

Town of Winchester

Fall Annual Town Meeting 2016



Preliminary Motions

MOVED AND SECONDED that the following preliminary motions be voted as one:

1. That Richard C. Howard, Town Manager; Stacie Ward, Comptroller; Wade M. Welch, Town Counsel; and Mark J. Twogood, Assistant Town Manager, who are not Town Meeting Members, be permitted to sit at the front of the auditorium with the Board of Selectmen during all sessions of this Town Meeting.
2. That all members of the Finance Committee and their secretary, whether Town Meeting Members or not, be permitted to sit together at the front of the auditorium during all sessions of this Town Meeting.
3. That the Town Clerk or her designee or the Assistant Town Clerk be permitted to occupy a desk on the platform during all sessions of this Town Meeting.
4. That the Moderator be authorized to permit members of various town boards, commissions, committees, department heads, and petitioners of special articles to sit at the front of the auditorium during consideration of appropriate articles.
5. That unless it be otherwise ordered, all adjourned sessions of this Town Meeting shall be held on successive Monday and Thursday evenings at 7:30 P.M. in the Winchester High School Auditorium, until the work of this Town Meeting is completed.
6. That action on all motions involving appropriations shall be contingent upon compliance with the provisions of Massachusetts General Laws Chapter 59, Section 21C, a law known as the
7. 2-1/2 Tax Limitation.
8. That cable television coverage shall be permitted at all sessions of this Town Meeting.

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*2/3 vote for Stabilization Funds

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 1

To hear and act upon the reports of the Town Officers and the Finance Committee, or take any other action in relation thereto.

(Board of Selectmen)

MOTION:

MOVED AND SECONDED, that the reports of Town Officers and Finance Committee be received and filed.

Majority vote required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 2

To see if the Town, acting under Article 2, Section 2.5 (c) of the Winchester Home Rule Charter, and upon the recommendations of the Committee on Rules pursuant to Chapter 2, Section 4.4.3 of the Code of By-Laws of the Town of Winchester, will vote to declare vacant the seats of certain Town Meeting Members for failure to attend one half or more of the total number of sessions of the Winchester Town Meeting held during Fiscal Year 2015, or take any other action in relation thereto.

(Committee on Rules)

Materials to be sent under separate cover

Majority vote required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 3

To see if the Town will approve the amendment and restatement of Chapter 14 of the Code of By-Laws of the Town of Winchester, "Demolition of Historic Buildings," by deleting such Chapter in its current state in its entirety and substituting the following in its place:

CHAPTER 14 PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS

Section 1. PURPOSE

This by-law is adopted to promote the preservation and protection of Historically Significant Buildings within the Town that reflect distinctive features of historical, architectural, archeological and culture significance to the Town and to limit the detrimental effect of Demolition on such features of the Town. Through this by-law, owners of Historically Significant Buildings are encouraged to consider alternatives to demolition that will preserve, rehabilitate and restore such buildings while residents of the Town are alerted to proposed and impending Demolitions.

Section 2. DEFINITIONS

As used in this chapter:

- 2.1. "Abutters" shall mean any owner of a Lot touching a Lot on which an Eligible Building is located and shall include owners of Lots directly opposite such Lot on any public or private street or way.
- 2.2. "Applicant" shall mean any person(s) or entity(ies) who files an application for a Permit to Demolish a Building. If the Applicant is not the owner of the Building, the owner must indicate on or with the application for a Permit its assent to the filing of the application.
- 2.3. "Building" shall mean a combination of any materials, having a roof, to form a structure for the shelter of person or property. For purposes of determination by the Commission of whether an Eligible Building is Historically Significant, a garage, out-building or carriage house located on a Lot of an Eligible Building shall be considered a separate "Building" and indicated as such in the application for a Permit submitted to the Building Department.
- 2.4. "Business Day" shall mean any day other than a Saturday, Sunday or other day on which the government of The Commonwealth of Massachusetts is authorized or required by law to be closed for business.
- 2.5. "Commission" shall mean the Winchester Historical Commission, created by vote of Winchester Town Meeting pursuant to Massachusetts General Laws, Chapter 40, section 8D.

2.6. “Demolition” shall mean any act of (a) pulling down, tearing down, destroying, or razing a Building or substantially all of a Building, (b) moving a Building from its site or foundation from its current location, or (c) commencing the work of any of the foregoing.

2.7. “Eligible Building” shall mean any Building or portion thereof located in the Town

- (a) which is listed individually on, or is a contributing Building within a district listed on, the National Register of Historic Places or State Register of Historic Places,
- (b) which is included in the Massachusetts Historical Commission’s “Inventory of Historic and Archeological Assets of the Commonwealth”, or
- (c) which was constructed during or before 1940.

For the purposes of clause (c) above, evidence that a Building was constructed during or before 1940 shall be determined from sources including Town building or tax assessment records, other historical records, or other reliable independent sources including information provided by the Applicant as is reasonably acceptable to the Commission.

2.8. “Hearing” shall mean a public hearing of the Commission held for the purposes of determining if an Eligible Building is a Historically Significant Building in accordance with Section 3.5 and the Demolition thereof should be delayed in accordance with Section 3.6.

2.9. “Historically Significant Building” shall mean an Eligible Building that the Commission determines meets the criteria set forth in Section 3.5.

2.10. “Lot” shall mean a parcel of land with definite boundaries ascertainable by recorded deed or plan.

2.11. “Permit” shall mean a permit issued by the Building Department authorizing the Demolition of a Building.

Section 3. PROCEDURES

3.1. Application for Permit. An Applicant seeking a Permit from the Building Department to Demolish a Building shall, in addition to or as part of such application form and information required by the Building Department, submit to the Building Department the following:

- (a) The address of the Building to be demolished;
- (b) The Applicant’s name, address, telephone number and email address (if any), and if the application is not submitted by the Owner of the Building, the owner’s information and consent to the application;
- (c) A brief description of the Building(s) to be demolished, together with information, if available to the Applicant, as to the date of construction of the Building (such as a copy of the original building permit application, tax assessment records or other historical records), the condition of the Building(s) and other information that the Applicant would like to submit to describe the reason for the Demolition; and
- (d) A photograph or photograph(s) of the Building.

At the time of the application, each Applicant will be provided with a copy of or reference to this bylaw describing the procedures for the Commission’s review of the Permit application. Within three (3) Business Days after receipt of an application for a Permit, the Building Department shall transmit a copy of the application to the chairperson and vice-chairperson of the Commission and to the Town Planner for review in accordance with this bylaw.

3.2. Required Notification to Issue Permit. The Building Commissioner shall not issue a Permit for the Demolition of a Building unless the Building Commissioner has received a notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner under any one of items (a) through (d) in this Section 3.2, or the Building Commissioner has not received any notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner on or before thirty (30) Business Days after the date of the Permit application is transmitted by the Building Department under Section 3.1. Notifications to the Building Commissioner shall be that:

- (a) the Building is not an Eligible Building pursuant to Section 3.3(a), or
- (b) the Building is an Eligible Building and the Commission (or an Authorized Person) has determined it is not a Historically Significant Building pursuant to Section 3.3(b), or
- (c) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building but has not imposed a demolition delay pursuant to Sections 3.6(b), 3.8 or 3.9; or
- (d) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building and imposed a demolition delay pursuant to Section 4.6(b); and no Permit shall be issued until a further notification is given to the Building Commissioner reporting that the period of demolition delay imposed by the Commission for a Historically Significant Building has ended, whether at the end of the time imposed by the Commission or at such earlier date pursuant to Sections 3.8 or 3.9; or
- (e) the Applicant and the Commission have agreed to extend the time for the Commission's determination that an Eligible Building is a Historically Significant Building and/or whether to impose a demolition delay, and the period of such extension.

Nothing in this Section is intended to prevent the Building Commissioner from issuing a Permit to Demolish a Building for the reasons in Section 3.13.

3.3. Determinations of Eligible Buildings and those of No Historical Significance.

- (a) Eligible Buildings. The Commission chairperson, vice-chairperson, Town Planner or other Town employee designated by the Commission (such person being an "Authorized Person") within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1 shall (i) determine if the Building described in the application is an Eligible Building based on information submitted with the Permit application, any additional information submitted by the Applicant, review of Building Department and tax assessor's office records, other public records or historical data and the results of any prior review of the Building to determine if it was an Eligible Building, and (ii) notify the Applicant and the Building Department of such determination. If the Authorized Person, within such ten (10) Business Day period is unable to make a determination that a Building is an Eligible Building based on available records, the Permit application shall be referred to the Commission for a determination at a Hearing to establish whether the Building is an Eligible Building. The Applicant is encouraged to present any information with the Permit application that the Applicant believes will assist the Authorized Person or Commission in making its determination. The Hearing will be held not later than twenty (20) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.
- (b) Preliminary Determination of No Historical Significance. Upon a determination that the Building is an Eligible Building, the Authorized Person may further determine based on the information submitted with the Permit application, any additional information submitted by the Applicant, review of building department and assessor's office records

and other public records or historical data, visual inspection, familiarity with the history or neighborhood, or prior review of the Eligible Building by the Commission and determination of no Historical Significance, that an Eligible Building is presumptively not a Historically Significant Building and not subject to the delay provisions of this bylaw and shall notify the Applicant and the Building Department of its determination, such notice to be provided within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.

3.4. Determination of Historical Significance by Commission; Public Hearing. Subject to any preliminary determination under Section 3.3(b), the Commission shall determine at a Hearing and based on the Criteria set forth in Section 3.5 whether an Eligible Building proposed for Demolition is a Historically Significant Building. The Hearing shall be held within twenty (20) Business Days after the date the Permit Application is transmitted by the Building Department pursuant to Section 3.1, unless the Commission and the Applicant jointly agree to extend the time for the Hearing. The Commission shall give public notice of the Hearing not less than five (5) days prior to the date of the Hearing by posting notice at Town Hall and by mailing notice of the date, time, location and subject matter of the Hearing to the Applicant, Abutters and to other persons deemed by the Commission to be affected.

3.5. Criteria for Determination of an Eligible Building being a Historically Significant Building. If at such Hearing the Commission determines that the Demolition of the Eligible Building would be detrimental to the American history, architecture, archeology, engineering and culture of the Town, such building shall be considered a “Historically Significant Building”. An Eligible Building’s Historical Significance shall be evidenced by demonstrating that the Eligible Building has a quality of significance in American history, architecture, archeology, engineering and/or culture and which possesses integrity of location, design, setting, materials, workmanship, feeling and/or association, and:

- (a) is associated with events that have made a significant contribution to the broad patterns of our history,
- (b) is associated with the lives of significant persons in our past,
- (c) embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction, or(d) has yielded or may be likely to yield, information important to history or prehistory.¹

3.6. Commission’s Determinations at Hearing; Demolition Delay.

(a) Not a Historically Significant Building. If at a Hearing (i) the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is not a Historically Significant Building pursuant to Section 3.5 or (ii) there is a tie vote (in which case the Commission shall be deemed to have determined that the Eligible Building is not a Historically Significant Building), the Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.

(b) Historically Significant Building. If at a Hearing the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is a Historically Significant Building pursuant to Section 3.5, the Commission shall further determine if it will

¹ The criteria for determination of Historical Significance set forth in clauses (a) –(d) are the Criteria for Evaluation found in the Code of Fed.Regs., Title 36, Part 60 (<https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf>)

require a twelve (12) month delay in the Demolition of the Historically Significant Building. The Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.

3.7. Alternatives to Demolition. At any time during the Hearing, prior to the issuance of the Commission's determinations, or during the period of Demolition delay, the Commission may invite the Applicant, and any other persons deemed affected by the proposed Demolition, to participate in a discussion of alternatives to Demolition including but not limited to: incorporation of the Building into the future development of the site; adaptive re-use of the Building; utilization of financial incentives to rehabilitate the Building; rezoning, or seeking a new owner willing to purchase and preserve, restore or rehabilitate the Historically Significant Building.

3.8. Unconditional Early Issuance of Permit. The Commission, after its determinations of Historical Significance and imposition of Demolition delay, may reduce or eliminate the period of delay and/or may impose conditions on the Demolition and shall notify the Building Commissioner of its revised determination, if:

- (a) the Commission is satisfied that there is no reasonable likelihood that either the Applicant or some other person or group is willing to purchase, preserve, rehabilitate or restore such building,
- (b) the Commission is satisfied that for at least twelve (12) months (which time period may precede the date of the Permit application) the Applicant or owner of the Historically Significant Building has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore such Building, and that such efforts have been unsuccessful, or
- (c) the Commission is satisfied that it is in the best interest of the community, as assessed by the Commission, to allow the Demolition of the Historically Significant Building.

3.9. Conditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.6, the Building Commissioner may issue a Permit subject to conditions agreed to by the Commission and the Applicant and the owner (if the Applicant is not the owner) of a Historically Significant Building at any time after receipt of written agreement from the Commission and the Applicant and the owner stating that the Commission is satisfied that Demolition of the Historically Significant Building, subject to the conditions specified in such agreement, is the outcome most likely to secure the intent of this by-law and that the Applicant and owner (if the Applicant is not the owner) agree to abide by the conditions specified.

3.10. Appeals. An appeal may be taken to the board of appeals by an Applicant or owner, as the case may be, regarding a determination by the Commission under Sections 3.6(b) or Section 5 that the related Eligible Building is a Historically Significant Building. Such appeal must be made within twenty (20) Business Days after the date of such determination by the Commission.

3.11. Communications. All written notifications under this Chapter 14 shall be made by hand delivery, the U.S. Postal Service, electronic mail, facsimile transmission (with confirmation of receipt in writing by other means) or overnight delivery service.

3.12. Historically Significant Buildings Subject to Prior Permit Applications.

- (a) No Change in Ownership. In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building was determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by the same

Applicant (or owner if the initial Application was not submitted by the owner), then such Building shall not be subject to a Hearing nor any further period of delay so long as (1) the ownership of the Building has not changed since the date of the Commission's initial determination, and (2) there is no new information about the Building's significance in history, architecture, archeology, engineering or culture in accordance with the Criteria set forth in Section 3.5 that was not known to the Commission at the time of the initial determination.

(b) Effect of Conveyances. In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building is determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by a different Applicant or owner, the Permit application shall be subject to review by the Commission in accordance with this bylaw in the same fashion as any other Permit application.

3.13. Overriding Safety Issue or Emergency Conditions. Nothing in this by-law shall restrict the authority of Building Commissioner to order the Building owner, or the Town, to demolish a building at any time if the Building Commissioner determines that the condition of the Building or part of it presents an imminent and substantial danger to the public health or safety. The Building Commissioner shall endeavor to provide the Chairperson and Vice-Chairperson of the Commission and the Town Planner with prior written notice of its issuance of a Permit in connection with the foregoing.

Section 4. ENFORCEMENT AND REMEDIES

4.1. Enforcement by Building Commissioner. The Building Commissioner is authorized to institute any and all proceedings in law or equity as the Building Commissioner deems necessary and appropriate to obtain compliance with the requirement of this by-law or to prevent a violation of it.

4.2. Demolitions In Violation of By-Laws. No building permit shall be issued with respect to any Lot upon which an Eligible Building has been intentionally demolished in violation of this by-law for a period of two (2) years after the date of the completion of such Demolition. The Demolition of an Eligible Building pursuant to a Permit issued on the basis of incorrect information shall be considered to be an intentional Demolition in violation of this by-law.

4.3. Vacant Historically Significant Buildings. The owner of a Building that the Commission has found to be a Historically Significant Building shall be responsible for properly securing such Building, if vacant (excluding temporary vacancies), to the satisfaction of the Building Commissioner. Should the owner fail to secure the Building, the loss of the Building (*e.g.*, fire) may be considered an intentional Demolition for the purposes of Section 4.2.

4.4. Regulations, Fees. The Commission may adopt such rules and regulations as are necessary to administer the terms of this by-law. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this by-law.

Section 5. Application for Pre-emptive Determination of Historical Significance

An owner of a Building may at any time request a review by the Commission as to the Historical Significance of such Building through submission to the Town Planner. Within ninety (90) days following receipt of such request, the Commission shall conduct such review at a regularly scheduled meeting of the Commission and notify Abutters. At the meeting and based upon information available to the Commission including information provided by the owner, the Commission shall make a

determination that (i) such Building is a Historically Significant Building, (ii) such Building is not a Historically Significant Building, or (iii) there does not exist sufficient information to make a determination as to the Historical Significance of such Building.

If the Commission determines such Building is not a Historically Significant Building, the determination will run with the Building, unless, following the determination and upon the later submission of an application for a Permit, it is found that the Building is associated with previously unknown significance in American history, architecture, archeology, engineering and culture as set forth in Section 3.5. If the Commission determines there is insufficient information available in the reasonable opinion of the Commission to make such a determination or the Commission determines that such Building is a Historically Significant Building and such owner disagrees, such owner may, in either case and at its sole cost and expense, hire or request the Commission to hire a consultant, which consultant is mutually acceptable to the Commission and the Applicant, to complete a Massachusetts Historical Commission Survey Form if no up-to-date Form exists and provide additional relevant information to the Commission as such owner may elect.

Upon receipt of such Form and additional information, as applicable, at a regularly scheduled meeting of the Commission, with notice to Abutters, the Commission shall reassess its prior determination and advise the owner of any change to its prior determination.

Section 6. EXISTING EXCLUSIONS

Notwithstanding anything contained in this by-law to the contrary, property owners of Eligible Buildings who elected to be excluded from the application of this by law in accordance with a 2001 amendment to this by-law² shall continue to be excluded and the exclusion shall apply to their respective successors and assigns provided, however, the current property owners of such Eligible Buildings may rescind such election at any time by notification in writing to the Commission.

Section 7. SEVERABILITY

If 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.

² Section 6 of the 2001 amendment to this by law permitted property owners of Eligible Buildings a one-time “opt out” from the protections afforded by these by laws.

MOTION:

MOVED AND SECONDED to amend and restate of Chapter 14 of the Code of By-Laws of the Town of Winchester, "Demolition of Historic Buildings," by deleting such Chapter in its current state in its entirety and substituting the following in its place:

**CHAPTER 14
PRESERVATION OF HISTORICALLY SIGNIFICANT BUILDINGS**

Section 1. PURPOSE

This by-law is adopted to promote the preservation and protection of Historically Significant Buildings within the Town that reflect distinctive features of historical, architectural, archeological and culture significance to the Town and to limit the detrimental effect of Demolition on such features of the Town. Through this by-law, owners of Historically Significant Buildings are encouraged to consider alternatives to demolition that will preserve, rehabilitate and restore such buildings while residents of the Town are alerted to proposed and impending Demolitions.

Section 2. DEFINITIONS

As used in this chapter:

2.12. "Abutters" shall mean any owner of a Lot touching a Lot on which an Eligible Building is located and shall include owners of Lots directly opposite such Lot on any public or private street or way.

2.13. "Applicant" shall mean any person(s) or entity(ies) who files an application for a Permit to Demolish a Building. If the Applicant is not the owner of the Building, the owner must indicate on or with the application for a Permit its assent to the filing of the application.

2.14. "Building" shall mean a combination of any materials, having a roof, to form a structure for the shelter of person or property. For purposes of determination by the Commission of whether an Eligible Building is Historically Significant, a garage, out-building or carriage house located on a Lot of an Eligible Building shall be considered a separate "Building" and indicated as such in the application for a Permit submitted to the Building Department.

2.15. "Business Day" shall mean any day other than a Saturday, Sunday or other day on which the government of The Commonwealth of Massachusetts is authorized or required by law to be closed for business.

2.16. "Commission" shall mean the Winchester Historical Commission, created by vote of Winchester Town Meeting pursuant to Massachusetts General Laws, Chapter 40, section 8D.

2.17. "Demolition" shall mean any act of (a) pulling down, tearing down, destroying, or razing a Building or substantially all of a Building, (b) moving a Building from its site or foundation from its current location, or (c) commencing the work of any of the foregoing.

2.18. "Eligible Building" shall mean any Building or portion thereof located in the Town

- (a) which is listed individually on, or is a contributing Building within a district listed on, the National Register of Historic Places or State Register of Historic Places,
- (b) which is included in the Massachusetts Historical Commission's "Inventory of Historic and Archeological Assets of the Commonwealth", or
- (c) which was constructed during or before 1940.

For the purposes of clause (c) above, evidence that a Building was constructed during or before 1940 shall be determined from sources including Town building or tax assessment records, other historical records, or other reliable independent sources including information provided by the Applicant as is reasonably acceptable to the Commission.

2.19. "Hearing" shall mean a public hearing of the Commission held for the purposes of determining if an Eligible Building is a Historically Significant Building in accordance with Section 3.5 and the Demolition thereof should be delayed in accordance with Section 3.6.

2.20. "Historically Significant Building" shall mean an Eligible Building that the Commission determines meets the criteria set forth in Section 3.5.

2.21. "Lot" shall mean a parcel of land with definite boundaries ascertainable by recorded deed or plan.

2.22. "Permit" shall mean a permit issued by the Building Department authorizing the Demolition of a Building.

Section 3. PROCEDURES

3.14. Application for Permit. An Applicant seeking a Permit from the Building Department to Demolish a Building shall, in addition to or as part of such application form and information required by the Building Department, submit to the Building Department the following:

- (a) The address of the Building to be demolished;
- (b) The Applicant's name, address, telephone number and email address (if any), and if the application is not submitted by the Owner of the Building, the owner's information and consent to the application;
- (c) A brief description of the Building(s) to be demolished, together with information, if available to the Applicant, as to the date of construction of the Building (such as a copy of the original building permit application, tax assessment records or other historical records), the condition of the Building(s) and other information that the Applicant would like to submit to describe the reason for the Demolition; and
- (d) A photograph or photograph(s) of the Building.

At the time of the application, each Applicant will be provided with a copy of or reference to this bylaw describing the procedures for the Commission's review of the Permit application. Within three (3) Business Days after receipt of an application for a Permit, the Building Department shall transmit a copy of the application to the chairperson and vice-chairperson of the Commission and to the Town Planner for review in accordance with this bylaw.

3.15. Required Notification to Issue Permit. The Building Commissioner shall not issue a Permit for the Demolition of a Building unless the Building Commissioner has received a notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner under any one of items (a) through (d) in this Section 3.2, or the Building Commissioner has not received any notification from the Commission, its Chairperson, Vice-Chairperson or the Town Planner on or before thirty (30) Business Days after the date of the Permit application is transmitted by the Building Department under Section 3.1. Notifications to the Building Commissioner shall be that:

- (a) the Building is not an Eligible Building pursuant to Section 3.3(a), or
- (b) the Building is an Eligible Building and the Commission (or an Authorized Person) has determined it is not a Historically Significant Building pursuant to Section 3.3(b), or

- (c) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building but has not imposed a demolition delay pursuant to Sections 3.6(b), 3.8 or 3.9; or
- (d) the Building is an Eligible Building and the Commission has determined it is a Historically Significant Building and imposed a demolition delay pursuant to Section 4.6(b); and no Permit shall be issued until a further notification is given to the Building Commissioner reporting that the period of demolition delay imposed by the Commission for a Historically Significant Building has ended, whether at the end of the time imposed by the Commission or at such earlier date pursuant to Sections 3.8 or 3.9; or
- (e) the Applicant and the Commission have agreed to extend the time for the Commission's determination that an Eligible Building is a Historically Significant Building and/or whether to impose a demolition delay, and the period of such extension.

Nothing in this Section is intended to prevent the Building Commissioner from issuing a Permit to Demolish a Building for the reasons in Section 3.13.

3.16. Determinations of Eligible Buildings and those of No Historical Significance.

- (a) Eligible Buildings. The Commission chairperson, vice-chairperson, Town Planner or other Town employee designated by the Commission (such person being an "Authorized Person") within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1 shall (i) determine if the Building described in the application is an Eligible Building based on information submitted with the Permit application, any additional information submitted by the Applicant, review of Building Department and tax assessor's office records, other public records or historical data and the results of any prior review of the Building to determine if it was an Eligible Building, and (ii) notify the Applicant and the Building Department of such determination. If the Authorized Person, within such ten (10) Business Day period is unable to make a determination that a Building is an Eligible Building based on available records, the Permit application shall be referred to the Commission for a determination at a Hearing to establish whether the Building is an Eligible Building. The Applicant is encouraged to present any information with the Permit application that the Applicant believes will assist the Authorized Person or Commission in making its determination. The Hearing will be held not later than twenty (20) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.
- (b) Preliminary Determination of No Historical Significance. Upon a determination that the Building is an Eligible Building, the Authorized Person may further determine based on the information submitted with the Permit application, any additional information submitted by the Applicant, review of building department and assessor's office records and other public records or historical data, visual inspection, familiarity with the history or neighborhood, or prior review of the Eligible Building by the Commission and determination of no Historical Significance, that an Eligible Building is presumptively not a Historically Significant Building and not subject to the delay provisions of this bylaw and shall notify the Applicant and the Building Department of its determination, such notice to be provided within ten (10) Business Days after the date the Permit application is transmitted by the Building Department pursuant to Section 3.1.

3.17. Determination of Historical Significance by Commission; Public Hearing. Subject to any preliminary determination under Section 3.3(b), the Commission shall determine at a Hearing and based on the Criteria set forth in Section 3.5 whether an Eligible Building proposed for Demolition is a

Historically Significant Building. The Hearing shall be held within twenty (20) Business Days after the date the Permit Application is transmitted by the Building Department pursuant to Section 3.1, unless the Commission and the Applicant jointly agree to extend the time for the Hearing. The Commission shall give public notice of the Hearing not less than five (5) days prior to the date of the Hearing by posting notice at Town Hall and by mailing notice of the date, time, location and subject matter of the Hearing to the Applicant, Abutters and to other persons deemed by the Commission to be affected.

3.18. Criteria for Determination of an Eligible Building being a Historically Significant Building. If at such Hearing the Commission determines that the Demolition of the Eligible Building would be detrimental to the American history, architecture, archeology, engineering and culture of the Town, such building shall be considered a “Historically Significant Building”. An Eligible Building’s Historical Significance shall be evidenced by demonstrating that the Eligible Building has a quality of significance in American history, architecture, archeology, engineering and/or culture and which possesses integrity of location, design, setting, materials, workmanship, feeling and/or association, and:

- (a) is associated with events that have made a significant contribution to the broad patterns of our history,
- (b) is associated with the lives of significant persons in our past,
- (c) embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction, or(d) has yielded or may be likely to yield, information important to history or prehistory.³

3.19. Commission’s Determinations at Hearing; Demolition Delay.

- (a) Not a Historically Significant Building. If at a Hearing (i) the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is not a Historically Significant Building pursuant to Section 3.5 or (ii) there is a tie vote (in which case the Commission shall be deemed to have determined that the Eligible Building is not a Historically Significant Building), the Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.
- (b) Historically Significant Building. If at a Hearing the Commission determines by a majority vote (of those members present and voting) that an Eligible Building is a Historically Significant Building pursuant to Section 3.5, the Commission shall further determine if it will require a twelve (12) month delay in the Demolition of the Historically Significant Building. The Commission shall notify the Building Commissioner, with a copy to the Applicant, of its determination at the Hearing within ten (10) Business Days of the closing of the Hearing.

3.20. Alternatives to Demolition. At any time during the Hearing, prior to the issuance of the Commission’s determinations, or during the period of Demolition delay, the Commission may invite the Applicant, and any other persons deemed affected by the proposed Demolition, to participate in a discussion of alternatives to Demolition including but not limited to: incorporation of the Building into the future development of the site; adaptive re-use of the Building; utilization of financial incentives to

³ The criteria for determination of Historical Significance set forth in clauses (a) –(d) are the Criteria for Evaluation found in the Code of Fed.Regs., Title 36, Part 60 (<https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf>)

rehabilitate the Building; rezoning, or seeking a new owner willing to purchase and preserve, restore or rehabilitate the Historically Significant Building.

3.21. Unconditional Early Issuance of Permit. The Commission, after its determinations of Historical Significance and imposition of Demolition delay, may reduce or eliminate the period of delay and/or may impose conditions on the Demolition and shall notify the Building Commissioner of its revised determination, if:

- (a) the Commission is satisfied that there is no reasonable likelihood that either the Applicant or some other person or group is willing to purchase, preserve, rehabilitate or restore such building,
- (b) the Commission is satisfied that for at least twelve (12) months (which time period may precede the date of the Permit application) the Applicant or owner of the Historically Significant Building has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore such Building, and that such efforts have been unsuccessful, or
- (c) the Commission is satisfied that it is in the best interest of the community, as assessed by the Commission, to allow the Demolition of the Historically Significant Building.

3.22. Conditional Early Issuance of Permit. Notwithstanding the provisions of Section 3.6, the Building Commissioner may issue a Permit subject to conditions agreed to by the Commission and the Applicant and the owner (if the Applicant is not the owner) of a Historically Significant Building at any time after receipt of written agreement from the Commission and the Applicant and the owner stating that the Commission is satisfied that Demolition of the Historically Significant Building, subject to the conditions specified in such agreement, is the outcome most likely to secure the intent of this by-law and that the Applicant and owner (if the Applicant is not the owner) agree to abide by the conditions specified.

3.23. Appeals. An appeal may be taken to the board of appeals by an Applicant or owner, as the case may be, regarding a determination by the Commission under Sections 3.6(b) or Section 5 that the related Eligible Building is a Historically Significant Building. Such appeal must be made within twenty (20) Business Days after the date of such determination by the Commission.

3.24. Communications. All written notifications under this Chapter 14 shall be made by hand delivery, the U.S. Postal Service, electronic mail, facsimile transmission (with confirmation of receipt in writing by other means) or overnight delivery service.

3.25. Historically Significant Buildings Subject to Prior Permit Applications.

- (a) No Change in Ownership. In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building was determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by the same Applicant (or owner if the initial Application was not submitted by the owner), then such Building shall not be subject to a Hearing nor any further period of delay so long as (1) the ownership of the Building has not changed since the date of the Commission's initial determination, and (2) there is no new information about the Building's significance in history, architecture, archeology, engineering or culture in accordance with the Criteria set forth in Section 3.5 that was not known to the Commission at the time of the initial determination.

- (b) **Effect of Conveyances.** In the event that (i) an application for a Permit has previously been submitted with respect to an Eligible Building, (ii) such Eligible Building is determined by the Commission to be a Historically Significant Building, (iii) such Building was not Demolished following any imposed period of delay, and (iv) subsequently a new application for a Permit is submitted for the Building by a different Applicant or owner, the Permit application shall be subject to review by the Commission in accordance with this bylaw in the same fashion as any other Permit application.

3.26. **Overriding Safety Issue or Emergency Conditions.** Nothing in this by-law shall restrict the authority of Building Commissioner to order the Building owner, or the Town, to demolish a building at any time if the Building Commissioner determines that the condition of the Building or part of it presents an imminent and substantial danger to the public health or safety. The Building Commissioner shall endeavor to provide the Chairperson and Vice-Chairperson of the Commission and the Town Planner with prior written notice of its issuance of a Permit in connection with the foregoing.

Section 4. ENFORCEMENT AND REMEDIES

4.5. **Enforcement by Building Commissioner.** The Building Commissioner is authorized to institute any and all proceedings in law or equity as the Building Commissioner deems necessary and appropriate to obtain compliance with the requirement of this by-law or to prevent a violation of it.

4.6. **Demolitions In Violation of By-Laws.** No building permit shall be issued with respect to any Lot upon which an Eligible Building has been intentionally demolished in violation of this by-law for a period of two (2) years after the date of the completion of such Demolition. The Demolition of an Eligible Building pursuant to a Permit issued on the basis of incorrect information shall be considered to be an intentional Demolition in violation of this by-law.

4.7. **Vacant Historically Significant Buildings.** The owner of a Building that the Commission has found to be a Historically Significant Building shall be responsible for properly securing such Building, if vacant (excluding temporary vacancies), to the satisfaction of the Building Commissioner. Should the owner fail to secure the Building, the loss of the Building (*e.g.*, fire) may be considered an intentional Demolition for the purposes of Section 4.2.

4.8. **Regulations, Fees.** The Commission may adopt such rules and regulations as are necessary to administer the terms of this by-law. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this by-law.

Section 5. Application for Pre-emptive Determination of Historical Significance

An owner of a Building may at any time request a review by the Commission as to the Historical Significance of such Building through submission to the Town Planner. Within ninety (90) days following receipt of such request, the Commission shall conduct such review at a regularly scheduled meeting of the Commission and notify Abutters. At the meeting and based upon information available to the Commission including information provided by the owner, the Commission shall make a determination that (i) such Building is a Historically Significant Building, (ii) such Building is not a Historically Significant Building, or (iii) there does not exist sufficient information to make a determination as to the Historical Significance of such Building.

If the Commission determines such Building is not a Historically Significant Building, the determination will run with the Building, unless, following the determination and upon the later submission of an

application for a Permit, it is found that the Building is associated with previously unknown significance in American history, architecture, archeology, engineering and culture as set forth in Section 3.5. If the Commission determines there is insufficient information available in the reasonable opinion of the Commission to make such a determination or the Commission determines that such Building is a Historically Significant Building and such owner disagrees, such owner may, in either case and at its sole cost and expense, hire or request the Commission to hire a consultant, which consultant is mutually acceptable to the Commission and the Applicant, to complete a Massachusetts Historical Commission Survey Form if no up-to-date Form exists and provide additional relevant information to the Commission as such owner may elect.

Upon receipt of such Form and additional information, as applicable, at a regularly scheduled meeting of the Commission, with notice to Abutters, the Commission shall reassess its prior determination and advise the owner of any change to its prior determination.

Section 6. EXISTING EXCLUSIONS

Notwithstanding anything contained in this by-law to the contrary, property owners of Eligible Buildings who elected to be excluded from the application of this by law in accordance with a 2001 amendment to this by-law⁴ shall continue to be excluded and the exclusion shall apply to their respective successors and assigns provided, however, the current property owners of such Eligible Buildings may rescind such election at any time by notification in writing to the Commission.

Section 7. SEVERABILITY

If 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.

⁴ Section 6 of the 2001 amendment to this by law permitted property owners of Eligible Buildings a one-time “opt out” from the protections afforded by these by laws.

ARTICLE 3 BACKGROUND:

In the view of the Winchester Historical Commission, Chapter 14, the so-called Demolition Delay By-Law, needs to be overhauled. In its current state, the Commission does not believe that By-Law:

- Adequately encourages preservation of Winchester’s historic properties;
- Sufficiently advances the goals of the Town’s 2010 Master Plan to maintain the character of our neighborhoods;
- Complies with the Massachusetts Historical Commission’s guidelines for creation of effective preservation tools; or
- Expedites the issuance of demolition permits for properties that lack historical merit.

Moreover, in recent years the Commission has heard growing concerns that it should be doing more to protect and preserve the distinct fabric of our community and its quality of life. Undoubtedly, this initiative to broaden the scope of the current by-law will elicit questions. We have already fielded some questions. In addition to answering those, we have also tried to anticipate other questions and provide succinct answers here. If you have other questions not addressed here, please feel free to contact the Commission through Town Planner Brian Szekely at 781-721-7162 or by email at bszekely@winchester.us).

When are demolition permits required? A permit, issued by the Building Department, is required to demolish any building in town, regardless of type, age, or historical significance. This process is not changed by the proposed amendments to Chapter 14.

What is the demolition permit process and what is the Historical Commission’s role in it?

Demolition permit applications are submitted to The Town Building Department, which forwards a copy to the Historical Commission. This process will not change under the proposed By-Law revision, except that an additional copy of the application will be sent to the Town Planner. A representative of the Historical Commission or the Town Planner will perform an initial review to determine whether the subject property falls under the aegis of the By-Law and is therefore eligible for review.

If the property is ineligible for consideration of historical significance (because it is not built before 1941), the Commission issues a letter to that effect instructing the Building Department to issue a permit immediately. If it is eligible, the Commission schedules a public hearing and conducts extensive research on the property. At hearing the Commission makes a determination of “Historical Significance” (as described in the By-Law) based on all available information including information provided by owners and members of the public. The Commission may delay the demolition of properties it finds to be historically significant for up to 12 months. Additionally, the proposed by-law revision (section 3.3(b)) allows for a preliminary determination of no historical significance, in which case a demolition permit can be issued without a hearing.

Is there a fee for the Commission’s review of a demolition permit application? The Commission will be authorized to charge a reasonable fee to cover its costs to administer the By-Law. Also, the proposed By-Law contains a new independent process that will allow property owners to obtain a determination of historical significance unrelated to a demolition permit request. This independent process may result in a cost to an owner if the owner engages an outside consultant to research records and submits an opinion about the historical significance of a building.

If my house was built before 1941, does that mean I cannot demolish it? No. These revisions only impact houses that meet the rigorous criteria for “historical significance” established by the U.S. Department of the Interior’s National Park Service. The demolition of historically significant properties

may only be delayed, not prevented. Nothing can save an important historical asset if the owner waits out the 12-month delay and is determined to demolish it.

What if the Original Date of Construction of a Building is Not Known? The Town Planner and Historical Commission will work with the owner to obtain records to identify when a structure was built. If that information cannot be found but there is a basis to conclude the building was constructed before 1941, and the application has not otherwise been returned to the Building Department with a finding of no historical significance, then the Historical Commission will consider the matter at a public hearing. The proposed by-law does not permit the Historical Commission to presumptively assume the building construction date without evidence.

What makes a property “Historically Significant?” An Eligible Building may be designated Historically Significant if it meets one or more of the following criteria:

1. It is associated with events that have made a significant contribution to the broad patterns of our history;
2. It is associated with the lives of significant persons in our past;
3. It embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or
4. It has yielded or may be likely to yield, information important to history or prehistory.⁵

Why did the Commission select 1940? The criteria for determining eligibility for listing on the National Register of Historic places use an initial threshold of at least 50 years meaning that, in 2016, any property built prior to 1966 could be deemed historically significant. When the Commission reviewed the Town’s history of development and its architectural contributions at the State and National level, an earlier date seemed more appropriate.

1940 marks an historic break in terms of Winchester’s residential development and planning, architectural design, and building practices. Many of the buildings that predate World War II exemplify distinctive architecture and craftsmanship that has become an irreplaceable expression of the Town’s character and heritage. During and after the war, people increasingly found jobs that required greater mobility. Subdivisions sprang up, repeating a small number of house plans. Many homes in a neighborhood were virtually identical with little in the way of architectural features to distinguish one from another.

Winchester neighborhoods constructed prior to the war exhibit a cohesive and harmonious character that can no longer be reproduced through new construction. The scale and aesthetic of later periods, with some important exceptions, has generally not acquired historical significance through a longer presence in the built landscape and the development of the cultural patina that older neighborhoods possess.

What if I do not demolish the building after the delay period ends? If a delay of issuance of the demolition permit is imposed under the By-Law and if at the end of that delay period the owner/applicant chooses not to obtain the permit and demolish the building, that same owner/applicant can request a demolition permit at a later date and not be subject to any further review by the Commission or delay. However, if in the future a new owner or applicant seeks to demolish that same building, then the application for demolition would be reviewed under the By-Law the same as any other new application to

⁵ The criteria for determination of Historical Significance set forth in clauses (a) –(d) are the Criteria for Evaluation found in the Code of Fed.Regs., Title 36, Part 60 (<https://www.nps.gov/nr/publications/bulletins/pdfs/nrb15.pdf>)

demolish a building, and the Commission may decide to impose a delay on the issuance of a demolition permit.

Will being subject to the By-Law affect the value of my property? An extensive literature review on the economic impact of historic designation (including case studies from California, Arkansas, Alabama, Pennsylvania, Colorado, New York, Tennessee, and Texas) found that preservation benefited all the communities studied in myriad ways, particularly in terms of property values and job creation. In a Texas study, property values increased 5-20%, but most studies showed far greater increases. In Pennsylvania, within a year after designation, a district's property values rose 15-63% and in Georgia, one block of homes increased in value by 200% over 12 years.⁶

The National Association of Realtors' website includes a "how to" section on getting your house and/or neighborhood designated as historical. They note that, "Even if your home's price doesn't rise, it's less likely to fall... because historic designations help ensure that the aspects that make the area attractive to home buyers will be protected over time by explicit design limits on such things as demolitions..."⁷ The Commission has not found any studies to the contrary that might indicate potential decreases in property values as a result of historic designation.

Does this by-law conflict with the Building Commissioner's authority to require demolition of unsafe buildings? No. The Building Commissioner has an independent authority under the Building Code and state law to determine whether the condition of a building presents a danger to the public and to order demolition.

Majority Vote Required

⁶ Morris, Mimi, "Economic Impact of Historic Designation," California Cultural and Historic Endowment, November, 2012

⁷ Retrieved from houselogic.com (<http://bit.ly/2dEX1gH>)

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 4

To see if the Town will vote to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

NOISE REGULATIONS

1. Purpose

The purpose of this Noise Bylaw is to allow the Town of Winchester, Massachusetts (the Town) to establish reasonable guidelines, restrictions and limitations to maintain acceptable noise conditions within the Town.

This bylaw defines noise criteria limits and restrictions for the purposes of (1) maintaining acceptable existing conditions, equipment operations, social interactions, and avoidance of disruption of the peace, and (2) managing and controlling potential future noise conditions in the Town stemming from development of properties, equipment operations, and infrastructure.

This bylaw is intended to maintain the quality-of-life within the Town from an acoustical perspective. This by-law addresses so-called “community noise” by establishing acceptable noise conditions from the receiver’s perspective in order to support the continued use and enjoyment of the receiving property for its intended purpose.

This bylaw is not intended to define safe noise levels to protect people’s hearing or avoid auditory damages from excessively loud noises either within the workplace or from private activities which are the subject of workplace and labor regulations. As such, this bylaw is not intended to maintain public health and safety with respect to noise. The remedies for maintaining acceptable noise conditions as outlined in this bylaw are intended to be in addition to, and not excluding of, such other laws, regulation and rules of the Commonwealth, the Town of Winchester, and its departments.

Therefore, it shall be a violation of this bylaw for a person or persons to knowingly generate, or allow continued generation of, noise levels which either (1) exceed the criteria limits found in Section 3, except under conditions defined in Section 5, when measured at a receiving party’s property line or at any location on the receiving property, OR (2) are deemed to be excessively loud to a “reasonable person”, as defined to be a Member of the Board of Health of the Town, and/or their designee, officers of the Winchester Police Department, employees of the Winchester Building and Zoning Department as defined in Section 4.

2. Acoustical Terms and Definitions

Community noise is generated by natural and man-made sources such as transportation systems, industrial processes, construction operations, building air handling systems, power generation, agricultural processes, landscaping machinery, human activities, meteorological conditions, etc. In general, noise can be quantified by its magnitudinal (loudness), tonal (frequency) and temporal (time) characteristics. The following are definitions to terms typically used to describe community noise.

Sound – Sound is a physical parameter which is produced when a vibrating surface transfers energy in the form of air pressure waves which fluctuate above and below barometric pressure to such a degree and within a frequency range that it can be perceived by the human auditory system (i.e. sound can be heard).

Noise – Noise is defined as “unwanted sound” which can occur when a source is either too loud, uncontrollable, conveys unwanted information, masks-out other desirable sound, occurs at unacceptable times, or has annoying characteristics.

Decibels (dB) – The magnitude or loudness of noise is expressed in units of decibels (dB). Decibels relate the actual fluctuating air pressure levels against a standardized reference air pressure level of 20 micro-pascals. Human beings can hear noise over a tremendously large range of air pressure so the use of a decibel scale (from about 0 dB to 140 dB) is used for convenience. Zero decibels represents the “threshold of hearing”, while at the other extreme, pain and hearing damage can occur at noise levels of about 140 decibels.

Audible Frequency Range (and A-weighting) – Human beings can perceive noise only if the fluctuating air pressure waves are within the so-called “audible frequency range” of about 20 Hz to 20,000 Hz (Hertz, or cycles-per-second). However, people do not hear noise equally well at all frequencies. As such, a frequency weighting adjustment has been standardized in ANSI Standard S1.42 to account for humans responding less sensitively to lower and higher frequency ranges. This frequency weighted adjustment is referred to as “A-weighting”, with results expressed as A-weighted decibels, or dBA.

Time Constant (RMS Slow) – The speed with which the electronic root-mean-square (RMS) detector of a sound level meter responds to changes in instantaneous noise levels has been standardized in ANSI Standard S1.4. A “fast” time constant is defined as a rise-time of 0.125 seconds, while “slow” is defined as a rise-time of 1 second. For the purpose of this bylaw, all noise levels and limits are expressed in units of A-weighted decibels using an RMS “slow” time constant (dBAs).

Background (Bkgd) Noise – The background noise is the prevailing or pre-existing noise conditions that can be measured at a given location of interest *without* the contribution of the noise source of concern.

Nuisance Noise – Nuisance noise is defined as noise which can annoy or disturb individual listeners. When measured, nuisance noise levels may or may not exceed specified noise criteria limits so nuisance noise is often defined qualitatively by listing specific examples, as in **Section 3.A** of this bylaw.

Equivalent Sound Level (Leq) – The Leq represents the energy-averaged noise level over some time period of interest. The Leq is expressed in dBA, and the time period over which the Leq value applies should also be stated (i.e. Leq(1min) represents a one minute average; Leq(24h) represents a 24 hour average, etc.).

Maximum and Minimum Sound Levels (Lmax and Lmin) – The Lmax and Lmin represents the absolute loudest and quietest noise levels experienced for just an instant during some time period of interest. The Lmax and Lmin levels are expressed in dBA.

Noise Percentile Levels (Ln) – Ln levels are a statistical representation of changing noise levels indicating the noise level that was exceeded "n" percent of the time. For example, the L10, L50, and L90 represent the noise levels exceeded 10%, 50%, and 90% of the time, respectively. The L10 is often used to identify an intrusive noise level, while the L90 is considered to represent the steady background noise level.

Reasonable Person – Acting on behalf of the greater good of the public, a reasonable person is able to judge in an unbiased manner the appropriateness of a given situation. A reasonable person is appropriately informed, rational, capable, aware of the law, and fair-minded when applications of the law is sought, compatible with planning, working, or getting along with others. For the purpose of this bylaw, a reasonable person shall be defined as a Member of the Town, and/or their designee, as further described in **Section 4**.

Sound Level Meter (SLM) – A sound level meter is a calibrated electrical device used to measure the loudness of noise. For the purposes of this bylaw, a SLM must be capable of measuring and expressing noise levels in A-weighted decibels using an RMS “slow” time constant in accordance with Type 1 or Type 2 accuracy requirements of ANSI Standard S1.4. In addition, an “integrating” SLM must be used if any time-averaged noise metrics (such as Leq or Ln percentiles) are to be reported.

Stationary Noise Sources – Sources that emit noise on a continuous or repeatable basis and that are located in fixed positions. Example stationary noise sources would include, but are not limited to, building mechanical (HVAC) systems, power transformers, commercial processing machinery, etc.

Construction Noise Sources – Sources, activities, vehicles and/or equipment that emit noise as part of a construction or demolition project. Typically some form of engine power is required such as diesel or gasoline motors, hydraulic or pneumatic pressure, or electric power.

Designee – A person, who after due consideration, is selected by the Winchester Board of Health to respond in their place to investigate noise complaints. The designee becomes an authorized representative of the Board of Health only for matters involving this bylaw. A designee should work for the Town in some capacity such as, but not limited to, the Building Department, or a consultant hired by the Town to act in these regards.

3. Noise Criteria Limits

Noise criteria limits in this bylaw are based on the type of noise being produced, the sensitivity of the receiver and land-use being affected, the time of day during which the noise is generated, and the existing background noise level. Except where noted, the following noise criteria limits and restrictions are based on noise propagating to and affecting the receiver’s location.

3.A. Nuisance Noise

Noise which has the potential to annoy or disturb can be described as nuisance noise. Nuisance noise can vary significantly from person to person, and typically exhibit aspects such as pure tone squealing or whining, loud impulsive noises, repetitive thumping, low-frequency air-borne vibrations, etc.

For the purposes of this bylaw, nuisance noise shall be qualitatively defined by listing specific examples which are deemed to be annoying.

Therefore, it will be prohibited for persons or equipment to generate the following nuisance noises:

- The use of excessively loud radios, public address systems, shouting, or other noises associated with communications or advertisement, that have the potential to disturb nearby residents during the nighttime hours of 9:00 PM to 7:00 AM.
- The emptying and/or replacing of waste dumpsters that is not in accordance with Board of Health regulations.
- The use of powered landscaping tools, such as but not limited to lawn mowers and leaf blowers, during the nighttime hours of 9:00 PM to 7:00 AM.
- The use of truck Jake-brakes (other than emergency vehicles).
- The use of noise enhancing exhaust muffler systems (i.e. glass packs, sport mufflers) on motor vehicles and motorcycles at any time of day or night.
- The use of excessively loud automobile sound systems (i.e. radios, CD players, etc.), as judged by a reasonable person as defined in **Section 4**, at any time of day or night.
- The unreasonable extended use of vehicle horns under non-emergency conditions.
- The unnecessary (i.e. false) sounding of vehicle security alarm systems.

Note: that for all the purposes cited above in this Section 3.A., it is prohibited on Saturdays and Sundays to generate nuisances noise before 8:30am and after 6:00pm or at any time day or night when applicable.

3.B. Stationary Noise Sources

Stationary sources of noise may include, but are not limited to, building HVAC systems, power generation facilities, industrial equipment, water or sewage pump stations, railroad and subway lay-over facilities, electric power transformers, commercial factories and plants, truck depots, and recreational events. The noise level emitted by stationary noise sources shall not exceed the limits contained in **Table 1** when measured at the property line of the receiving property.

Table 1.
Noise Criteria Limits from Stationary Noise Sources

Receiver Land-Use	Daytime Noise Limit (7 AM to 6 PM)	Evening Noise Limit (6 PM to 9 PM)	Nighttime Noise Limit (9 PM to 7 AM)
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater	50 dBAs Leq(1min) or Background Leq(1min), whichever is greater	45 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater

Notes: Background Leq(1min) noise levels should be measured without the noise source in question operating.

Average noise levels measurements can be estimated if an integrating Leq noise meter is not available.

3.C. Construction Noise Sources

In general, construction and/or demolition activities shall only be permitted to occur within the town during the hours of 7:00 AM to 6:00 PM. However, it is understood that construction and demolition are inherently noisy activities which will likely be heard by adjacent residents and business operators during short periods of time. As such, the intent of this section is to balance the needs for the necessary construction work to be performed with the needs of the community for peace and quiet.

Therefore, cumulative noise generated by construction and/or demolition activities and operations shall not exceed the limits contained in **Table 2** when evaluated at the property line of the receiving property, nor shall the noise emission level of any individual piece of construction equipment exceed the noise emission limits contained in **Table 3** when measured at a distance of 50 feet from the loudest side of the piece of equipment.

**Table 2.
Construction Noise Criteria Limits**

Receiver Land-Use	Daytime Noise Limit (7 AM to 6 PM)	Evening Noise Limit (if specifically permitted) (6 PM to 9 PM)	Nighttime Noise Limit (9 PM to 7 AM)	Saturday and Sunday Noise Limit (8 AM to 4 PM)
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	65 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	60 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	45 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	70 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	50 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	80 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	55 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater

Notes: Criteria approach taken from FHWA Roadway Construction Noise Handbook (FHWA, 2006).

L10 noise levels shall be measured over a period of 20 minutes.

Background (Bkgd) L10 noise levels should be measured prior to construction commencing in the field or without the noise source in question operating.

L10 noise levels measurements can be estimated if an integrating noise meter is not available by determining the average or Leq noise level plus 3 dBA.

Table 2 noise limits do not apply to roadway construction activities.

(*) Except when determined necessary by the Board of Selectmen to protect public safety.

Activity on Sunday must be specifically permitted by the Chief of Police, otherwise Nighttime Noise Limits apply

**Table 3.
Construction Equipment Noise Emission Criteria Limits**

Generic Type of Construction Equipment	Noise Emission Limit at 50 feet
Blasting – as well as explosive tools such as concrete nail guns	95 dBAs Lmax
Pile Drivers – including impact and vibratory type drivers	95 dBAs Lmax
Impact Devices – such as hoe rams, jackhammers and pavement breakers	90 dBAs Lmax
Saws and Drills – including chain saws, concrete saws and vermeer saws, rock drills, and auger drill rigs	90 dBAs Lmax
Demolition Equipment – such as grapples and shears	85 dBAs Lmax
Earth Movers – including excavators, backhoes, bull dozers, gradalls, front end loaders, scrapers and vacuum excavators	85 dBAs Lmax
Trucks and Tractors – including dump trucks, concrete mixers, concrete pump trucks, flatbed trucks, and street sweepers	85 dBAs Lmax
Finishing Equipment – including graders, rollers, pavers and compactors	80 dBAs Lmax
Support Equipment – such as cranes, compressors, generators and pumps	80 dBAs Lmax
Tools – including pneumatic and gas-powered hand tools	80 dBAs Lmax
Any other equipment not listed above	85 dBAs Lmax

Notes: Criteria limits consistent with FHWA Roadway Construction Noise Handbook (FHWA, 2006).
Lmax noise emission levels shall be measured 50 feet from the loudest side of the equipment while the equipment is engaged in its intended activity.

In addition to the construction noise criteria limits shown in **Tables 2 and 3**, the following restriction(s) shall apply to any and all pieces of construction and/or maintenance equipment.

- The use of standard vehicle backup alarms, whose noise level exceeds 105 dBAs at a distance of 4 feet behind the vehicle, shall be prohibited. Alternatively, quieter-type manually-adjustable or automatically-adjustable backup alarms, or the use of observers used in lieu of audible backup alarms, are permitted for use in accordance with applicable OSHA Guidelines (29 CFR Part 1926, Subpart “O”, 1926.601.b.4 and 1926.602.a.9.).

4. Reasonable Person Determination

It shall be a violation of this bylaw to knowingly generate, or allow continued generation of, noise levels which a reasonable person would consider to be excessively loud. For the purposes of interpretation and enforcement, a *reasonable person* shall be defined in this bylaw as Member of the Board of Health and/or their designee; officers from the Winchester Police Department; employees of the Winchester Building and Zoning Department

To be applicable, the Member, and/or their designee, must hear for him/herself the noise source in question. The Member, and/or their designee, must take conditional, circumstantial and extenuating factors into account, including but not limited to, the following:

- The necessity of the noise source to continue to operate.
- The extent to which the noise propagates to, and is heard by, noise-sensitive receivers.
- The time of day or night that the noise is occurring.
- The duration of time that the noise is expected to continue.

5. Exceptions

The following cases shall be exceptions to the restrictions and criteria limits contained in this noise bylaw. The Town shall maintain the right to modify, add or remove any or all of these exceptions.

- Grandfathering - All existing residential, commercial, industrial and/or agricultural stationary noise sources, which have been operating on a lawful basis prior to the effective date of this bylaw, shall be allowed. However, this exception does *not* apply to any *new or upgraded* sources of noise subsequently brought into operation at an existing location.
- Noise generated by transportation systems in motion, such as vehicular traffic traveling on public roadways, aircraft overflights, commuter and freight trains, public transit systems and buses, are generally not regulated by local ordinances, and as such, shall not be a part of this noise bylaw (however, specific motor vehicle noise-enhancing devices, as described in **Section 3.A**, will still be subject to this bylaw). Commercial deliveries involving idling trucks and/or idling freight trains will be subject to this bylaw after a period not to exceed 20 minutes.
- Noise emitted by utility or Town service crews and equipment performing emergency repairs to restore supply of and/or operation of critical public utilities such as natural gas, electrical power, steam, potable water, telecommunications, sewerage removal, etc.
- Any noise emitted by public safety or emergency response vehicles while performing their intended duties. Specific examples of exempt emergency equipment include sirens, horns, generators, pumps, public address systems, etc.
- Noise generated by sources intended for public entertainment, when said sources are part of a legal activity such as, but not limited to, parades, sporting events, public concerts, fireworks display, etc.
- All snow clearance activities at any time of day, evening or night.
- The performance of Town-sponsored street sweeping operations at night on public ways which are otherwise inaccessible during daytime hours.
- Due to the continuously progressing nature of roadway work, the cumulative property line construction noise limits shown in **Table 2** shall not apply for roadway construction (however, individual pieces of equipment used for roadway construction will still be subject to the 50 foot emission limits shown in **Table 3**).

- The use of hand tools, powered lawn equipment and small motorized vehicles for construction, maintenance or repair of properties between the hours of 7:00 AM to 9:00 PM (except as noted in 3A above for Saturdays and Sundays).

6. Noise Compliance Measurements

Quantitative noise level measurements performed to demonstrate compliance or exceedance of the various noise criteria limits contained in this bylaw must be collected in accordance with accepted practices and procedures as recommended in ASTM Standards E1686-03, E1780-04, and E1014-84, using a sound level meter (SLM) capable of meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy. Noise data shall be collected using a calibrated SLM using a “slow” time constant with results expressed in A-weighted decibels (dBAs). The minimum information necessary to collect and report shall include the following:

- (1) The make and model of SLM and portable calibrator used for the noise readings.
- (2) The date which the SLM was last certified by the manufacturer, or other independent calibration laboratory, as meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy requirements (should be within previous two years).
- (3) The SLM calibration readings obtained prior to, and immediately following, performing the compliance noise measurements.
- (4) The type of windscreen used to cover the microphone.
- (5) The height at which the noise readings were collected (should be at least 5 feet above ground), and an estimate of the distance (in feet) from the noise source to the SLM.
- (6) The time of day, date, and duration of noise data collected by the SLM.
- (7) An indication of the background noise level collected in the absence of the noise source in question.
- (8) A brief description of the meteorological conditions during the noise readings including wind speed and direction, air temperature, precipitation, and ground cover conditions.
- (9) A clear and concise comparison of the measured noise level data (expressed in dBAs) verses the applicable noise criteria limits contained in **Section 3** of this bylaw.
- (10) The findings and conclusions to be drawn from the noise compliance measurements.

7. Enforcement, Penalties, Appeals

7.A. Enforcement

In the event a noise complaint is received from a resident or business owner, or at any time at the discretion of the Town, a representative from any appropriate department, and/or their designee, shall respond and investigate the circumstances surrounding the noise issue. Noise levels may be judged excessively loud by a “reasonable person” standard as defined in **Section 4** or may be measured at the receiving party’s property line by a properly designated investigating agent. If measurements are deemed necessary, the investigating agent shall first have been trained in the proper use of, and equipped with, a calibrated sound level meter meeting the requirements described above in **Section 6**. The investigating agent shall collect all relevant information, perform noise compliance measurements (if available), and prepare a written report summarizing their findings in a manner consistent with the procedure described in **Section 6**.

If the investigating agent’s findings indicate a violation of the noise criteria limits or restrictions contained in **Section 3**, except in those cases as described in **Section 5**, then the producer(s) of said noise shall be found in violation of this noise bylaw and will be cited to a civil penalty consistent with the guidelines in **Section 7.B** together with such relief as outlined in Section 34 of Chapter 8 of the Town’s bylaws.

7.B. Penalties

1. The first violation of this bylaw shall result in the issuance of a *written warning* indicating the reason(s) for the violation and stating, at the investigating agent’s discretion, a time period within which the offender(s) must cease production of the noise, or mitigate (reduce) the noise down to acceptable levels which will then comply with the restrictions and noise criteria limits in this bylaw.
2. The second violation of this bylaw stemming from the same noise issue within any 12 month period shall be punished by a fine of one hundred dollars (\$100.00).
3. Further violations of this bylaw within any 12 month period shall be punished by a fine of one thousand dollars (\$1,000.00), together with a loss of permit or license applicable to any stationary or construction noise source as defined in 2 above.
4. Each such act in violation of this bylaw which either continues or occurs more than one hour after issuance of a written warning of violation of this bylaw shall be deemed a *separate* offense and shall be prosecuted as such, unless it occurs within the time period granted for correcting the original offense.
5. If the violation occurs on the premises of rental property which is not owned by the offender, then in the interest of assisting property owners in exercising responsible property management, the Town will notify the owner-of-record in writing that the violation has occurred, including the nature and circumstances of the violation.

7.C. Appeals

An offender who has been cited and/or fined under the terms and procedures of this noise bylaw can *appeal* the citation within 30 days after receiving it by presenting to the Board of Selectmen’s appointed Hearing Officer any alternative information, situational evidence, noise measurement data, extenuating circumstances, or explanation to the contrary of the investigating agent’s findings. The Hearing Officer

will serve in judgment of the appeal, and will have full discretion to reject, request additional details, reduce the severity of the penalties, continue, or enforce as issued the violation under appeal. The ruling of the Hearing Officer shall be final and not subject to further appeals within the Town's governance system.

8. Invalidity/Severability

If any provision of this bylaw shall be determined to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction, the remaining provisions of this bylaw shall continue in effect to the fullest extent permitted bylaw.

Or take any other action in relation thereto.

MOTION:

MOVED AND SECONDED to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

NOISE REGULATIONS

1. Purpose

The purpose of this Noise Bylaw is to allow the Town of Winchester, Massachusetts (the Town) to establish reasonable guidelines, restrictions and limitations to maintain acceptable noise conditions within the Town.

This bylaw defines noise criteria limits and restrictions for the purposes of (1) maintaining acceptable existing conditions, equipment operations, social interactions, and avoidance of disruption of the peace, and (2) managing and controlling potential future noise conditions in the Town stemming from development of properties, equipment operations, and infrastructure.

This bylaw is intended to maintain the quality-of-life within the Town from an acoustical perspective. This by-law addresses so-called "community noise" by establishing acceptable noise conditions from the receiver's perspective in order to support the continued use and enjoyment of the receiving property for its intended purpose.

This bylaw is not intended to define safe noise levels to protect people's hearing or avoid auditory damages from excessively loud noises either within the workplace or from private activities which are the subject of workplace and labor regulations. As such, this bylaw is not intended to maintain public health and safety with respect to noise. The remedies for maintaining acceptable noise conditions as outlined in this bylaw are intended to be in addition to, and not excluding of, such other laws, regulation and rules of the Commonwealth, the Town of Winchester, and its departments.

Therefore, it shall be a violation of this bylaw for a person or persons to knowingly generate, or allow continued generation of, noise levels which either (1) exceed the criteria limits found in Section 3, except under conditions defined in Section 5, when measured at a receiving party's property line or at any location on the receiving property, OR (2) are deemed to be excessively loud to a "reasonable person", as defined to be a Member of the Board of Health of the Town, and/or their designee, officers of the Winchester Police Department, employees of the Winchester Building and Zoning Department as defined in Section 4.

2. Acoustical Terms and Definitions

Community noise is generated by natural and man-made sources such as transportation systems, industrial processes, construction operations, building air handling systems, power generation, agricultural processes, landscaping machinery, human activities, meteorological conditions, etc. In general, noise can be quantified by its magnitudinal (loudness), tonal (frequency) and temporal (time) characteristics. The following are definitions to terms typically used to describe community noise.

Sound – Sound is a physical parameter which is produced when a vibrating surface transfers energy in the form of air pressure waves which fluctuate above and below barometric pressure to such a degree and within a frequency range that it can be perceived by the human auditory system (i.e. sound can be heard).

Noise – Noise is defined as “unwanted sound” which can occur when a source is either too loud, uncontrollable, conveys unwanted information, masks-out other desirable sound, occurs at unacceptable times, or has annoying characteristics.

Decibels (dB) – The magnitude or loudness of noise is expressed in units of decibels (dB). Decibels relate the actual fluctuating air pressure levels against a standardized reference air pressure level of 20 micro-pascals. Human beings can hear noise over a tremendously large range of air pressure so the use of a decibel scale (from about 0 dB to 140 dB) is used for convenience. Zero decibels represents the “threshold of hearing”, while at the other extreme, pain and hearing damage can occur at noise levels of about 140 decibels.

Audible Frequency Range (and A-weighting) – Human beings can perceive noise only if the fluctuating air pressure waves are within the so-called “audible frequency range” of about 20 Hz to 20,000 Hz (Hertz, or cycles-per-second). However, people do not hear noise equally well at all frequencies. As such, a frequency weighting adjustment has been standardized in ANSI Standard S1.42 to account for humans responding less sensitively to lower and higher frequency ranges. This frequency weighted adjustment is referred to as “A-weighting”, with results expressed as A-weighted decibels, or dBA.

Time Constant (RMS Slow) – The speed with which the electronic root-mean-square (RMS) detector of a sound level meter responds to changes in instantaneous noise levels has been standardized in ANSI Standard S1.4. A “fast” time constant is defined as a rise-time of 0.125 seconds, while “slow” is defined as a rise-time of 1 second. For the purpose of this bylaw, all noise levels and limits are expressed in units of A-weighted decibels using an RMS “slow” time constant (dBAs).

Background (Bkgd) Noise – The background noise is the prevailing or pre-existing noise conditions that can be measured at a given location of interest *without* the contribution of the noise source of concern.

Nuisance Noise – Nuisance noise is defined as noise which can annoy or disturb individual listeners. When measured, nuisance noise levels may or may not exceed specified noise criteria limits so nuisance noise is often defined qualitatively by listing specific examples, as in **Section 3.A** of this bylaw.

Equivalent Sound Level (Leq) – The Leq represents the energy-averaged noise level over some time period of interest. The Leq is expressed in dBA, and the time period over which the Leq value applies should also be stated (i.e. Leq(1min) represents a one minute average; Leq(24h) represents a 24 hour average, etc.).

Maximum and Minimum Sound Levels (Lmax and Lmin) – The Lmax and Lmin represents the absolute loudest and quietest noise levels experienced for just an instant during some time period of interest. The Lmax and Lmin levels are expressed in dBA.

Noise Percentile Levels (Ln) – Ln levels are a statistical representation of changing noise levels indicating the noise level that was exceeded "n" percent of the time. For example, the L10, L50, and L90 represent the noise levels exceeded 10%, 50%, and 90% of the time, respectively. The L10 is often used to identify an intrusive noise level, while the L90 is considered to represent the steady background noise level.

Reasonable Person – Acting on behalf of the greater good of the public, a reasonable person is able to judge in an unbiased manner the appropriateness of a given situation. A reasonable person is appropriately informed, rational, capable, aware of the law, and fair-minded when applications of the law is sought, compatible with planning, working, or getting along with others. For the purpose of this bylaw, a reasonable person shall be defined as a Member of the Town, and/or their designee, as further described in **Section 4**.

Sound Level Meter (SLM) – A sound level meter is a calibrated electrical device used to measure the loudness of noise. For the purposes of this bylaw, a SLM must be capable of measuring and expressing noise levels in A-weighted decibels using an RMS “slow” time constant in accordance with Type 1 or Type 2 accuracy requirements of ANSI Standard S1.4. In addition, an “integrating” SLM must be used if any time-averaged noise metrics (such as Leq or Ln percentiles) are to be reported.

Stationary Noise Sources – Sources that emit noise on a continuous or repeatable basis and that are located in fixed positions. Example stationary noise sources would include, but are not limited to, building mechanical (HVAC) systems, power transformers, commercial processing machinery, etc.

Construction Noise Sources – Sources, activities, vehicles and/or equipment that emit noise as part of a construction or demolition project. Typically some form of engine power is required such as diesel or gasoline motors, hydraulic or pneumatic pressure, or electric power.

Designee – A person, who after due consideration, is selected by the Winchester Board of Health to respond in their place to investigate noise complaints. The designee becomes an authorized representative of the Board of Health only for matters involving this bylaw. A designee should work for the Town in some capacity such as, but not limited to, the Building Department, or a consultant hired by the Town to act in these regards.

3. Noise Criteria Limits

Noise criteria limits in this bylaw are based on the type of noise being produced, the sensitivity of the receiver and land-use being affected, the time of day during which the noise is generated, and the existing background noise level. Except where noted, the following noise criteria limits and restrictions are based on noise propagating to and affecting the receiver’s location.

3.A. Nuisance Noise

Noise which has the potential to annoy or disturb can be described as nuisance noise. Nuisance noise can vary significantly from person to person, and typically exhibit aspects such as pure tone squealing or whining, loud impulsive noises, repetitive thumping, low-frequency air-borne vibrations, etc.

For the purposes of this bylaw, nuisance noise shall be qualitatively defined by listing specific examples which are deemed to be annoying.

Therefore, it will be prohibited for persons or equipment to generate the following nuisance noises:

- The use of excessively loud radios, public address systems, shouting, or other noises associated with communications or advertisement, that have the potential to disturb nearby residents during the nighttime hours of 9:00 PM to 7:00 AM.
- The emptying and/or replacing of waste dumpsters that is not in accordance with Board of Health regulations.
- The use of powered landscaping tools, such as but not limited to lawn mowers and leaf blowers, during the nighttime hours of 9:00 PM to 7:00 AM.
- The use of truck Jake-brakes (other than emergency vehicles).
- The use of noise enhancing exhaust muffler systems (i.e. glass packs, sport mufflers) on motor vehicles and motorcycles at any time of day or night.
- The use of excessively loud automobile sound systems (i.e. radios, CD players, etc.), as judged by a reasonable person as defined in **Section 4**, at any time of day or night.
- The unreasonable extended use of vehicle horns under non-emergency conditions.
- The unnecessary (i.e. false) sounding of vehicle security alarm systems.

Note: that for all the purposes cited above in this Section 3.A., it is prohibited on Saturdays and Sundays to generate nuisances noise before 8:30am and after 6:00pm or at any time day or night when applicable.

3.B. Stationary Noise Sources

Stationary sources of noise may include, but are not limited to, building HVAC systems, power generation facilities, industrial equipment, water or sewage pump stations, railroad and subway lay-over facilities, electric power transformers, commercial factories and plants, truck depots, and recreational events. The noise level emitted by stationary noise sources shall not exceed the limits contained in **Table 1** when measured at the property line of the receiving property.

Table 1.
Noise Criteria Limits from Stationary Noise Sources

Receiver Land-Use	Daytime Noise Limit (7 AM to 6 PM)	Evening Noise Limit (6 PM to 9 PM)	Nighttime Noise Limit (9 PM to 7 AM)
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater	50 dBAs Leq(1min) or Background Leq(1min), whichever is greater	45 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater	55 dBAs Leq(1min) or Background Leq(1min), whichever is greater
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	65 dBAs Leq(1min) or Background Leq(1min), whichever is greater	60 dBAs Leq(1min) or Background Leq(1min), whichever is greater

Notes: Background Leq(1min) noise levels should be measured without the noise source in question operating.

Average noise levels measurements can be estimated if an integrating Leq noise meter is not available.

3.C. Construction Noise Sources

In general, construction and/or demolition activities shall only be permitted to occur within the town during the hours of 7:00 AM to 6:00 PM. However, it is understood that construction and demolition are inherently noisy activities which will likely be heard by adjacent residents and business operators during short periods of time. As such, the intent of this section is to balance the needs for the necessary construction work to be performed with the needs of the community for peace and quiet.

Therefore, cumulative noise generated by construction and/or demolition activities and operations shall not exceed the limits contained in **Table 2** when evaluated at the property line of the receiving property, nor shall the noise emission level of any individual piece of construction equipment exceed the noise emission limits contained in **Table 3** when measured at a distance of 50 feet from the loudest side of the piece of equipment.

**Table 2.
Construction Noise Criteria Limits**

Receiver Land-Use	Daytime Noise Limit (7 AM to 6 PM)	Evening Noise Limit (if specifically permitted) (6 PM to 9 PM)	Nighttime Noise Limit (9 PM to 7 AM)	Saturday and Sunday Noise Limit (8 AM to 4 PM)
Residential: - including private residences, multi-family residences, apartment complexes, retirement homes, etc.	65 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	60 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	45 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater
Residential within Commercial: - mixed land-use, primarily commercial areas but with some residential development, hotel/motels, hospitals, etc.	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	70 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	50 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater
Commercial: - including retail stores, business offices, houses of worship, restaurants, libraries, theaters, public parks, etc.	80 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	75 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater	N/A (*) Non-emergency construction and/or demolition activities are prohibited	55 dBAs L10 or Bkgd L10 + 5 dBAs, whichever is greater

Notes: Criteria approach taken from FHWA Roadway Construction Noise Handbook (FHWA, 2006).

L10 noise levels shall be measured over a period of 20 minutes.

Background (Bkgd) L10 noise levels should be measured prior to construction commencing in the field or without the noise source in question operating.

L10 noise levels measurements can be estimated if an integrating noise meter is not available by determining the average or Leq noise level plus 3 dBA.

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Any other equipment not listed above	85 dBAs Lmax

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In addition to the construction noise criteria limits shown in **Tables 2 and 3**, the following restriction(s) shall apply to any and all pieces of construction and/or maintenance equipment.

- The use of standard vehicle backup alarms, whose noise level exceeds 105 dBAs at a distance of 4 feet behind the vehicle, shall be prohibited. Alternatively, quieter-type manually-adjustable or automatically-adjustable backup alarms, or the use of observers used in lieu of audible backup alarms, are permitted for use in accordance with applicable OSHA Guidelines (29 CFR Part 1926, Subpart “O”, 1926.601.b.4 and 1926.602.a.9.).

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To be applicable, the Member, and/or their designee, must hear for him/herself the noise source in question. The Member, and/or their designee, must take conditional, circumstantial and extenuating factors into account, including but not limited to, the following:

- The necessity of the noise source to continue to operate.
- The extent to which the noise propagates to, and is heard by, noise-sensitive receivers.
- The time of day or night that the noise is occurring.
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- Noise generated by transportation systems in motion, such as vehicular traffic traveling on public roadways, aircraft overflights, commuter and freight trains, public transit systems and buses, are generally not regulated by local ordinances, and as such, shall not be a part of this noise bylaw (however, specific motor vehicle noise-enhancing devices, as described in **Section 3.A**, will still be subject to this bylaw). Commercial deliveries involving idling trucks and/or idling freight trains will be subject to this bylaw after a period not to exceed 20 minutes.
- Noise emitted by utility or Town service crews and equipment performing emergency repairs to restore supply of and/or operation of critical public utilities such as natural gas, electrical power, steam, potable water, telecommunications, sewerage removal, etc.
- Any noise emitted by public safety or emergency response vehicles while performing their intended duties. Specific examples of exempt emergency equipment include sirens, horns, generators, pumps, public address systems, etc.
- Noise generated by sources intended for public entertainment, when said sources are part of a legal activity such as, but not limited to, parades, sporting events, public concerts, fireworks display, etc.
- All snow clearance activities at any time of day, evening or night.
- The performance of Town-sponsored street sweeping operations at night on public ways which are otherwise inaccessible during daytime hours.
- Due to the continuously progressing nature of roadway work, the cumulative property line construction noise limits shown in **Table 2** shall not apply for roadway construction (however, individual pieces of equipment used for roadway construction will still be subject to the 50 foot emission limits shown in **Table 3**).

- The use of hand tools, powered lawn equipment and small motorized vehicles for construction, maintenance or repair of properties between the hours of 7:00 AM to 9:00 PM (except as noted in 3A above for Saturdays and Sundays).

6. Noise Compliance Measurements

Quantitative noise level measurements performed to demonstrate compliance or exceedance of the various noise criteria limits contained in this bylaw must be collected in accordance with accepted practices and procedures as recommended in ASTM Standards E1686-03, E1780-04, and E1014-84, using a sound level meter (SLM) capable of meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy. Noise data shall be collected using a calibrated SLM using a “slow” time constant with results expressed in A-weighted decibels (dBAs). The minimum information necessary to collect and report shall include the following:

- (1) The make and model of SLM and portable calibrator used for the noise readings.
- (2) The date which the SLM was last certified by the manufacturer, or other independent calibration laboratory, as meeting ANSI Standard S1.4 for Type 1 or Type 2 accuracy requirements (should be within previous two years).
- (3) The SLM calibration readings obtained prior to, and immediately following, performing the compliance noise measurements.
- (4) The type of windscreen used to cover the microphone.
- (5) The height at which the noise readings were collected (should be at least 5 feet above ground), and an estimate of the distance (in feet) from the noise source to the SLM.
- (6) The time of day, date, and duration of noise data collected by the SLM.
- (7) An indication of the background noise level collected in the absence of the noise source in question.
- (8) A brief description of the meteorological conditions during the noise readings including wind speed and direction, air temperature, precipitation, and ground cover conditions.
- (9) A clear and concise comparison of the measured noise level data (expressed in dBAs) verses the applicable noise criteria limits contained in **Section 3** of this bylaw.
- (10) The findings and conclusions to be drawn from the noise compliance measurements.

7. Enforcement, Penalties, Appeals

7.A. Enforcement

In the event a noise complaint is received from a resident or business owner, or at any time at the discretion of the Town, a representative from any appropriate department, and/or their designee, shall respond and investigate the circumstances surrounding the noise issue. Noise levels may be judged excessively loud by a “reasonable person” standard as defined in **Section 4** or may be measured at the receiving party’s property line by a properly designated investigating agent. If measurements are deemed

necessary, the investigating agent shall first have been trained in the proper use of, and equipped with, a calibrated sound level meter meeting the requirements described above in **Section 6**. The investigating agent shall collect all relevant information, perform noise compliance measurements (if available), and prepare a written report summarizing their findings in a manner consistent with the procedure described in **Section 6**.

If the investigating agent's findings indicate a violation of the noise criteria limits or restrictions contained in **Section 3**, except in those cases as described in **Section 5**, then the producer(s) of said noise shall be found in violation of this noise bylaw and will be cited to a civil penalty consistent with the guidelines in **Section 7.B** together with such relief as outlined in Section 34 of Chapter 8 of the Town's bylaws.

7.B. Penalties

1. The first violation of this bylaw shall result in the issuance of a *written warning* indicating the reason(s) for the violation and stating, at the investigating agent's discretion, a time period within which the offender(s) must cease production of the noise, or mitigate (reduce) the noise down to acceptable levels which will then comply with the restrictions and noise criteria limits in this bylaw.
2. The second violation of this bylaw stemming from the same noise issue within any 12 month period shall be punished by a fine of one hundred dollars (\$100.00).
3. Further violations of this bylaw within any 12 month period shall be punished by a fine of one thousand dollars (\$1,000.00), together with a loss of permit or license applicable to any stationary or construction noise source as defined in 2 above.
4. Each such act in violation of this bylaw which either continues or occurs more than one hour after issuance of a written warning of violation of this bylaw shall be deemed a *separate* offense and shall be prosecuted as such, unless it occurs within the time period granted for correcting the original offense.
5. If the violation occurs on the premises of rental property which is not owned by the offender, then in the interest of assisting property owners in exercising responsible property management, the Town will notify the owner-of-record in writing that the violation has occurred, including the nature and circumstances of the violation.

7.C. Appeals

An offender who has been cited and/or fined under the terms and procedures of this noise bylaw can *appeal* the citation within 30 days after receiving it by presenting to the Board of Selectmen's appointed Hearing Officer any alternative information, situational evidence, noise measurement data, extenuating circumstances, or explanation to the contrary of the investigating agent's findings. The Hearing Officer will serve in judgment of the appeal, and will have full discretion to reject, request additional details, reduce the severity of the penalties, continue, or enforce as issued the violation under appeal. The ruling of the Hearing Officer shall be final and not subject to further appeals within the Town's governance system.

8. Invalidity/Severability

If any provision of this bylaw shall be determined to be invalid or unenforceable by final judgment or order of a court of competent jurisdiction, the remaining provisions of this bylaw shall continue in effect to the fullest extent permitted by law.

BACKGROUND:

Town meeting had previously authorized funds to hire a noise and vibration engineering consultant to provide two tasks: An analysis of the noise issues associated with rail delivery services on the Commuter rail line near the Winchester-Woburn line, and; the development of a bylaw for town-wide noise mitigation.

The first task was completed and a report made on suggested solutions which involve the permission of the MBTA to construct noise mitigation on the rail line. Those solutions may be impractical.

This proposed bylaw is the product of the second task which the consultant worked on with Town staff. The intention is to provide a framework for measuring unacceptable levels of noise and a process for dealing with potential violations on a localized basis.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 5

ARTICLE 5: To see if the Town will vote to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

SOLICITATIONS AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law is intended to secure for residents of the town the tranquility which they reasonably expect to enjoy in the privacy of their homes and to protect them from unreasonable intrusion by unrequested and unwanted solicitation and canvassing. It is framed with deep respect for the principles embodied in the constitutions of the United States and the Commonwealth of Massachusetts and attempts to achieve a workable balance between the right of free speech and the right of privacy. It is intended to be framed narrowly and construed strictly to achieve its purpose by imposing certain restrictions as to the time, place and manner in which solicitation and canvassing are conducted. It is not intended to be applied to political or religious activities entitled to protection under the First Amendment to the United States Constitution.

Section 2. DEFINITIONS

(a) "Solicitation or canvassing" means traveling by foot, motor vehicle or any type of conveyance, from place to place, from house to house, or from street to street, for salary, commission or other remuneration, whether on behalf of oneself or of another person, firm or corporation and:

- (1) Selling, leasing or taking orders for the sale of any goods, wares, merchandise or services whatsoever, including without limitation books, periodicals, food, and home improvement services, or attempting to so sell, lease or take orders, whether or not advance payment on such sales is collected; or
- (2) Seeking or requesting donations of money, goods or services for any for-profit or nonprofit entity.

(b) "Residential property" includes without limitation each individual dwelling unit.

Section 3. PROHIBITION AND REQUIREMENTS

- (a) No person shall engage in solicitation or canvassing in or upon any private residential property in the Town of Winchester, and no firm, corporation, organization or other entity shall arrange for any person to engage in solicitation or canvassing in or upon any residential property, without first registering with the Chief of Police not less than seven days before commencing such solicitation or canvassing and obtaining from the Chief of Police a certificate evidencing such registration.
- (b) Persons engaged in solicitation or canvassing shall carry such certificate or registration while so engaged and shall produce such certificate upon the request of a police officer.
- (c) Immediately upon encountering an occupant of any residential property, a person engaged in solicitation or canvassing shall present such certificate of registration for inspection and inform the occupant of the nature and purpose of his business and, if he is representing an organization, firm or other entity, the nature and purpose of such organization, firm or other entity.
- (d) Each person engaged in solicitation or canvassing in or upon any residential premises shall immediately leave such premises upon the request of the occupant.
- (e) No person shall engage in solicitation or canvassing in or upon any residential property upon which is displayed a sign prohibiting trespassing, solicitation or canvassing.
- (f) No person engaging in solicitation or canvassing shall misrepresent in any way his true objective, status or mission or that of any organization on behalf of which he is so engaged.
- (g) Persons engaging in solicitation or canvassing shall comply with all federal, state and local laws and regulations, including but not limited to consumer protection laws such as MGL c. 93, 93A and 255D.

Section 4. REGISTRATION

- (a) Application. Persons seeking registration certificates in accordance with this by-law shall apply thereof not less than seven days before commencing solicitation or canvassing in the Town of Winchester. Such application shall be signed under the penalties of perjury and shall contain the following information on a form provided by the Chief of Police:
 - (1) Applicant's name;
 - (2) Applicant's business, residence and local address;
 - (3) Applicant's business, residence and local telephone numbers;
 - (4) Applicant's date of birth;
 - (5) Applicant's driver's license number and state of issue;
 - (6) Applicant's sex, race, height, weight, hair color and eye color;
 - (7) Length of time for which applicant seeks to conduct business in the Town of Winchester;
 - (8) Description of the nature of the business and the goods or services to be sold or purpose(s) for which donations are to be requested;
 - (9) Name, home office address and home office telephone number of applicant's employer, if any, or statement of self-employment;

(10) If applicant is operating or being transported by a motor vehicle, the year, make, model, color, registration number, state of registration, owner's name and address of each such vehicle.

(11) Such other identifying information as may be required by the Chief of Police.

(b) Fee. Upon filing such application each applicant shall pay a nonrefundable filing fee in the amount of \$50.

Section 5. INVESTIGATION AND ISSUANCE

(a) Upon receipt of an application for registration the Chief of Police shall cause to make an investigation of the applicant's background and reputation. Within seven days of the filing [of] such application the Chief of Police or his designee shall either approve such application and cause the certificate of registration to be issued or deny such application, stating the reason(s) for such denial. Failure of the Chief of Police or his designee to so act within seven days shall constitute approval of said application.

(b) Grounds for denial shall include but are not limited to the following:

(1) A conviction in any state or federal court of the United States or any court of a territory of the United States for any of the following named offenses committed within seven years prior to the date of such shall constitute grounds for denial of such application: burglary, breaking and entering, larceny, robbery, receiving stolen property, assault, fraud, sexual misconduct as specified in Chapter 265, Sections 13B and 22 through 24, and Chapter 272, Section 53 of the General Laws, unlawfully carrying weapons, or the attempt of any such offense;

(2) The failure to include any of the information requested in the application.

Section 6. CONTENTS OF CERTIFICATE

Each certificate of registration shall contain the signature of Chief of Police or his designee and shall show the name, address and photograph of the holder of said certificate, date of issue and registration number.

Section 7. APPEAL

(a) Any applicant aggrieved by the action of the Chief of Police in denying such application or in revoking such certificate of registration may appeal in writing to the Board of Selectmen within seven days of the action complicated of. The Board of Selectmen shall hold a hearing and render a decision within 30 days of the date the appeal is received.

(b) If the Board of Selectmen fails to render a decision within 30 days the appeal shall be deemed to be upheld.

Section 8. EXPIRATION OF CERTIFICATE

Each certificate of registration issued pursuant to this by-law shall expire 90 days from date of issue.

Section 9. TRANSFER OF CERTIFICATE

No certificate of registration may be transferred to any other person or entity.

Section 10. REVOCATION OF CERTIFICATE:

The Chief of Police may revoke the certificate of registration of any solicitor or canvasser for violation of any provision of this by-law or for providing false information on the application.

Section 11. DUTIES OF POLICE DEPARTMENT

The Police Department shall keep a record of all certificate of registration, including registration numbers, and application thereof for a period of six years after application. Enforcement authority of this By-Law shall be by criminal complaint filed by the Police Department.

Section 12. EXCEPTION

The provisions of this by-law shall not apply to the following persons:

- (a) Any person duly licensed under Chapter 101 of the General Laws or any persons exempted under Chapter 101, Chapter 149, Section 69, Chapter 180, Section 4, or any other General Law.
- (b) Any officer or employee of the town, county, state or federal government on official business; or
- (c) Route salespersons or others having established customers making periodic deliveries to such customers or making calls upon prospective customers to solicit orders for periodic route deliveries, including but not limited to news carriers.

Section 13. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this by-law shall be declared invalid or held unconstitutional by any court of last resort, the remainder shall continue in full force and effect.

Section 14. PENALTY

Whoever violates any provisions of this by-law shall be liable to a penalty of not less than \$300 for each offense.

Or take any other action in relation thereto.

(Board of Selectmen)

MOTION:

MOVED AND SECONDED to amend the Town of Winchester Code of By-Laws by adding a new chapter, as follows:

SOLICITATIONS AND CANVASSING

Section 1. STATEMENT OF PURPOSE

This by-law is intended to secure for residents of the town the tranquility which they reasonably expect to enjoy in the privacy of their homes and to protect them from unreasonable intrusion by unrequested and unwanted solicitation and canvassing. It is framed with deep respect for the principles embodied in the constitutions of the United States and the Commonwealth of Massachusetts and attempts to achieve a workable balance between the right of free speech and the right of privacy. It is intended to be framed narrowly and construed strictly to achieve its purpose by imposing certain restrictions as to the time, place and manner in which solicitation and canvassing are conducted. It is not intended to be applied to political or religious activities entitled to protection under the First Amendment to the United States Constitution.

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(1) Selling, leasing or taking orders for the sale of any goods, wares, merchandise or services whatsoever, including without limitation books, periodicals, food, and home improvement services, or attempting to so sell, lease or take orders, whether or not advance payment on such sales is collected; or

(2) Seeking or requesting donations of money, goods or services for any for-profit or nonprofit entity.

(b) "Residential property" includes without limitation each individual dwelling unit.

Section 3. PROHIBITION AND REQUIREMENTS

(a) No person shall engage in solicitation or canvassing in or upon any private residential property in the Town of Winchester, and no firm, corporation, organization or other entity shall arrange for any person to engage in solicitation or canvassing in or upon any residential property, without first registering with the Chief of Police not less than seven days before commencing such solicitation or canvassing and obtaining from the Chief of Police a certificate evidencing such registration.

(b) Persons engaged in solicitation or canvassing shall carry such certificate or registration while so engaged and shall produce such certificate upon the request of a police officer.

(c) Immediately upon encountering an occupant of any residential property, a person engaged in solicitation or canvassing shall present such certificate of registration for inspection and inform the occupant of the nature and purpose of his business and, if he is representing an organization, firm or other entity, the nature and purpose of such organization, firm or other entity.

- (d) Each person engaged in solicitation or canvassing in or upon any residential premises shall immediately leave such premises upon the request of the occupant.
- (e) No person shall engage in solicitation or canvassing in or upon any residential property upon which is displayed a sign prohibiting trespassing, solicitation or canvassing.
- (f) No person engaging in solicitation or canvassing shall misrepresent in any way his true objective, status or mission or that of any organization on behalf of which he is so engaged.
- (g) Persons engaging in solicitation or canvassing shall comply with all federal, state and local laws and regulations, including but not limited to consumer protection laws such as MGL c. 93, 93A and 255D.

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- (3) Applicant's business, residence and local telephone numbers;
- (4) Applicant's date of birth;
- (5) Applicant's driver's license number and state of issue;
- (6) Applicant's sex, race, height, weight, hair color and eye color;
- (7) Length of time for which applicant seeks to conduct business in the Town of Winchester;
- (8) Description of the nature of the business and the goods or services to be sold or purpose(s) for which donations are to be requested;
- (9) Name, home office address and home office telephone number of applicant's employer, if any, or statement of self-employment;
- (10) If applicant is operating or being transported by a motor vehicle, the year, make, model, color, registration number, state of registration, owner's name and address of each such vehicle.
- (11) Such other identifying information as may be required by the Chief of Police.

(b) Fee. Upon filing such application each applicant shall pay a nonrefundable filing fee in the amount of \$50.

Section 5. INVESTIGATION AND ISSUANCE

(a) Upon receipt of an application for registration the Chief of Police shall cause to make an investigation of the applicant's background and reputation. Within seven days of the filing [of] such application the Chief of Police or his designee shall either approve such application and cause the certificate of registration to be issued or deny such application, stating the reason(s) for such denial. Failure of the Chief of Police or his designee to so act within seven days shall constitute approval of said application.

(b) Grounds for denial shall include but are not limited to the following:

- (1) A conviction in any state or federal court of the United States or any court of a territory of the United States for any of the following named offenses committed within seven years prior to the date of such shall constitute grounds for denial of such application: burglary, breaking and entering, larceny, robbery, receiving stolen property, assault, fraud, sexual misconduct as specified in Chapter 265, Sections 13B and 22 through 24, and Chapter 272, Section 53 of the General Laws, unlawfully carrying weapons, or the attempt of any such offense;
- (2) The failure to include any of the information requested in the application.

Section 6. CONTENTS OF CERTIFICATE

Each certificate of registration shall contain the signature of Chief of Police or his designee and shall show the name, address and photograph of the holder of said certificate, date of issue and registration number.

Section 7. APPEAL

- (a) Any applicant aggrieved by the action of the Chief of Police in denying such application or in revoking such certificate of registration may appeal in writing to the Board of Selectmen within seven days of the action complicated of. The Board of Selectmen shall hold a hearing and render a decision within 30 days of the date the appeal is received.
- (b) If the Board of Selectmen fails to render a decision within 30 days the appeal shall be deemed to be upheld.

Section 8. EXPIRATION OF CERTIFICATE

Each certificate of registration issued pursuant to this by-law shall expire 90 days from date of issue.

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No certificate of registration may be transferred to any other person or entity.

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The Chief of Police may revoke the certificate of registration of any solicitor or canvasser for violation of any provision of this by-law or for providing false information on the application.

Section 11. DUTIES OF POLICE DEPARTMENT

The Police Department shall keep a record of all certificate of registration, including registration numbers, and application thereof for a period of six years after application. Enforcement authority of this By-Law shall be by criminal complaint filed by the Police Department.

Section 12. EXCEPTION

The provisions of this by-law shall not apply to the following persons:

- (a) Any person duly licensed under Chapter 101 of the General Laws or any persons exempted under Chapter 101, Chapter 149, Section 69, Chapter 180, Section 4, or any other General Law.

(b) Any officer or employee of the town, county, state or federal government on official business; or

(c) Route salespersons or others having established customers making periodic deliveries to such customers or making calls upon prospective customers to solicit orders for periodic route deliveries, including but not limited to news carriers.

Section 13. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this by-law shall be declared invalid or held unconstitutional by any court of last resort, the remainder shall continue in full force and effect.

Section 14. PENALTY

Whoever violates any provisions of this by-law shall be liable to a penalty of not less than \$300 for each offense.

BACKGROUND:

The Town does not have a bylaw that regulates solicitation activities in the Town's neighborhoods. This proposed bylaw provides a framework for regulation with the Police Department and investigation of the background of soliciting and canvassing firms before getting local approval.

Expected activities includes political and religious activities entitled to protection and charitable activity in conformance with M.G.L. Chapter 180.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 6

To amend the Zoning Bylaw by adding Section 8.10.

COMMUNITY RESOURCE OVERLAY DISTRICT

8.10 Community Resource Overlay District (CROD)

- 8.10.1 **Purpose.** The purpose of the Community Resource Overlay District (CROD) is to encourage and promote the use of land and facilities located within the Overlay District that serve as community resources in the Town of Winchester where the primary use of the land or facility is for nonprofit educational, agricultural, cultural, institutional, or civic purposes, by providing for certain accessory uses as described in this Section 8.10.
- 8.10.2 **Overlay District.** The CROD is established as an overlay district in the locations shown on the Town of Winchester Zoning Map. Where the CROD authorizes uses not allowed in the underlying zoning district or establishes different standards or procedures from those otherwise set forth in this Zoning Bylaw, the provisions of the CROD shall control.
- 8.10.3 **Definitions.** See Section 10.0 – Community Resource Overlay District
- 8.10.4 **Applicability.** The CROD Accessory Uses that are set forth in Section 8.10.5 shall be permitted as of right on Community Resource Property located in the CROD. The application of the CROD shall not restrict the uses, including other accessory uses, allowed as of right, under the Dover Amendment (M.G.L Ch 40A Section 3), or by special permit in the underlying zoning district.
- 8.10.5 **Table of Use Regulations for CROD.** The Table of Accessory Uses shall be permitted on a Community Resource Property according to the following Symbols:
- | | |
|-----------|--|
| Y | Permitted as of Right- See Section 9.5.1 of this Bylaw for applicability of Site Plan Review. |
| N | Not Permitted; Prohibited |
| SP | Permitted only under a special permit granted by the designated Special Permit Granting Authority, as provided for in Subsection 9.4 of this Bylaw |

Use	CROD #1: Wright-Locke Farm	
1. Demonstrations, classes, instruction or other educational lectures and assemblies whether conducted by the Community Resource Property owner, occupant or a third party.	Y	
2. Activities which follow from the primary use of the Community Resource Property, for example, preparation, assembly, or packaging of products from agricultural crops, whether such crops are grown on the Community Resource Property or at another location.	Y	
3. The sale of merchandise related to the primary use of the Community Resource Property.	Y	
4. The use of the land or facility(ies) for the conduct of social gatherings or similar types of events either open to the public or by private invitation, whether conducted or sponsored by the Community Resource Property owner, occupant or by third parties.	Y	
5. The serving of food and alcohol, whether in connection with a special event conducted by the Community Resource Property owner, occupant or third party. <i>(All serving of food and alcohol shall be subject to the normal permitting procedures from the appropriate Town permit granting authority).</i>	Y	
6. Leasing of space associated with the primary Community Resource Use.	Y	

8.10.6 **Other Accessory Uses.** This Section 8.10 is not meant to limit any accessory uses currently permitted under the Dover Amendment (M.G.L Ch 40A Section 3).

8.10.7 **Conflicting Provisions.** If the provisions of this Section 8.10 are in conflict with any other section of the Winchester Zoning Bylaw, Section 8.10 shall govern.

COMMUNITY RESOURCE OVERLAY DISTRICT (CROD). Within this Section, the following terms shall have the following meanings:

Community Resource Property. Land and facilities having as their primary Use a Community Resource Use.

Community Resource Use. A primary use of a property for a nonprofit educational, agricultural, cultural, institutional, or civic purpose.

CROD Accessory Use. A CROD Accessory Use is a use carried out on a Community Resource Property if related and subordinate to the Community Resource Use and includes the uses set forth in Section 8.10.5. CROD Accessory Uses are in addition to and not in limitation of accessory uses that would be otherwise permitted in the zoning district, whether as of right, under the Dover Amendment, or by special permit.

MODIFY EXISTING WINCHESTER, MA ZONING MAP TO REFLECT NEW OVERLAY DISTRICT:

A certain parcel of land owned in part by the Town of Winchester, and in part by Wright-Locke Land Trust, Inc. located on Ridge Street in the Town of Winchester, County of Middlesex, Commonwealth of Massachusetts, said parcel of land being bounded and described as follows:

BEGINNING at a steel survey marker at the northeasterly corner of said parcel, on the westerly layout line of Ridge Street, and the southerly line of High Street Extension, a private way; thence

N 74°52'59" W a distance of 70.02 feet to the end of a stone wall; thence along said stone wall

S 86°13'05" W a distance of 35.10 feet to a point; thence

S 74°56'02" W a distance of 68.03 feet to a point; thence

S 68°48'14" W a distance of 59.63 feet to a point; thence

S 59°22'06" W a distance of 173.09 feet to a drill hole; thence

S 58°38'52" W a distance of 183.82 feet to a point; thence

S 56°33'52" W a distance of 87.39 feet to a point; thence

S 58°43'48" W a distance of 62.59 feet to a point; thence

S 58°25'00" W a distance of 106.77 feet to a point; thence

S 56°15'50" W a distance of 41.92 feet to a point; thence

S 60°56'56" W a distance of 64.30 feet to a point; thence

N 32°03'33" W a distance of 13.35 feet, to a point; thence

S 72°19'49" W a distance of 14.98 feet, to a point; thence

S 65°47'08" W a distance of 29.94 feet, to a point; thence

S 63°23'38" W a distance of 91.06 feet, to a point; thence

S 58°34'30" W a distance of 137.03 feet, to a point; thence

S 50°57'02" W a distance of 55.46 feet, to a point; thence

S 46°50'10" W a distance of 164.62 feet, to a point; thence

S 45°20'31" W a distance of 27.27 feet, to a point; thence

N 43°41'57" W a distance of 77.99 feet, crossing the stream connecting Locke Farm Pond with Little Pond, to the end of said stone wall; thence

S 72°35'41" W a distance of 18.44 feet, to a point on the town line between Winchester and Lexington near a stone wall; thence

S 45°27'48" E a distance of 417.67 feet along said town line, to a stone bound with drill hole marking town line corner "L-W-4"; thence

S 39°27'09" W a distance of 306.24 feet along the town line between Winchester and Lexington, to a point witnessed by a concrete bound with drill hole located N 68°00'08" W a distance of 2.49 feet from said point; thence

S 68°00'08" E a distance of 229.84 feet, to a point; thence

N 62°40'22" E a distance of 720.30 feet, to a steel survey marker; thence

N 62°40'22" E a distance of 453.92 feet in part along two stone walls, to a point on the westerly location line of Ridge Street; thence

N 30°09'03" W a distance of 88.28 feet along said location line of Ridge Street, to a point at the westerly location line of an unnamed way; thence

along a curve turning to the left with an arc length of 45.64 feet, with a radius of 30.00 feet, and a delta angle of 87°10'00", along said location line of an unnamed way, to a point; thence

N 48°28'50" W a distance of 51.61 feet, along said location line of an unnamed way, to a point; thence

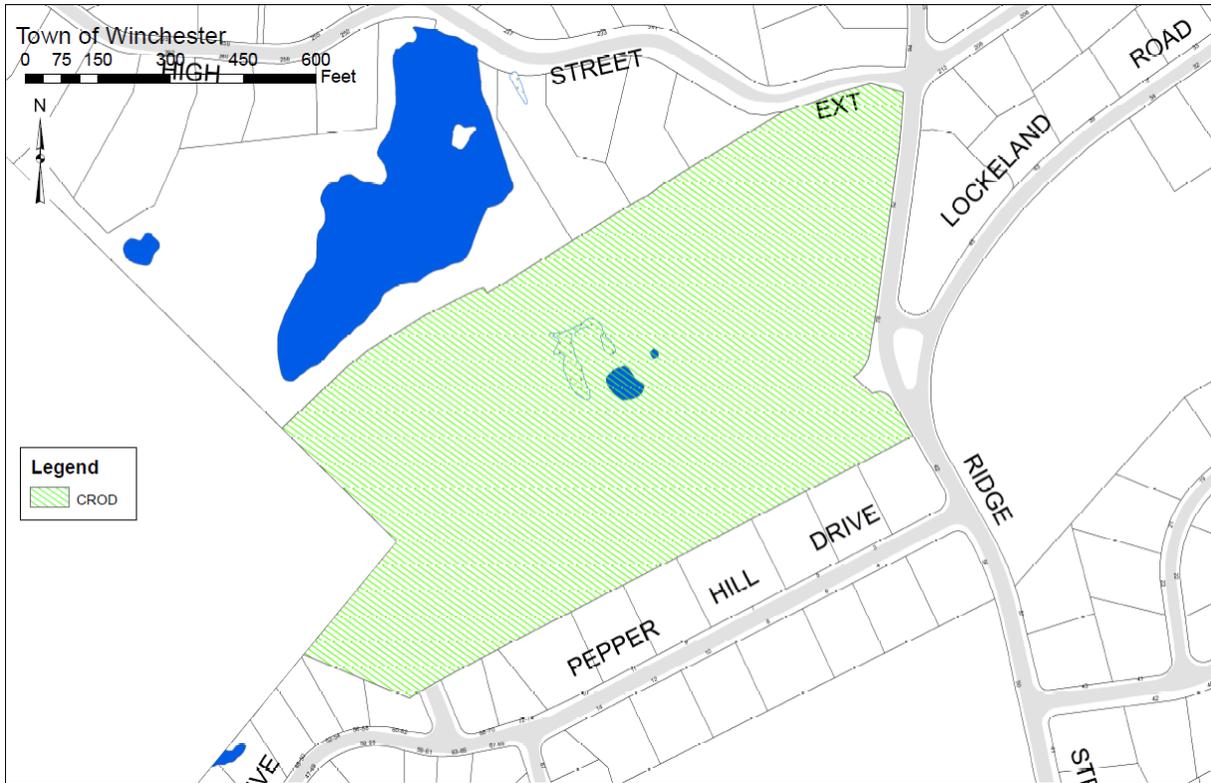
along a curve turning to the left with an arc length of 60.03 feet, with a radius of 70.00 feet, and a delta angle of 49°08'20", along said location line of an unnamed way, to a point; thence

N 09°08'12" E a distance of 97.32 feet, along said location line of an unnamed way, to a point on the westerly location line of Ridge Street; thence

N 07°59'57" E a distance of 295.36 feet along said location line of Ridge Street to a stone bound with drill hole;

thence along a curve turning to the left with an arc length of 98.63 feet, with a radius of 1,386.70 feet, and a delta angle of 04°04'30", along said location line of Ridge Street to a stone bound with drill hole; thence

N 03°55'27" E a distance of 51.15 feet by Ridge Street to the POINT OF BEGINNING, containing an area of 20.05 acres, more or less.



(Planning Board)

MOTION:

MOVED AND SECONDED to add a new Section 8.10 to the Winchester, MA Zoning Code, entitled Community Resource Overlay District.

COMMUNITY RESOURCE OVERLAY DISTRICT

8.10 Community Resource Overlay District (CROD)

8.10.1 **Purpose.** The purpose of the Community Resource Overlay District (CROD) is to encourage and promote the use of land and facilities located within the Overlay District that serve as community resources in the Town of Winchester where the primary use of the land or facility is for nonprofit educational, agricultural, cultural, institutional, or civic purposes, by providing for certain accessory uses as described in this Section 8.10.

8.10.2 **Overlay District.** The CROD is established as an overlay district in the locations shown on the Town of Winchester Zoning Map. Where the CROD authorizes uses not allowed in the underlying zoning district or establishes different standards or procedures from those otherwise set forth in this Zoning Bylaw, the provisions of the CROD shall control.

8.10.3 **Definitions.** See Section 10.0 – Community Resource Overlay District

8.10.4 **Applicability.** The CROD Accessory Uses that are set forth in Section 8.10.5 shall be permitted as of right on Community Resource Property located in the CROD. The application of the CROD shall not restrict the uses, including other accessory uses, allowed as of right, under the Dover Amendment (M.G.L Ch 40A Section 3), or by special permit in the underlying zoning district.

8.10.5 **Table of Use Regulations for CROD.** The Table of Accessory Uses shall be permitted on a Community Resource Property according to the following Symbols:

- Y** Permitted as of Right- See Section 9.5.1 of this Bylaw for applicability of Site Plan Review.
- N** Not Permitted; Prohibited
- SP** Permitted only under a special permit granted by the designated Special Permit Granting Authority, as provided for in Subsection 9.4 of this Bylaw

Use	CROD #1: Wright-Locke Farm	
1. Demonstrations, classes, instruction or other educational lectures and assemblies whether conducted by the Community Resource Property owner, occupant or a third party.	Y	
2. Activities which follow from the primary use of the Community Resource Property, for example, preparation, assembly, or packaging of products from agricultural crops, whether such crops are grown on the Community Resource Property or at another location.	Y	
3. The sale of merchandise related to the primary use of the Community Resource Property.	Y	
4. The use of the land or facility(ies) for the conduct of social gatherings or similar types of events either open to the public or by private invitation, whether conducted or sponsored by the Community Resource Property owner, occupant or by third parties.	Y	
5. The serving of food and alcohol, whether in connection with a special event conducted by the Community Resource Property owner, occupant or third party. <i>(All serving of food and alcohol shall be subject to the normal permitting procedures from the appropriate Town permit granting authority).</i>	Y	
6. Leasing of space associated with the primary Community Resource Use.	Y	

8.10.6 **Other Accessory Uses.** This Section 8.10 is not meant to limit any accessory uses currently permitted under the Dover Amendment (M.G.L Ch 40A Section 3).

8.10.7 **Conflicting Provisions.** If the provisions of this Section 8.10 are in conflict with any other section of the Winchester Zoning Bylaw, Section 8.10 shall govern.

COMMUNITY RESOURCE OVERLAY DISTRICT (CROD). Within this Section, the following terms shall have the following meanings:

Community Resource Property. Land and facilities having as their primary Use a Community Resource Use.

Community Resource Use. A primary use of a property for a nonprofit educational, agricultural, cultural, institutional, or civic purpose.

CROD Accessory Use. A CROD Accessory Use is a use carried out on a Community Resource Property if related and subordinate to the Community Resource Use and includes the uses set forth in Section 8.10.5. CROD Accessory Uses are in addition to and not in limitation of accessory uses that would be otherwise permitted in the zoning district, whether as of right, under the Dover Amendment, or by special permit.

MODIFY EXISTING WINCHESTER, MA ZONING MAP TO REFLECT NEW OVERLAY DISTRICT:

A certain parcel of land owned in part by the Town of Winchester, and in part by Wright-Locke Land Trust, Inc. located on Ridge Street in the Town of Winchester, County of Middlesex, Commonwealth of Massachusetts, said parcel of land being bounded and described as follows:

BEGINNING at a steel survey marker at the northeasterly corner of said parcel, on the westerly layout line of Ridge Street, and the southerly line of High Street Extension, a private way; thence

N 74°52'59" W a distance of 70.02 feet to the end of a stone wall; thence along said stone wall

S 86°13'05" W a distance of 35.10 feet to a point; thence

S 74°56'02" W a distance of 68.03 feet to a point; thence

S 68°48'14" W a distance of 59.63 feet to a point; thence

S 59°22'06" W a distance of 173.09 feet to a drill hole; thence

S 58°38'52" W a distance of 183.82 feet to a point; thence

S 56°33'52" W a distance of 87.39 feet to a point; thence

S 58°43'48" W a distance of 62.59 feet to a point; thence

S 58°25'00" W a distance of 106.77 feet to a point; thence

S 56°15'50" W a distance of 41.92 feet to a point; thence

S 60°56'56" W a distance of 64.30 feet to a point; thence

N 32°03'33" W a distance of 13.35 feet, to a point; thence

S 72°19'49" W a distance of 14.98 feet, to a point; thence

S 65°47'08" W a distance of 29.94 feet, to a point; thence

S 63°23'38" W a distance of 91.06 feet, to a point; thence

S 58°34'30" W a distance of 137.03 feet, to a point; thence

S 50°57'02" W a distance of 55.46 feet, to a point; thence

S 46°50'10" W a distance of 164.62 feet, to a point; thence

S 45°20'31" W a distance of 27.27 feet, to a point; thence

N 43°41'57" W a distance of 77.99 feet, crossing the stream connecting Locke Farm Pond with Little Pond, to the end of said stone wall; thence

S 72°35'41" W a distance of 18.44 feet, to a point on the town line between Winchester and Lexington near a stone wall; thence

S 45°27'48" E a distance of 417.67 feet along said town line, to a stone bound with drill hole marking town line corner "L-W-4"; thence

S 39°27'09" W a distance of 306.24 feet along the town line between Winchester and Lexington, to a point witnessed by a concrete bound with drill hole located N 68°00'08" W a distance of 2.49 feet from said point; thence

S 68°00'08" E a distance of 229.84 feet, to a point; thence

N 62°40'22" E a distance of 720.30 feet, to a steel survey marker; thence

N 62°40'22" E a distance of 453.92 feet in part along two stone walls, to a point on the westerly location line of Ridge Street; thence

N 30°09'03" W a distance of 88.28 feet along said location line of Ridge Street, to a point at the westerly location line of an unnamed way; thence

along a curve turning to the left with an arc length of 45.64 feet, with a radius of 30.00 feet, and a delta angle of 87°10'00", along said location line of an unnamed way, to a point; thence

N 48°28'50" W a distance of 51.61 feet, along said location line of an unnamed way, to a point; thence

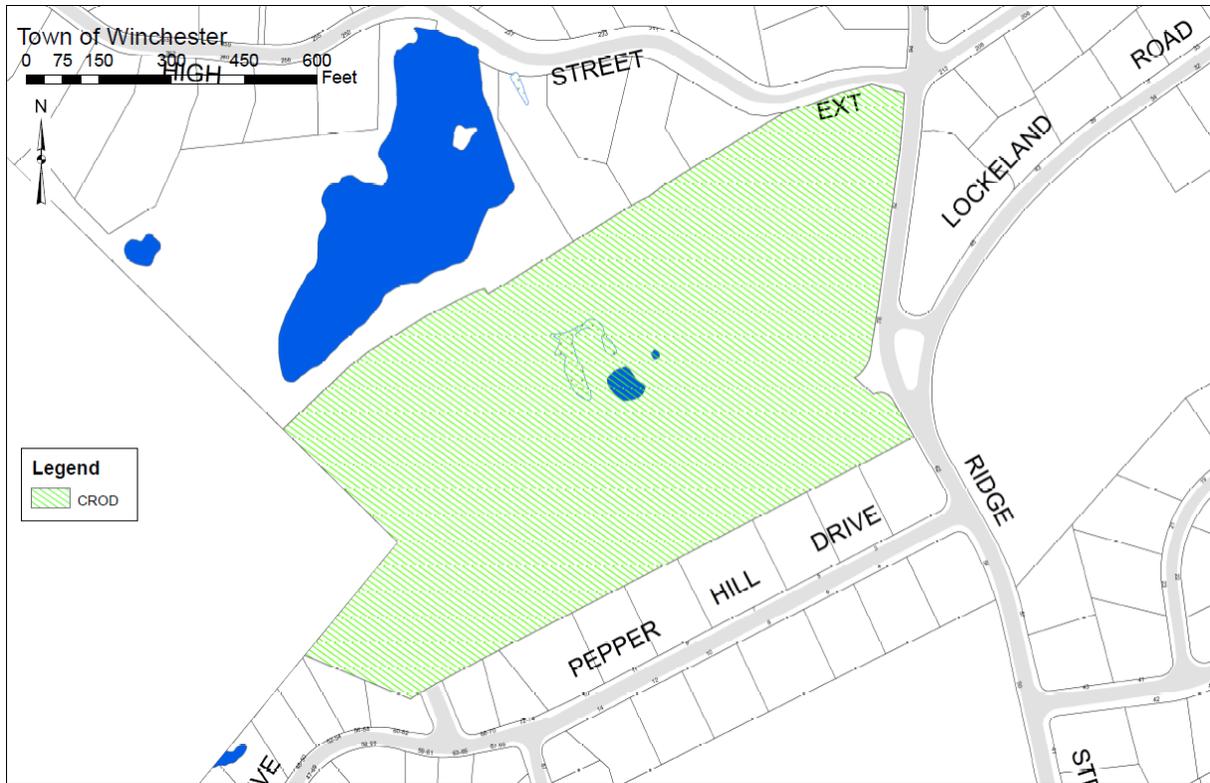
along a curve turning to the left with an arc length of 60.03 feet, with a radius of 70.00 feet, and a delta angle of 49°08'20", along said location line of an unnamed way, to a point; thence

N 09°08'12" E a distance of 97.32 feet, along said location line of an unnamed way, to a point on the westerly location line of Ridge Street; thence

N 07°59'57" E a distance of 295.36 feet along said location line of Ridge Street to a stone bound with drill hole;

thence along a curve turning to the left with an arc length of 98.63 feet, with a radius of 1,386.70 feet, and a delta angle of 04°04'30", along said location line of Ridge Street to a stone bound with drill hole; thence

N 03°55'27" E a distance of 51.15 feet by Ridge Street to the POINT OF BEGINNING, containing an area of 20.05 acres, more or less.



BACKGROUND:

Many non-profit community groups in town host educational and social events that are part of, or support, their mission but are not permitted by the underlying zoning. At Wright-Locke Farm, the Dover Amendment (Massachusetts General Law Chapter 40 A, Section 3) allows these activities to occur even though they are outside of the list of principal or accessory uses for the underlying RDA-20 zoning district. To make sure Winchester’s zoning by-law keeps up with the accessory uses which are allowed under the Dover Amendment and supported by the town and its residents, the Planning Board has brought forward this overlay district to correct some possible conflicts. While there have been no complaints about any of the activities at the farm, an abundance of caution and a desire to support our community resources drive this effort to clear up any inconsistencies in the zoning code.

The proposed CROD is a model for other community groups in town that host educational and social events. The goal is that the CROD can be expanded and tailored to specific properties in future years to accommodate other community-oriented endeavors such as events at the Sanborn House and the Jenks Center.

2/3 Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 7

To see if the Town will vote to amend the membership of the Educational Facilities Planning and Building Committee (EFPBC) by adding an alternate member with a background in construction, to be appointed by the Moderator, to the eleven person committee, or take any other action in relation thereto.

(EFPBC)

MOTION:

MOVED AND SECONDED, to amend the membership of the Educational Facilities Planning and Building Committee (EFPBC) by adding an alternate member with a background in construction, to be appointed by the Moderator, to the eleven person committee.

ARTICLE 7 BACKGROUND:

The purpose of this alternate member would be to assure that there is a quorum for critical meetings. This person would be appointed by the moderator for a three year term, effective January 1, 2017, and should have a background in construction.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 8

To hear and act on the report of the Capital Planning Committee regarding the proposed Capital Plan for FY2018 and place the report on file, or take any other action in relation thereto.

(Capital Planning Committee)

MOTION:

MOVED AND SECONDED that the Capital Planning Committee Report for FY2018 be received placed on file.

Capital Planning Committee Report sent under separate cover

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 9

To see if the Town will vote to appropriate an additional sum of money for the reconstruction of the Mt. Vernon Street Bridge for the purpose of flood mitigation, including the construction of an additional culvert, including planning, design and all other costs incidental and related thereto; to determine whether this appropriation shall be raised by transferring the unexpended bond proceeds set forth below, for which the projects are complete and for which no liability remains, or otherwise; or to take any other action relative thereto.

<u>Fund/Project</u>	<u>Town Meeting Vote</u>	<u>Amount</u>
8863 Public Safety Building	11/2008 (Article 12)	\$ 83.48
8869 Drainage	11/2008 (Article 23)	16,602.03
8887 Public Safety Building	11/2014 (Article 7)	34,337.79

(Capital Planning Committee)

MOTION #1:

MOVED AND SECONDED, that \$51,023.30 be appropriated as an additional sum for the reconstruction of the Mt. Vernon Street Bridge for the purpose of flood mitigation, including the construction of an additional culvert, including planning, design and all other costs incidental and related thereto; and further this appropriation shall be raised by transferring the unexpended bond proceeds set forth below, for which the projects are complete and for which no liability remains or otherwise.

<u>Fund/Project</u>	<u>Town Meeting Vote</u>	<u>Amount</u>
8863 Public Safety Building	11/2008 (Article 12)	\$ 83.48
8869 Drainage	11/2008 (Article 23)	16,602.03
8887 Public Safety Building	11/2014 (Article 7)	34,337.79

BACKGROUND:

This motion reallocates unexpended bond proceeds on completed projects to the Mt. Vernon Street Bridge Culvert Project. This project is currently underway.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 10

To see if the Town will vote to appropriate a sum of money for the following projects:

1. McCall School Gym Ceiling Replacement: \$95,000;
2. DPW Wall/Stable Demolition/Repair: \$150,000;
3. McCall School Conversion of existing space, Design: \$50,000;
4. New Fire Pumper: \$550,000;
5. VFA Building Inventory Phase II: \$51,187;

Said appropriations shall be made from the Building Stabilization Fund or Capital Stabilization Fund established under Chapter 69 of the Acts of 2002, or take any other action in relation thereto.

(Capital Planning Committee)

MOTION 1:

MOVED AND SECONDED that \$95,000 be appropriated from the Building Stabilization Fund established under Chapter 69 of the Acts of 2002 for the McCall School Gym Ceiling Replacement, including engineering, construction and all other costs incidental and related thereto.

MOTION 2:

MOVED AND SECONDED that \$150,000 be appropriated from the Building Stabilization Fund established under Chapter 69 of the Acts of 2002 for the DPW Wall/Stable Demolition/Repair, including engineering, construction and all other costs incidental and related thereto.

MOTION 3:

MOVED AND SECONDED that \$50,000 be appropriated from the Building Stabilization Fund established under Chapter 69 of the Acts of 2002 for the McCall School Conversion of Existing Space, Design, including engineering, and all other costs incidental and related thereto.

MOTION 4:

MOVED AND SECONDED that \$550,000 be appropriated from the Capital Stabilization Fund established under Chapter 69 of the Acts of 2002 for the purchase of a New Fire Pumper and all other costs incidental and related thereto.

MOTION 5:

MOVED AND SECONDED that \$51,187 be appropriated from the Capital Stabilization Fund established under Chapter 69 of the Acts of 2002 for the VFA Building Inventory, Phase II and all other costs incidental and related thereto.

Capital Planning Report sent under separate cover

2/3 Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 11

To see if the Town will vote to appropriate a sum of money for a community lead service water line replacement program to reduce the potential for elevated lead levels at customer taps and to maintain high water quality conditions, including the replacement of lead neck connections, and the replacement or rehabilitation of public and privately-owned water service lines containing lead, including all design, engineering and other costs incidental or related thereto; to determine whether this appropriation shall be raised by borrowing from the Massachusetts Resources Authority or otherwise; and to take any other action relative thereto.

(Capital Planning Committee)

MOTION:

MOVED AND SECONDED That \$600,000 is appropriated for a community lead service water line replacement program to reduce the potential for elevated lead levels at customer taps and to maintain high water quality conditions, including the replacement of lead neck connections, and the replacement or rehabilitation of public and privately-owned water service lines containing lead, including all design, engineering and other costs incidental or related thereto; and that the Treasurer with the approval of the Board of Selectmen is authorized to borrow all or a portion of such amount from the Massachusetts Water Resources Authority (“MWRA”) and in connection therewith to enter into a loan agreement and financial assistance agreement with the Authority and to accept any grants for the project from the MWRA, provided that the amount of the authorized borrowing shall be reduced by the amount of any such grants received from the MWRA; that the Town Manager is authorized to have oversight of said project; and that in accordance with Section 4-2 of the Winchester Home Rule Charter, the Town Manager shall have the authority to enter into contracts and approve payments with respect to said project.”

BACKGROUND:

The Department of Public Works has been removing lead piping in the Town’s public water system on an annual basis. At Spring Town Meeting an ad hoc committee was formed to work with staff to formulate a program for the further elimination of lead piping in the water system. This Article identifies the appropriate sources and uses to carry forward a more aggressive public works program that will expedite the elimination of much, if not all, of the known lead piping in both the public and private pipes in the water system. This program will be carried out over a 2-3 year period by both the DPW and private contractors.

2/3 Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 12

To see if the Town will vote to appropriate a sum of money for the following projects:

1. Water Filtration Plant, Replacement of Scada system including all design, engineering and other costs incidental or related thereto: \$175,000;
2. EPA MS4 Stormwater Permit – NOI Preparation: \$13,000;

said appropriation shall be from the Water and Sewer Retained Earnings or otherwise; or take any other action in relation thereto.

(Capital Planning Committee)

MOTION 1:

MOVED AND SECONDED that \$175,000 be appropriated from Water & Sewer Retained Earnings for the replacement of the Scada System at the Water Filtration Plant including design, engineering and all other costs incidental and related thereto.

MOTION 2:

MOVED AND SECONDED that \$13,000 be appropriated from Water & Sewer Retained Earnings for the Notice of Intent preparation for the EPA MS4 Stormwater Permit and all other costs incidental and related thereto.

Capital Planning Report sent under separate cover

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 13

To see if the Town will vote to transfer from free cash or other available funds, a sum or sums of money, for the purpose of engineering and associated consultations pertaining to the location of electronic transmission lines in Winchester as proposed by Eversource in accordance with its petitions to the Energy Facility Siting Board, Department of Public Utilities EFSB 15-04/DPU 15-140, 141 and EFSB 15-03/DPU 15-64, 65 or take any other action in relation thereto.

(Board of Selectmen)

MOTION:

MOVED AND SECONDED that \$125,000 be appropriated from Free Cash for the purpose of engineering and associated consultations pertaining to the location of electronic transmission lines in Winchester as proposed by Eversource in accordance with its petitions to the Energy Facility Siting Board, Department of Public Utilities EFSB 15-04/DPU 15-140, 141 and EFSB 15-03/DPU 15-64, 65 and all other costs associated thereto.

BACKGROUND:

The Town has contested the proposed siting of a 345 kilovolt electric transmission line primarily on a route over Cross Street and a portion of Washington Street (beginning at the Cross and Washington Street intersection and extending northerly to the Winchester-Woburn line). The Town is opposed to the route on both engineering and public health grounds and on the basis that a corresponding 115 kilovolt line must be sited in the Town from the Medford line on Main Street to a substation in Woburn on Pond Street. These funds will continue to pay for the costs associated with the prosecution of the case at the Energy Facility Siting Board in Boston by Town Counsel.

Majority Vote Required

Town of Winchester
Annual Fall Town Meeting 2016



ARTICLE 14

To see if the Town will vote to transfer \$20,800 from the Recreation Enterprise Fund Retained Earnings to the General Fund to reimburse the General Fund for using the FY16 Reserve Fund to supplement Recreation Enterprise related costs in FY16 or take any other action in relation thereto.

(Finance Committee)

MOTION:

MOVED AND SECONDED that \$20,800 be transferred from Recreation Enterprise Fund Retained Earnings to the General Fund for use of the FY2016 Reserve Fund to supplement the FY2016 Recreation Enterprise Fund.

ARTICLE 14 BACKGROUND:

This transfer replaces the \$20,800 that was taken out of the Reserve Fund in FY16 to supplement the Recreation Enterprise Fund.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 15

To see if the Town will raise and appropriate or transfer from available funds a sum of money to be transferred to the Worker's Compensation Reserve Fund established in accordance with Massachusetts General Law Chapter 40 Section 13c to pay future workers compensation claims, or take any other action in relation thereto.

(Town Manager)

MOTION:

MOVED AND SECONDED that the Town vote to appropriate \$180,000 from Free Cash to be transferred to the Workers Compensation Reserve Fund established in accordance with Mass General Law Chapter 40 Section 13c to pay future workers compensation claims.

BACKGROUND:

The Town self-insures the Worker's Compensation program which can be unpredictable. In the past several years, the Worker's Compensation budget required supplemental appropriations to meet the needs of the program; however, in FY16, the costs were less than what was budgeted. Due to the volatile nature of this budget, the Town seeks to reserve the \$180,000 turnback to help defray future costs.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 16

To see if the Town will vote to appropriate the premium paid to the Town upon the sale of bonds dated October 27, 2016 for the remodeling and reconstruction of, and an addition to, Winchester High School, which bonds are the subject of a Proposition 2½ debt exclusion, to pay costs of the project being financed by such bonds or notes and to reduce the amount authorized to be borrowed for such project, but not yet issued by the Town, by the same amount, or to take any other action relative thereto.

(Town Manager)

MOTION:

MOVED AND SECONDED that the Town appropriate \$689,809 from the premium paid to the Town upon the sale of the \$20,000,000 General Obligation School Project Loan, Chapter 70B Bonds dated October 27, 2016 for the remodeling and reconstruction of, and an addition to, Winchester High School, which bonds are the subject of a Proposition 2½ debt exclusion, to pay costs of the project being financed by such bonds or notes and to reduce the amount authorized to be borrowed for such project, but not yet issued by the Town, by the same amount.

BACKGROUND:

The application of these funds, realized from the sale of bonds associated with the debt exclusion override for Winchester High School must be applied, to the reduction of the overall borrowing cost as required by law.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 17

To see if the Town will vote to raise and appropriate, or transfer from the Parking Meter Fund or other available funds, a sum of money for the maintenance of the parking meters, maintenance of the parking lot and other costs associated with the collection and enforcement of parking ticket revenues, including the payments to the Massachusetts Department of Conservation and Recreation (DCR) at the Wedgemere Lot, or take any other action in relation thereto.

(Town Manager)

MOTION:

MOVED AND SECONDED, that \$80,000 be appropriated from the Parking Meter Fund to the Wedgemere Parking Article account #0396912 to pay for expenses associated with the operation of the Wedgemere Commuter Station Parking Lot.

ARTICLE 17 BACKGROUND:

Since October of 2013, the Town, in agreement with the Commonwealth's Department of Conservation and Recreation (DCR), has operated the parking lot at this location. After much negotiation, we now have a signed Revocable License Agreement which gives the Town the authority to manage the lot until September 30, 2018. The agreement calls for expenses associated with this operation to be paid out of revenue derived from the operation of the lot, and the net revenue to be divided between the DCR (66.66%) and the Town (33.34%). This transfer from parking revenues is expected to cover expenses and net revenue distribution to DCR for FY2016. Over the past twelve (12) months the revenue amounts have trended upward due to increased parking and expenses have remained level.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 18

To see if the Town will vote to amend the water and sewer rates currently in effect in accordance with Chapter 7, Section 3 of the Code of By-Laws.

(Board of Selectmen)

The Board of Selectmen will be meeting on Tuesday, November 1st to vote the recommended Water and Sewer rates. The Motion and Background will be distributed under separate cover.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting 2016



ARTICLE 19

To see if the Town will vote to raise and appropriate, or transfer from available funds including free cash, a sum of money to supplement or reduce appropriations in the budget article and other articles that were voted at the Spring 2016 Town Meeting, or take any other action in relation thereto.

(Town Manager)

MOTION 1:

MOVED AND SECONDED that the Town vote to raise and appropriate \$65,000 for technology and curriculum improvements for the Winchester Public Schools.

MOTION 2:

MOVED AND SECONDED that the Town vote to appropriate \$100,000 from free cash to supplement the FY2017 legal budget.

BACKGROUND 1:

At the spring 2016 Town Meeting, the Winchester Public School budget was reduced from the School Committee request. The school department identified \$65,000 in unmet needs for technology and curriculum work and suggested that, should the Chapter 70 funds allocation be higher than anticipated, that a warrant article would be put forth at Town Meeting to ask for restoration of those funds. The net school aid for FY17 is \$133,726 higher than had been projected. A warrant article was presented and approved by the School Committee on September 13, 2016.

BACKGROUND 2:

The additional appropriation is required to fund the added legal expenses associated with the prosecution of the case at the Energy Facility Siting Board regarding the proposed Eversource Transmission Line.

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting



ARTICLE 20

To see if the Town will vote to hear and act on the report of the Personnel Board and take any action in connection with recommendations as to wages and salaries, working conditions, new or revised rates of wages and salaries, changes, additions, adjustments or revisions of wages and salaries and in classifications and definitions, and in amending, revising and adding to the Personnel Policy Guide as well as in other matters thereto related; and to raise and appropriate money for any adjustments or revisions of wages and salaries of employees subject and not subject to collective bargaining agreements or in any job classifications, and to provide for salary or wage adjustments not otherwise provided for, said monies to be expended by the departments affected; determine in what manner the monies shall be raised by taxation or otherwise, or take any other action in relation thereto.

(Personnel Board)

The Personnel Board report will be sent under separate cover

Majority Vote Required

Town of Winchester
Fall Annual Town Meeting



ARTICLE 21

To see if the Town will vote to accept committee reports, dissolve old committees, authorize new committees, or take any other action in relation thereto.

(Board of Selectmen)

Majority vote required

Town of Winchester
Fall Annual Town Meeting



ARTICLE 22

To see if the Town will vote to take appropriate action to comply with provisions of M.G.L. Chapter 59, Section 21C, a law known as “2 ½ Tax Limitation”, or take any other action in relation thereto.

(Town Manager)

Majority vote required