camelids (such as llamas and camels), and other domesticated animals for food and other agricultural purposes, including bees and fur-bearing animals.

**"Farming" shall encompass activities including, but not limited to, the following:**

- Operation and transportation of slow-moving farm equipment over roads within the Town;
- Control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;
- Application of manure, fertilizers and pesticides;

- Conducting agriculture-related educational and farm-based recreational activities, including Agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
- Processing, slaughtering and packaging of the agricultural output of the farm and the operation of a farmers' market or farm stand including signage thereto;
- Maintenance, repair, or storage or seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and

### **Section 3. Right to Farm Declaration**

The Right-to-Farm is hereby recognized to exist with the Town of Leicester. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this Bylaw are intended to apply exclusively to those agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right-to-Farm Bylaw shall be deemed as acquiring any interest in land or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

### **Section 4. Precedence**

In the event of conflict between this Bylaw and all other town regulations, this Bylaw shall take precedence. In the event of conflict between this Bylaw and federal or state law, federal or state law shall take precedence respectively.

### **Section 5. Disclosure Notification**

"It is the policy of this community to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and also for its natural and ecological value. This disclosure notification is to inform buyers or occupants that the property they are about to acquire or occupy lies within a town where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Buyers or occupants are also informed that the buyer's property within the Town may be impacted by commercial agricultural operations including the ability to access water services for such property under certain circumstances."

### **Section 6. Resolution of Disputes**

Dispute resolution will be the responsibility of the Select Board, or its designee(s), until at which time an Agricultural Commission is formed by the Town and empowered to resolve disputes arising from this by-law.

### **Section 7. Severability Clause**

If any part of this Bylaw is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this Bylaw. The Town of Leicester hereby declares the provisions of this Bylaw to be severable.

- On-farm relocation of earth and the clearing of ground for farming operations.



## CHAPTER 20: SEX OFFENDER RESIDENCY BYLAW

*This bylaw has been conditionally approved by the Attorney General's office and may be the subject of a repeal vote at a future Town Meeting. Additionally, current judicial opinion has vacated similar type bylaws in the Commonwealth and Town Counsel advises against enforcement actions taken pursuant to this bylaw.*

### PREAMBLE, FINDINGS, INTENT

- A. It is the intent of this by-law to serve and protect the Town's compelling interest to promote, protect, and improve the health, safety, and welfare of the citizens of the Town by creating areas around locations where children, the elderly, and the mentally impaired regularly congregate in concentrated numbers wherein certain registered sex offenders are prohibited from loitering and establishing temporary or permanent residence.
- B. After careful consideration, the Town finds that this by-law is the most narrowly tailored means of limiting, to the fullest extent possible, the opportunity for registered sex offenders to approach or otherwise come in contact with children, the elderly, and the mentally impaired in places where children and the elderly would naturally congregate, and that the protection of the health and safety of our children, the elderly, and the mentally impaired is a compelling governmental interest.
- C. By the enactment of this or any other by-law, the Town understands that it cannot remove the threat posed to or guarantee the safety of children, the elderly, and the mentally impaired, or assure the public that registered sex offenders will comply with the mandates of this law. This By-Law is intended to create a regulatory scheme in order to protect children, the elderly, and the mentally impaired to the extent possible under the circumstances. Nothing contained herein shall constitute a specific assurance of safety or assistance.
- D. The Town finds that registered sex offenders pose a clear threat to the children, the elderly, and the mentally impaired residing in or visiting in Leicester. Because registered sex offenders are more likely than any other type of offenders to re-offend for another sexual offense, the Town desires to impose safety precautions in furtherance of the goal of protecting the children, the elderly, and the mentally impaired in the Town of Leicester. The purpose of this by-law is to reduce the potential risk of harm to the children, the elderly, and the mentally impaired of the community by restricting the ability of registered sexual offenders to be in contact with those persons in locations that are primarily designed for use by or are primarily used by children, the elderly, and/or the mentally impaired, namely, the grounds of a public or private school for children, a pre-school, a day care facility, parks or other public recreational facilities, facilities for the elderly, facilities for the mentally impaired, or public libraries.

## SECTION 1: DEFINITIONS

1. **"Public Library"** means the structure in which the Leicester Public Library is located.
2. **"Park"** means public land designated for active or passive recreational or athletic use by the Town of Leicester, the Commonwealth of Massachusetts or other governmental subdivision, and located within the Town of Leicester.
3. **"School"** means any public or private education facility that provides services to children in grades pre-kindergarten — 12.
4. **"Day care center"** means an establishment, whether public or private, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Office of Child Care Services.
5. **"Elderly or Age Restricted housing"** means a building or buildings on the same lot containing two or more dwelling units restricted to occupancy by households having one or more members fifty-five years of age or older.
6. **"Place of worship"** means a structure used for religious worship or religious education purposes on land owned by, or held in trust for the use of, any religious organization.
7. **"Senior Center"** means the Town owned center commonly used to provide activities and services to individuals fifty-five years of age or older.
8. **"Sex offender,"** as defined in G.L. c. 6, § 178C, means a person who resides, works or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under G.L. c. 123A, §14, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981.
9. **"Sex offender registry"** means the collected information and data that is received by the criminal history systems board pursuant to G.L. c. 6, §§ 178C to 178P, inclusive, as such information and data is modified or amended by the sex offender registry board or a court of competent jurisdiction pursuant to said Sections 178C to 178P, inclusive.
10. **"Permanent residence"** means a place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.
11. **"Establishing a residence"** means to set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or by means of purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).
12. **"Loitering"** means to remain for more than fifteen (15) minutes within a five hundred (500) foot distance of the location in question.

## **SECTION 2: SEXUAL OFFENDER RESIDENCE PROHITION; PENALTIES**

- 1.** It is unlawful for any sex offender who is so long as classified as a level 2 or level 3 sex offender, pursuant to the guidelines of the Sex Offender Registry Board, to establish a permanent residence within one thousand five hundred (1,500) feet of the Town Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship within the Town of Leicester.
- 2.** For purposes of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of the Public Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship.
  - a.** A list and/or map depicting zones where a sex offender shall be created and maintained by the Town in coordination with the Police Department, which shall be reviewed annually or as the need arises for changes. Said list and/or map as well as a copy of this section shall be available to the public at the offices of the Town of Leicester Police Department and the Town Clerk and will also be posted on the Town of Leicester's official website. In the event that the list, map or the words of this bylaw shall conflict, then the words of this bylaw shall control.
- 3.** Notice to move. Any classified registered level 2 or 3 sex offender who establishes a permanent residence within one thousand five hundred (1,500) feet of the Town Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center, or place of worship shall be in violation of this section and shall, within thirty (30) days of receipt of written notice of the sex offender's noncompliance with this chapter, move from said location to a new location, but said location may not be within one thousand five hundred (1,500) feet of the Public Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship. It shall constitute a separate violation for each day beyond the thirty (30) days the sex offender continues to reside within one thousand five hundred (1,500) feet of the Public Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town of Leicester to another that is within one thousand five hundred (1,500) feet of the Public Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship.
- 4.** Loitering. A registered sex offender, after having received notice from the Leicester Police Department that he/she is loitering by having remained for more than fifteen (15) minutes within five hundred (500) feet of a Town Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center, or place of worship, is prohibited from continuing to so loiter. For purposes of determining the minimum distance separation under this section, the distance shall be measured by following a straight line from the registered sex offender to the outer property line of the Town Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center, or place of worship.
- 5. (A) Notice of Residency :** *Notice:* The Chief of Police or his designee shall make reasonable efforts to provide prompt, actual written notice of the enactment of this section (which notice shall contain a copy of the bylaw) to all persons who are listed on the sex offender registry as of the effective date of this section and who were given a Level 2 or Level 3 designation, as well as those persons who are added to

the sex offender registry at such levels thereafter, which persons' addresses (as shown on the sex offender registry) are within the Town of Leicester. Such notice requirement may be satisfied by the mailing such notice by registered or certified mail, return receipt required to the last known address of such person as listed on the sex offender registry or as otherwise known to the Chief of Police. The failure of any person to receive such actual written notice shall not be a defense to a violation of this section.

**5. (B) Opportunity for Hearing:** Any registered sex offender as defined herein receiving a 30-day notice to move his or her permanent residence may request a hearing before a local tribunal consisting of the Chief of Police, The Town Administrator and the Chairman of the Select Board provided that the request for hearing is filed with the office of the Town Administrator within 14 days from receipt of the 30-day notice. Filing of the notice of hearing shall suspend the operation of the 30 days' notice to vacate. The local tribunal shall as soon as reasonably practical and no later than 30 days from the filing of the request for hearing hold such hearings in the offices of the Town of Leicester. The party requesting the hearing may present evidence, present witnesses and testimony all relative to the issue of the application of this bylaw to the registered sex offender. The local tribunal shall promptly render a decision as to whether this bylaw applies to the registered sex offender receiving the 30 day notice hereunder. When the local tribunal issues its finding that the bylaw applies to the registered sex offender appealing this notice, the sex offender shall have 15 days to comply with the notice to remove oneself from the protected area. Additionally, for good cause shown, the local tribunal may extend the time within which the registered sex offender must change his or her permanent residence from 30 days to 180 days.

**5. (C) Penalties.** Violations of this bylaw may be enforced through any lawful means in law or in equity by any police officer of the Town of Leicester including, but not limited to, enforcement by non-criminal disposition pursuant to G.L. c. 40, §21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows;

- a. First Offense: Notification to sex offender that he/she has thirty (30) days to move.
- b. Subsequent Offense: Non-criminal fine of \$300.00 and notification to the sex offender's landlord, parole officer and/or probation officer and the Commonwealth's Sex Offender Registry Board that the person has violated a municipal bylaw.

### **SECTION 3: EXCEPTIONS**

**1.** A person residing within one thousand five hundred (1,500) feet of the Town Library or any school, day care center, park, Elderly or Age Restricted housing, Senior Center or place of worship does not commit a violation of this section if any of the following apply:

- The person established the permanent residence and reported and registered the resident pursuant to G.L. c. 6, §§178C to 178P, inclusive, prior to the date of the Town Meeting at which this bylaw was approved.
- The person was a minor when he/she committed the offense and was not convicted as an adult.
- The person is a minor.

- The Public Library or school, day care center, park Elderly or Age Restricted housing, Senior Center or place of worship within one thousand five hundred (1,500) feet of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to G.L. c. 6, §§178C to 178P, inclusive.
- The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of mentally ill persons pursuant to G.L. c. 123.
- The person is an incapacitated person under guardianship pursuant to G.L. ch. 190B Article V, Section 5 and is residing with his or her guardian or residing within a group residence that is professionally staffed and supervised 24 hours a day.
- The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or other facility.
- The prohibitions defined in this bylaw shall not be construed or enforced so as to prohibit a registered sex offender from exercising his or her right to vote in any federal, state or municipal election, conducting town and/or police business or from attending any religious service.

**SEVERABILITY:**

The invalidity of any section of this bylaw shall not affect the validity of any remaining section or paragraph which shall be deemed to be in full force and effect until vacated by a court of competent jurisdiction.

# CHAPTER 21: DEPARTMENTAL REVOLVING FUNDS BYLAW

## ATM 5-3-17

1. Purpose. This bylaw establishes and authorizes revolving funds for use by Town departments, boards and committees in connection with the operation of programs or activities that generate fees, charges or other receipts to support all or some of the expenses of those programs or activities. These revolving funds are established under and governed by General Laws Chapter 44, § 53E½.
2. Expenditure Limitations. A department head, board or committee may incur liabilities against and spend monies from a revolving fund established and authorized by this bylaw without appropriation subject to the following limitations:
  - a. Fringe benefits of full-time employees whose salaries or wages are paid from the fund shall also be paid from the fund.
  - b. No liability shall be incurred in excess of the available balance of the fund.
  - c. The total amount spent during a fiscal year shall not exceed the amount authorized by Town Meeting on or before July 1 of that fiscal year, or any increased amount of that authorization that is later approved during that fiscal year by the Select Board.
3. Interest. Interest earned on monies credited to a revolving fund established by this bylaw shall be credited to the general fund.
4. Procedures and Reports. Except as provided in General Laws Chapter 44, § 53E½ and this bylaw, the laws, bylaws, rules, regulations, policies or procedures that govern the receipt and custody of Town monies and the expenditure and payment of Town funds shall apply to the use of a revolving fund established and authorized by this bylaw. The Town Accountant shall include a statement on the collections credited to each fund, the encumbrances and expenditures charged to the fund and the balance available for expenditure in the regular report the Town Accountant provides the department, board, or committee on appropriations made for its use.
5. Authorized Revolving Funds. The Table establishes:

Each revolving fund authorized for use by a Town department, board or committee,

  - a. The department, board or committee authorized to spend from each fund,
  - b. The fees, charges and other monies charged and received by the department, board or committee in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant,
  - c. The expenses of the program or activity for which each fund may be used,
  - d. Any restrictions or conditions on expenditures from each fund,
  - e. Any reporting or other requirements that apply to each fund; and
  - f. The fiscal years each fund shall operate under this by-law/ordinance

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
<b>Revolving Fund</b>	<b>Department, Board, Committee, Agency or Officer Authorized to Spend from Fund</b>	<b>Fees, Charges or Other Receipts Credited to Fund</b>	<b>Program or Activity Expenses Payable from Fund</b>	<b>Restrictions or Conditions on Expenses Payable from Fund</b>	<b>Other Requirements/ Reports</b>	<b>Fiscal Years</b>
Inspectional Services	Development & Inspectional Services	Certain inspection and permit fees charged and received by the Building Inspector for gas, electric, weights & measurers and plumbing inspections	Wages and fees of inspectors performing gas, electric, weights & measures and plumbing inspections and contractual services related to those inspections	None	None	Fiscal Year 2018 and subsequent years
Health Clinics	Board of Health	Fees charged and received by the Board of Health for health clinics	Expenses associated with health clinics	None	None	Fiscal Year 2018 and subsequent years
Senior Center Programs	Council on Aging	Fees charged and received by the Senior Center to attend various programs such as exercise classes	Expenses associated with programs and services at the Senior Center	None	None	Fiscal Year 2018 and subsequent years
Fuel Usage	Highway Department	Fees charged and received by the Highway Department for the cost to fuel Town and District owned vehicles	Expenses associated with providing fuel to Town Departments and Districts	None	None	Fiscal Year 2018 and subsequent years
Town Hall	Town Administrator	Fees charged and received by the Town for renting out the Town Hall	Expenses associated with maintenance costs at the Town Hall	None	None	Fiscal Year 2018 and subsequent years
Recycling	Select Board	Fees charged and received by the Recycling Center to recycle items	Expenses associated with the operation and maintenance of the Recycling Center	None	None	Fiscal Year 2018 and subsequent years
Police Training	Police Department	Fees charged and received by the Police Department to attend police training programs	Expenses associated with providing police training programs	None	None	Fiscal Year 2018 and subsequent years
Recreation	Parks & Recreation	Fees charged and received for recreation programs	Expenses associated with recreation programs and the maintenance/upkeep of Town fields and facilities	None	None	Fiscal Year 2018 and subsequent years
One-to-One Technology	School Department	Fees charged to students for participating in the one-to-one technology program	Expenses associated with insuring and repairing/replacing electronic devices provided through this program	None	None	Fiscal Year 2018 and subsequent years

## **CHAPTER 22: STRETCH ENERGY CODE (ATM 5-3-2017)**

This bylaw establishes a “Stretch Energy Code” for the purpose of regulating the design and construction of buildings for the effective use of energy, pursuant to Appendix 115.AA of the Massachusetts Building Code, 780 CMR, the Stretch Energy Code, including future editions, amendments, or modifications thereto, with an effective date of July 1, 2017.



## **CHAPTER 23: TEMPORARY REPAIRS TO PRIVATE WAY**

**[STM 10-30-2018]**

### **Section 1. Authorization to make repairs.**

The Town of Leicester may make temporary repairs on private ways when such repairs are deemed necessary or appropriate by the Highway Superintendent (the Superintendent) and are approved by the Select Board. The Superintendent shall make such determination based on the public convenience and necessity, the protection of the health and safety of the general public using such ways, and the protection of the environment adjacent to the way and in the surrounding area.

### **Section 2. Type and extent of repairs.**

The repairs may include the patching and filling of holes; oiling and treatment of road surfaces; the repair of specific portions of the way; cleaning of catch basins and drainage structures; installation of guardrails or other infrastructure; and the reconstruction of a way, including the removal of roadway surface and the regrading and installation of fill and roadway surface materials, including asphalt and concrete.

### **Section 3. Drainage improvements.**

As part of the repair of any private way, the Town may make such drainage repairs and improvements to the private way as are deemed necessary or appropriate by the Superintendent. The Town shall not perform any such drainage repairs or improvements on a private way unless the Superintendent has indicated that such repairs or improvements are required by public necessity or for the protection of the environment.

### **Section 4. Requests for Repairs.**

The Town may only perform such repairs, reconstruction, or improvements on a private way upon the occurrence of any of the following events:

- a.) The request of the Planning Board to the Select Board;
- b.) The request of the Superintendent to the Select Board;
- c.) At least 80% of the owners of properties which abut the way to be repaired have signed a petition to the Select Board requesting that such repairs to the way be performed. Such petition must state that the public convenience and necessity require such repairs, reconstruction and improvements and shall request that the Superintendent make an investigation of the condition of the way and report the findings to the Select Board

### **Section 5. Easements.**

If any easements are necessary for the completion of such repairs, reconstruction or improvements, the owners of the properties abutting the way and the owners of any land or interest in land upon which such easement would be required, shall be responsible for the cost of the preparation and the grant of

such easements to the Town. Such easement shall include the grant of the right to the Town, its agents, contractors and employees, to enter upon the way for the performance of the work.

#### **Section 6. Approval and method of payment.**

Upon receipt of a request from the Superintendent, or from the Planning Board, or upon receipt of a petition from the owners of abutting properties, the Select Board shall review the report of the Superintendent, and determine whether such repairs, reconstruction or improvements are required for the public health or safety, the protection of the environment, and the public convenience and necessity, and, if it so determines, the Select Board may approve the project and determine whether such repairs, reconstruction or improvements:

- a.) shall be paid by a cash deposit representing the total estimated cost of the work;
- b.) shall be paid by the abutters by betterment charges which shall be assessed to the abutters;
- c.) shall be paid partly by the abutters and partly by the Town by the assessment of betterment charges for a portion of the work;
- d.) shall be paid by the Town.

In the event the Select Board determines that the project should be funded in whole or in part by the assessment of betterments or by a cash deposit from the abutters, the Select Board shall hold a public hearing on such determination within 30 days thereof. The Select Board shall notify the owners of the properties abutting the way by regular mail at least seven days prior to the date of the hearing and shall cause notice of such hearing to be published in a newspaper of general circulation in the Town at least seven days prior to the date of the hearing. Such notices shall indicate that the Select Board is considering the assessment of betterments or a cash deposit to fund the project. The Select Board shall make the decision on the request and the method of payment therefor, within 60 days of the close of the public hearing. If the appropriation of funds or the assessment of betterments is necessary, the Select Board shall thereupon submit an article to the next ensuing Town Meeting for approval by the Town of the repairs, reconstruction or improvements to the way and the method of payment therefor.

#### **Section 7. Select Board action.**

If the appropriation of funds, the assessment of betterments or a cash deposit is not to be required in conjunction with the project, the Select Board shall review the request at a public meeting within 21 days of receipt of the request and shall make a decision on the request within 45 days of its receipt.

#### **Section 8. Liability of Town.**

To the fullest extent permitted by law, the Town shall not be liable for any claim, damage, loss, cost, liability, or expense, of any name, nature or description, including attorney's fees and costs, arising out of or as a result of the repairs, reconstruction or improvements performed on any private way by the Town or any damage resulting therefrom, including that to third parties. The Select Board may in relation to any such project as it deems appropriate, require the owners of the properties abutting the way to execute an agreement pursuant to which all such owners agree to save, indemnify and hold

harmless the Town from any and all such claims, damages, losses, costs, liabilities or expenses, including attorney's fees, arising out of or as a result of such repairs, reconstruction or improvements.

#### **Section 9. Ways to be open to public use.**

The ways upon which the Town may perform any such repair, reconstruction or improvement, must have been open to public use for no less than 10 years prior to the date of the vote of the Select Board which approves such project, or which authorizes the submission of the article relating thereto to the Town Meeting.

#### **Section 10. Standard of work.**

All work to be performed by the Town on any such way pursuant hereto must be to the standards established by the Highway Department of the Town.

#### **Section 11. Basis for assessment of betterments.**

In the event the Town Meeting authorizes such repair, reconstruction or improvement to such way, and authorizes the assessment of betterments for all or a portion of the cost of such work, it shall determine the percentage of project cost to be assessed, and such assessments shall be made based upon either the fixed uniform rate method using the linear frontage of each lot on the street as the standard for computation, or the uniform unit method, pursuant to which each existing or potential lot abutting the way shall constitute unit.

#### **Section 12. Town Meeting appropriation of funds.**

No repair, reconstruction or improvement requiring an appropriation of funds shall be made to any way pursuant hereto unless and until the Town Meeting has appropriated any funds necessary for the project.

#### **Section 13. Minor repairs.**

Upon the request of the Superintendent, the Planning Board or the owners of properties abutting a way, the Select Board, based on the recommendation and report and the certification of the Superintendent that the funds necessary for the project are available, may authorize the Town to make minor repairs to private ways to a sum not to exceed \$1,000 in total on any way in any one fiscal year. Or take any action relating thereto.

# **CHAPTER 24: ARCHITECTURAL CONSERVATION DISTRICT BYLAW**

**MAY 11, 2021**

The Town of Leicester hereby establishes an Architectural Conservation District, to be administered by an Architectural Conservation District Commission.

## **1. PURPOSE**

This by-law is enacted for the purpose of preserving and protecting groups of buildings and their settings that are architecturally and historically distinctive which constitute or reflect distinctive features of the architectural, cultural, economic, political, or social history of the town and to limit the detrimental effect of alterations, additions, demolitions, and new construction on the character of the town. Through this bylaw, alterations, additions, demolition, and new construction may be reviewed for compatibility with the existing buildings, setting and neighborhood character. This bylaw seeks to encourage the protection of the built environment through regulatory review. This bylaw promotes the public welfare by making the town a more attractive and desirable place in which to live and work.

## **2. DEFINITIONS**

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

**ADDITION:** A change to a building that includes additional stories, height, or floor area.

**ALTERATION, TO ALTER:** A change to a building or part thereof such as removal, construction, reconstruction, restoration, replication, rehabilitation, demolition and other similar activities. A change to a building that includes additions and other similar activities. A change to a site that includes constructing, placing, erecting, installing, enlarging, and moving a building, or other similar activities.

**APPLICATION:** The complete document(s) and supporting material(s) to be submitted by an applicant desiring to obtain a Certificate to Alter. A complete application shall include information reasonably deemed necessary by the commission to enable it to make a determination.

**BUILDING:** A combination of materials forming a shelter for persons, animals, or property.

**CERTIFICATE TO ALTER:** document granted by the Architectural Conservation District Commission in order to obtain a building (or demolition) permit.

**COMMISSION:** The Architectural Conservation District Commission

**COMPATIBLE:** A project that meets the design guidelines of the architectural conservation district commission.

**DISTRICT:** The Architectural Conservation District as established in this bylaw.

**PERSON AGGRIEVED:** An applicant, an abutter, or an owner of property within the district.

**SUBSTITUTE SIDING:** Exterior building cladding such as vinyl, aluminum, or cement board.

**TEMPORARY BUILDING:** A building, necessary for a specific event, incident, or project, erected for a period of no more than 6 months, unless otherwise agreed to by the commission.

### **3. DISTRICT**

The Architectural Conservation District shall encompass the area shown on the Leicester Architectural Conservation District maps.

### **4. ARCHITECTURAL CONSERVATION DISTRICT COMMISSION**

The Architectural Conservation District shall be overseen by a Commission consisting of five members, to be appointed by the Board of Selectmen, two members initially to be appointed for one year, two for two years, and one for three years, and each successive appointment to be made for three years.

The Board of Selectmen may appoint up to five alternate members to the Architectural Conservation District. Said alternate members shall initially be appointed for terms of one, two and three years, and for three-year terms thereafter. In the case of absence, inability to act, or recusal from action due to a conflict of interest, his or her place shall be taken by an alternate member designated by the Chairperson, if available, otherwise by the Vice-Chairperson if available, otherwise by a majority vote of the members and alternate members of the Commission present.

The Commission shall include the following:

- a. two members of the local historical commission.
- b. two residents of the district, or if not possible residents of Leicester; and
- c. a realtor, architect, or building contractor familiar with historic rehabilitation

Members and alternates of an architectural conservation district shall by reason of experience or education have demonstrable knowledge and concern for improvement, conservation, and enhancement of the district.

Each member and alternate member shall continue to serve in office after the expiration date of his or her term until a successor is duly appointed.

Meetings of the Commission shall be held at the call of the Chairperson, at the request of two members and in such other manner as the Commission shall determine in its Rules and

Regulations. Three members of the Commission shall constitute a quorum.

### **5. ARCHITECTURAL CONSERVATION DISTRICT COMMISSION POWERS AND DUTIES**

The Commission shall exercise its powers in administering and regulating the alteration of buildings within the architectural conservation district as set forth under the procedures and criteria established in this bylaw.

### Adoption of Rules & Regulations

The Commission, after a public hearing duly posted and advertised at least 14 days in advance in a conspicuous place in Town Hall, may adopt and from time to time amend, reasonable Rules and Regulations not inconsistent with the provisions of this bylaw or setting forth such forms and procedures as it deems desirable and necessary for the regulation of its affairs and the conduct of its business, including requirements for the contents and form of applications for certificates, fees hearing procedures and other matters. The Commission shall file a copy of any such Rules and Regulations with the office of the Town Clerk.

### Adoption of Design Guidelines

The Commission, after a public hearing duly posted and advertised at least 14 days in advance in a conspicuous place in Town Hall may adopt and from time to time amend the design guidelines which set forth the designs for certain alterations which are, in general, suitable for the issuance of a Certificate to Alter. No such design guidelines shall limit the right of an applicant for a Certificate to Alter to present other designs to the Commission for approval.

### Commission Organization

The Commission shall annually hold an organizational meeting and elect a Chairperson, a Vice Chairperson and Secretary, and file notice of such election with the office of the Town Clerk. The Commission shall keep a permanent record of its regulations, transactions, decisions and determinations and of the vote of each member participating therein. The Commission shall undertake educational efforts to explain to the public and property owners the merits and functions of an Architectural Conservation District.

## **6. ALTERATION PROHIBITED WITHOUT A CERTIFICATE**

Except as this Bylaw provides, no building or part thereof within an Architectural Conservation District shall be altered unless the commission shall first have issued a Certificate to Alter.

## **7. ALTERATIONS EXCLUDED FROM COMMISSION REVIEW**

It shall be the responsibility of the Commission, or its delegate thereof to determine whether an alteration is exempt from review. The Commission or its delegate thereof shall have seven days to make this determination. The following projects are excluded from Commission review:

- a. Projects not requiring a building (or demolition) permit.
- b. Structures when not defined as buildings or parts of buildings
- c. Temporary buildings subject to time limits and size limits by the Architectural

Conservation District Commission.

- d. Interior Alterations
- e. Storm windows and doors, screen windows and doors.
- f. Removal, replacement or installation of gutters and downspouts.

- g. Removal, replacement or installation of window and door shutters.
- h. Accessory buildings of less than 100 square feet of floor area.
- i. Removal of substitute siding.
- j. Alterations not visible from a public way.
- k. Ordinary maintenance and repair of architectural features that match the existing conditions including materials, design, and dimensions.
- l. Reconstruction, substantially similar in exterior design, of a building, damaged or destroyed by fire, storm, or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.
- m. Accessibility Improvements including ramps, rails, walkways, and mechanical equipment associated with exterior architectural barriers subject to the extent possible under MGL 40A and other applicable state or federal laws.
- n. Substitute siding
- o. Removal of architectural trim
- p. Replacement of Windows and Doors

## **8. PROCEDURES FOR THE REVIEW OF MAJOR ALTERATIONS**

The following major alterations require the submittal of an application for a regulatory review by the Commission. The decision of the Commission shall be binding on the applicant.

- a. Demolition of a building or part of a building.
- b. New construction including buildings and additions.

Within forty-five days of the submittal of an application for a major alteration, the Commission shall hold a public hearing on the application. At least seven days before said public hearing, public notice shall be given by posting in a conspicuous place in Town Hall. Such notice shall identify the time, place, and purpose of the public hearing. At least seven days before said public hearing, a copy of said public notice shall be mailed to the applicant, to the owners of all adjoining properties and of other properties deemed by the Commission to be materially affected thereby all as they appear on the most recent applicable tax list.

Following the public hearing, the Commission shall determine whether the proposed alteration is compatible with the design guidelines and the purpose of this bylaw. If the Commission determines that the alteration is compatible, the Commission shall issue a Certificate to Alter. The concurring vote of a majority of the members shall be required to issue a Certificate to Alter. If the Commission cannot determine that the alteration is compatible, the Commission shall decline to issue the Certificate to Alter. The Commission shall provide the applicant with the reasoning for their disapproval including how the alteration does not meet the design guidelines or the purpose of this bylaw.

## **9. PROCEDURES FOR ISSUANCE AND FILING OF CERTIFICATES**

Each Certificate issued by the Commission shall be dated and signed by its chairperson or such other person designated by the Commission to sign such Certificates on its behalf. The Commission shall send a copy of its Certificates and disapprovals to the applicant and shall file a copy of its Certificates and disapprovals with the office of the Town Clerk and the Code Enforcement Officer (Building Inspector). The date of issuance of a Certificate or disapproval shall be the date of the filing of a copy of such Certificate or disapproval with the office of the Town Clerk. If the Commission should fail to make a determination within sixty days of the filing of the application for a Certificate, or within such further time as the applicant may allow in writing, the Commission shall thereupon issue a Certificate to Alter due to failure to act.

## **10. ENFORCEMENT AND PENALTIES**

The Architectural Conservation District Commission is specifically authorized to institute any and all actions, proceedings in law and in equity, as they deem necessary and appropriate to obtain compliance with the requirements of this bylaw or to prevent a threatened violation thereof. The Commission shall designate the Code Enforcement Officer to act on its behalf and to enforce this Bylaw under the direction of the Commission. Any owner of a building subject to this bylaw that altered a building without first obtaining a Certificate to Alter in accordance with the provisions of this bylaw shall be subject to a fine of not more than Three Hundred Dollars. Each day the violation exists shall constitute a separate offense until the alteration is corrected, the addition is removed, or a faithful restoration of the demolished building is completed or unless otherwise agreed to by the Commission. If a violation of this bylaw remains