

TOWN OF WINCHESTER

CODE OF BY-LAWS



Enacted by Town Meeting
March 4, 1976

Approved by the Attorney General
May 25, 1976

Latest Revision Effective Spring of 2013

2013

AMENDMENTS

Amendments to the Code of By-Laws must first receive a majority vote of Town Meeting, followed by approval of the Attorney General of the Commonwealth of Massachusetts.

<u>Date of Town Meeting Action</u>	<u>Article</u>	<u>Date of Approval By Attorney General</u>
April 25, 1983	2	August 25, 1983
April 28, 1983	14	August 25, 1983
November 7, 1983	3	February 29, 1984
April 26, 1984	8	August 10, 1984
November 8, 1984	11, 12, 15, 16	April 8, 1985
November 7, 1985	18, 19, 20, 21, 22	February 14, 1986
November 12, 1987	5, 10	December 8, 1987
November 10, 1988	13	February 7, 1989
November 5, 1990	7	March 19, 1991
November 26, 1990	9	March 19, 1991
November 4, 1991	6	February 4, 1992
May 21, 1992	26	September 15, 1992
April 26, 1993	12	August 20, 1993
June 12, 1995	23	August 20, 1995
November 6, 1995	7	December 13, 1995
November 10, 1997	17	March 20, 1998
April 27, 1998	3	September 3, 1998
November 5, 1998	11	February 26, 1999
May 13, 1999	9	September 13, 1999
July 28, 2000	30	October 19, 2000
April 30, 2001	8	October 3, 2001
November 5, 2001	4	March 11, 2002
June 10, 2002	4 and 7	August 5, 2002
April 28, 2003	33	October 2, 2003
November 3, 2003	8, 9,10,11,15	January 27, 2004
April 25, 2005	2	September 7, 2005
April 24, 2006	6	September 26, 2006
May 1, 2006	12	September 26, 2006
April 23, 2007	3	July 25, 2007
November 5, 2007	16-22	January 2, 2008
April 29, 2010	6	September 2, 2010
November 18, 2010	27	January 2, 2011
April 30, 2012	3	August 12, 2012
May 7, 2012	5	August 12, 2012
May 10, 2012	30	August 12, 2012
November 8, 2012	3	December 20, 2012
April 29, 2013	3	July 8, 2013

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CHAPTER 1

GENERAL PROVISIONS

Section 1. SHORT TITLE

These by-laws (which do not include the zoning by-law) shall be known and may be cited as the Code of By-Laws, Town of Winchester.

Section 2. AMENDMENTS

The Code of By-Laws may be amended, repealed or revised from time to time, by a majority vote of the town meeting. (A change in the zoning by-law shall require a two-thirds vote.) All proposed by-laws adopted by the town meeting shall be submitted to the Attorney General for review, and published, as required by the General Laws.

Section 3. DEFINITIONS OF TERMS

The provisions of Section 7-4 (References to General Laws), Section 7-5 (Computation of Time), Section 7-6 (Number and Gender) and Section 7-7 (Definitions) of the charter are hereby incorporated into these by-laws. In addition, the following words, for the purposes of these by-laws shall, unless another meaning is clearly apparent from the way in which the word is used, have the following meanings:

By-Laws - The word “by-laws” shall mean the Code of By-Laws, Town of Winchester, as the same may be amended from time to time.

Charter - The word “charter” shall mean the Winchester Home Rule Charter.

Hackney Carriage - The word “hackney carriage” shall mean every vehicle used, driven or set up to be used for the conveyance of persons for hire, except that it shall NOT include railroad and street railway cars, ambulances, trackless trolley vehicles within the meaning of Chapter 163, Section 2 of the General Laws, motor vehicles operated in the same manner and for the purposes stated in Chapter 159A, Section 1 of the General Laws, or sightseeing automobiles as defined in Chapter 592, Section 1 of the Statutes of 1913.

Mailed - The word “mailed” shall mean deposited in the local U. S. Post Office, or branch thereof, postage prepaid.

Majority Vote - The words “majority vote” shall mean a majority of those present and voting, provided a quorum of the body is present.

Refuse - The word “refuse” shall have the meaning set forth in Chapter 11, Section 1.12 of these by-laws.

Street - The word “street” shall mean any public way, highway, street, avenue, boulevard, alley, court, lane, common or square located within the town, but shall not include private ways.

Two-Thirds Vote - The words “two-thirds vote” shall mean two-thirds of the number of persons present and voting, provided a quorum of the body is present.

Town Agency - The words “town agency” shall mean any board, commission, committee, department or office of the town government, whether elected, appointed or otherwise constituted.

Town Bulletin Board - The words “town bulletin boards” shall mean the bulletin boards on which official town notices are posted.

Town Office - The words “town office” shall mean a position in the town held by town officers as defined.

Town Officer - The words “town officer” shall mean an elected or appointed official of the town exclusive of town meeting members.

Section 4. TOWN SEAL

The town shall have a seal which shall be in the following style: Viz.:



The town clerk shall be the keeper of the town seal. Papers or documents issued from any town agency may be attested by use of the town seal. The colors of the seal shall be the same as those in the original drawing on file in the Office of the Town Clerk.¹

¹ Art 4 of the 2001 Fall Town Meeting replaced the design of the seal with the 1896 version designed by Edmund M. Garrett, and specified the colors of the seal by adding the final sentence.

CHAPTER 2

TOWN MEETINGS

Section 1. MANNER IN WHICH TOWN MEETINGS ARE TO BE CALLED

1.1 **WARRANTS** - Every town meeting shall be called pursuant to a warrant issued by the board of selectmen which shall state the time and place at which the meeting is to convene and the subjects which are to be acted upon.

1.2 **NOTIFICATION** - The board of selectmen shall cause copies of the warrant for each town meeting to be posted on the town bulletin boards at least seven days before the meeting is to convene. Such posting shall be deemed to be the legal notification of such meeting, and the legal service of such warrant.

1.3 **DISTRIBUTION** - The board of selectmen shall cause a copy of the warrant for each town meeting to be delivered in hand, or mailed to the residence of the town moderator, the representative town meeting members and to the head of each town agency at least ten¹ days before the meeting is to convene. The board of selectmen shall also provide for the distribution, by mail or otherwise, of a copy of the warrant for each town meeting, to every occupied dwelling in the town, at least ten¹ days before the town meeting is to convene. The distribution provided in this sub-section (.3) shall not be deemed to be a part of the legal service of the town meeting and failure to comply with the provisions of this sub-section shall not serve to invalidate the proceedings of any town meeting.

Section 2. TIME OF MEETINGS

2.1 **IN GENERAL** - The town meeting shall meet, in regular meeting, twice in each calendar year and, in special meetings, at such other times as the board of selectmen may direct, or as otherwise provided by law.

2.2 **SPRING MEETING** - There shall be a spring town meeting, which shall be primarily concerned with the adoption of an annual budget and other warrant articles which have a fiscal effect on the town. The spring town meeting shall begin on the last² Monday of April and shall continue, by adjournment from time to time, until disposition has been made of all articles contained in the warrant. However, no article that contains an appropriation of funds applicable to the annual operating budget for the ensuing fiscal year shall be considered by this town meeting prior to the first Monday of May.

¹ Art 11 of the 1984 Fall Town Meeting changed "seven" to "ten".

² Art 3 of the 2012 Fall Town Meeting change "fourth" to "last"

2.2.1 During the first session of the spring town meeting, as the last order of business under Article 1 (reports of town officers), town meeting member precinct meetings shall be held for the purpose of electing precinct chairmen and precinct clerks, electing persons to fill town meeting member vacancies, electing members to the town meeting committee on rules, and to conduct other precinct business that may be necessary and proper. During the first session of the fall town meeting, as the last order of business under Article 1 (reports of town officers), town meeting member precinct meetings shall be held, if necessary, for the purpose of electing persons to fill town meeting member vacancies, and to conduct other precinct business that may be necessary and proper.³ Persons elected as precinct clerk shall report all election results to the town clerk. Nothing contained herein shall prohibit the holding of precinct meetings at other times and places as town meeting members may deem necessary.

2.3 **FALL MEETING**⁴ - There shall be a fall town meeting, which shall be primarily concerned with non-fiscal matters. The fall town meeting shall begin on the first Monday in November, and shall continue, by adjournment from time to time, until disposition has been made of all articles contained in the warrant. However, in years in which the Town Clerk must administer Federal and/or State Elections then the fall town meeting shall begin on the first Thursday after the scheduled Federal or State election and shall continue, by adjournment from time to time, until disposition has been made of all articles contained in the warrant.

2.4 **NOTICE OF ADJOURNED SESSION** – Notice of every adjourned town meeting shall be posted by the town clerk on all the town bulletin boards, and the town clerk shall also notify the absent members by mail within twenty-four (24) hours of the adjournment. The notice shall state briefly the business to be acted upon at said meeting and shall include notice of any proposed reconsideration.⁵

Section 3. RULES OF PROCEDURE

3.1 **IN GENERAL** - The proceedings of town meetings shall be governed by the rules of parliamentary procedure contained in Robert's Rules of Order Revised, as the same may be revised from time to time, unless another provision is made by statute or by these by-laws.

3.2 **PREPARATION FOR DEBATE** - It shall be the duty of every citizen of the town seeking recognition to speak at a town meeting to have attempted in advance of the town meeting to inform himself regarding the warrant article under consideration. On any warrant article on which a public hearing has not been held, the town manager or the appropriate town agency shall

³ Art 2 of the 1983 Spring Town Meeting amended this sub-section to provide for precinct meetings at the Fall Town Meeting.

⁴Art 19 of the 2007 Fall Town Meeting by deleting Subsection 2.3 Fall Town Meeting and substituting the language.

⁵ Art 3 of the 1983 Fall Town Meeting added this section.

schedule a time and place at which information with respect to said article shall be furnished in advance of the meeting.

3.3 PARTICIPATION IN DEBATE - The moderator shall first recognize the proponent of the main motion under each article in the warrant unless the maker of any other motion is offering a procedural motion or for the previous question.

The moderator shall recognize any non-resident or minor, provided the town meeting so authorizes.

3.4 LIMITATION ON INDIVIDUAL SPEAKERS - Unless granted an extension of time by vote of the meeting, the individual speaking as the initial proponent on a main motion shall not speak for more than ten minutes. Subsequently, any person speaking on any motion shall not speak for more than five minutes unless granted an extension of time by the meeting. No person shall receive more than one extension of time on any pending motion, but this extension shall be for whatever time voted by town meeting.

3.5 LIMITATION ON DEBATE, SPECIAL CIRCUMSTANCES - Upon a motion to lay on the table, not more than ten minutes shall be allowed for debate, and no person shall speak thereon more than three minutes.

3.6 DIVISION OF QUESTIONS - If a motion is susceptible of division, it shall be divided and the question put separately upon each part thereof if ten town meeting members so request, or the moderator, in his discretion, so directs.

3.7 RECONSIDERATION - A motion for reconsideration is a main motion and may be offered at any time when no other motion is pending.

If a motion for reconsideration is made, it shall be the first order of business at the next adjourned session of the town meeting. If no adjourned session is ordered, pending motions for reconsideration shall be placed before the town meeting immediately prior to acceptance by the chair of a motion for dissolution of the town meeting.

Favorable action on a motion for reconsideration shall require a two-thirds vote.

Action on a motion for reconsideration may be postponed by a majority vote.

A subsection of the main motion under an article may be reconsidered without first reopening the main motion under the article.

Not more than one motion for reconsideration on the same subject shall be in order.

3.8 PREPARATION FOR TOWN MEETING⁶

3.8.1 **Public Hearings** – Public hearings on warrant articles are held for the purpose of informing town meeting members and interested citizens as provided by the charter and other sections of the by-laws.

3.8.2 **Warrant Article Requirements:**⁷

- (1) The proponent of each warrant article shall prepare or cause to be prepared the main motion as it is to be presented, prepare a supporting report and cause copies of each to be made available to town meeting members at the required public hearing. If requested, the board of selectmen shall provide, or cause to be provided, assistance with the preparation of the formal motion.
- (2) The town manager's office shall cause a copy of each main motion and supporting report to be delivered to town meeting members at least seven (7) days before the first session of town meeting, unless prohibited by applicable law.
- (3) For Warrant Articles sponsored by Town Boards or Committees, absence of a timely main motion and supporting report shall preclude any consideration of the article by the town meeting until seven (7) days after such main motion and report is made available to members, unless otherwise voted by a majority of the town meeting.

Section 4. STANDING COMMITTEES

4.1 FINANCE COMMITTEE⁸

4.1.1 **Establishment** - There shall be a finance committee having the responsibilities and organized in the manner described below.

4.1.2 **Composition; Term of Office** - The finance committee shall consist of fifteen voters, who shall hold no other town office. The members shall be appointed for terms of three years each, so arranged that the terms of office of five members shall expire each year.

4.1.3 **Appointment of Members** - The members of the finance committee shall be appointed by an appointing committee consisting of the moderator, the chairman of the board of selectmen and the chairman of the finance committee.

⁶ Art 8 of the 1984 Spring Town Meeting added this new sub-section; it was further amended by Art 19 of the 1985 Fall Town Meeting, and again by Art 33 of the 2003 Spring Town Meeting.

⁷ Art 20 of the 2007 Fall Town Meeting deleting Section 3.8.2- Warrant Article Requirements, and replacing the language.

⁸ Art 5 Spring Town Meeting 2012

4.1.4 **Time for Appointments** - Appointments to the finance committee shall be made within thirty days following the dissolution of the spring town meeting.

4.1.5 **Duties** - The finance committee shall each year receive and review the proposed budget submitted by the town manager. The finance committee shall conduct one or more public hearings and thereafter shall file its recommended budget with the office of the town clerk for distribution to town meeting members and subsequent town meeting action.

The finance committee shall, in addition, prepare a written report, stating the committee's recommendations and its reasons therefor, pertaining to all warrant articles which involve the expenditure of town funds. It may also, at its discretion, report on any article in the warrant.

Copies of such committee reports shall be mailed or electronically distributed to the town moderator, to each town meeting member, to each member of the board of selectmen, to each member of the school committee and to the heads of all town departments. Written authorization must be provided to the Town Clerk in order to receive electronic distribution of materials.

4.1.6 **Filling of Vacancies** -Whenever a vacancy occurs on the committee, it shall be filled in the manner set forth in Section 4.1.3 above.⁹

4.2 PERSONNEL BOARD¹⁰

4.2.1 **Establishment** - There shall be a personnel board having the responsibilities and organized in the manner described below.

4.2.2 **Composition; Term of Office** - The personnel board shall consist of seven voters, who shall hold no other town office. The members shall be appointed for terms of three years each, so arranged that the terms of office of no more than three and no fewer than two members shall expire each year.

4.2.3 **Appointment of Members** - The members of the personnel board shall be appointed by an appointing committee consisting of the moderator, the chairman of the board of selectmen and the chairman of the school committee.

4.2.4 **Time for Appointments** - Appointments to the personnel board shall be made within thirty days following the dissolution of the spring town meeting.

4.2.5 **Duties** - The personnel board shall conduct research on area wage and working conditions and shall serve in an advisory capacity to town agencies and the town manager.

⁹ Art 26 of the 1992 Spring Town Meeting changed the method of filling vacancies.

¹⁰ Art 5 Spring Town Meeting 2012

The board shall also assist in the coordination of collective bargaining activities with all organized groups, excepting the professional school staff.

Not later than March first of each year, the town manager shall submit a proposed compensation plan and personnel policy guide to the personnel board. The board shall hold a public hearing on the proposed compensation plan and personnel policy guide and thereafter forward in writing to the town manager its recommendations regarding the proposed plan and policy guide. When placing his final compensation plan and personnel policy guide before the town meeting, the town manager shall attach thereto all recommendations of the personnel board not adopted by him.

The personnel board shall, in addition, prepare a written report, stating the board's recommendations and reasons therefor, on all warrant articles involving personnel matters, except for new positions in various town agencies.

Copies of such committee reports shall be mailed or electronically distributed to the town moderator, to each town meeting member, to each member of the board of selectmen, to each member of the school committee and to the heads of all town departments. Written authorization must be provided to the Town Clerk in order to receive electronic distribution of materials.

4.2.6 Filling of Vacancies - Whenever a vacancy occurs on the board, it shall be filled in the manner set forth in Section 4.2.3 above.

4.3 COMMITTEE ON GOVERNMENT REGULATIONS¹¹

4.3.1 Establishment - There shall be a committee on government regulations, as provided in Article 8, Section 8-5(h) of the charter.

4.3.2 Composition; Term of Office - The committee on government regulations shall consist of eight town meeting members, one to be appointed from each precinct by the moderator for terms of three years, so arranged that as nearly an equal number of terms as possible shall expire each year.

4.3.3 Duties - The committee on government regulations shall review all warrant articles which would, if adopted, effect or require changes in these by-laws. The committee shall also be responsible for the decennial review of the by-laws and for the review of proposed changes in the charter.

¹¹ Art 5 Spring Town Meeting 2012

The committee shall prepare a written report stating the committee's recommendations for favorable or unfavorable action and the reasons therefor, pertaining to any warrant articles which would, if adopted, effect changes in the by-laws or the charter.

Copies of such committee reports shall be mailed or electronically distributed to the town moderator, to each town meeting member, to each member of the board of selectmen, to each member of the school committee and to the heads of all town departments. Written authorization must be provided to the Town Clerk in order to receive electronic distribution of materials.

4.3.4 Filling of Vacancies - Whenever a vacancy occurs on the committee, the moderator shall fill the vacancy for the unexpired term.

4.4 COMMITTEE ON RULES¹²

4.4.1 Establishment - There shall be a committee on rules as provided in Article 8, Section 8-5(h) of the charter.

4.4.2 Composition; Term of Office - The committee on rules shall consist of eight members, one to be elected by and from the town meeting members from each precinct. The terms of office of members of the committee on rules shall be for three years, so arranged that as nearly an equal number of terms as possible shall expire each year.

4.4.3 Duties - The committee on rules shall provide a continuing oversight of the business, conduct and procedures of the town meeting.

The committee on rules shall at least annually prepare a written report stating the committee's recommendations and its reasons therefor, pertaining to the business, conduct and procedures of the town meeting.

Copies of such committee reports shall be mailed or electronically distributed to the town moderator, to each town meeting member, to each member of the board of selectmen, to each member of the school committee and to the heads of all town departments. Written authorization must be provided to the Town Clerk in order to receive electronic distribution of materials.

The committee on rules shall present to the fall town meeting, and to such other town meetings as it deems appropriate, the name of each town meeting member, who was notified in writing by the town clerk as provided in Chapter 5, Section 3 of the code of by-laws and whom the committee on rules has decided should be considered for forfeiture of office, whose seat may be declared vacant by a vote of the town meeting.

¹² Art 5 Spring Town Meeting 2012

The town clerk shall provide to the committee on rules prior to each spring town meeting the names of all town meeting committees which have been established by a vote of town meeting as provided in Chapter 2, Section 5 of these by-laws. The committee on rules shall present to the town meeting the name of each town meeting committee that should be discharged of its duties by vote of the town meeting.¹³

4.4.4 Filling of Vacancies - Whenever a vacancy occurs on the committee, the remaining town meeting members from the precinct where the vacancy exists shall meet in a precinct caucus and select a person from among themselves to fill the vacancy for the unexpired term. The caucus of the pertinent precinct town meeting members shall be held at a time and place designated by the town clerk.

4.5 CAPITAL PLANNING COMMITTEE

4.5.1 Establishment - There shall be a capital planning committee as provided in Article 6, Section 6-7 of the charter.

4.5.2 Composition; Appointment - The capital planning committee shall consist of seven voters, who may hold other town offices. The members shall consist of the following: three members appointed by the board of selectmen; one member appointed by the planning board from among its members; one member appointed by the school committee; and two members appointed by the finance committee, at least one of whom shall be from among its members.

4.5.3 Term of Office - The four members of the capital planning committee appointed by the planning board, school committee and the finance committee shall serve at the pleasure of the respective board or committee appointing them. The three members appointed by the board of selectmen shall serve three-year terms, so arranged that one shall expire each year.

4.5.4 Duties - The capital planning committee shall each year assist the town manager in the preparation of materials for and the development of a capital improvement program as provided in Article 6, Section 6-7 of the charter. The committee shall also review the capital improvement program prepared by the town manager and shall report its recommendations to the board of selectmen and to the finance committee. The town manager's capital improvement program and the capital planning committee's recommendations shall become an integral part of the finance committee's budget report. The committee shall make recommendations to the town meeting regarding the capital program and all articles involving capital expenditures.

4.5.5 Filling of Vacancies - Whenever a vacancy occurs on the committee, the body which appoints the member whose position is vacant shall fill the vacancy within thirty days.

¹³ Art 18 of the 1985 Fall Town Meeting added the last paragraph to sub-section 4.4.3.

4.6 HUMAN SERVICES COMMITTEE

4.6.1 **Establishment** - There shall be a human services committee, as permitted by Article 2, Section 2-11 of the charter.

4.6.2 **Composition; Appointment** - The human services committee shall consist of seven voters, who may hold other town offices. The committee shall consist of two public members appointed by the board of selectmen and one other member each from each of the following bodies respectively: the board of selectmen, the board of health, the council on aging, the school committee or its designee, and the finance committee.

4.6.3 **Term of Office** - The two public members shall serve terms of three years each, so arranged that they shall not expire in the same year. The other members shall serve at the pleasure of the body that appoints them.

4.6.4 **Duties** - The human services committee shall receive and review all proposals for human services programs which originate outside the town offices and shall make recommendations concerning such proposals to the town meeting.

The committee shall recommend to the town manager as to the town agency which should provide day to day supervision of such programs and at appropriate intervals, review and evaluate ongoing programs for effectiveness and continued need for support.

The committee shall be consulted on such human services proposals as in the judgment of members of other town agencies or the town manager are deemed appropriate for review by the committee.

Staff services shall be provided by the departments represented on the committee.

4.6.5 **Filling of Vacancies** - Whenever a vacancy occurs on the committee, the body which appointed the member whose position is vacant shall fill the vacancy within thirty days.

4.7 COMMITTEE FOR EQUAL OPPORTUNITY¹⁴

4.7.1 **Establishment** - There shall be a committee for equal opportunity as permitted by Article 2, Section 2-11 of the charter and by Chapter 2, Section 5 of the code of by-laws.

4.7.2 **Composition; Term of Office** - The committee for equal opportunity shall consist of fifteen residents, who may hold other town offices. The members shall be appointed for terms of

¹⁴ Under the terms established for the duration of this committee, it ceased to exist at the end of the 1985 Spring Town Meeting.

three years each, so arranged that the terms of office of five members shall expire each year and that the members appointed by each of the three appointing bodies or officer shall be as evenly staggered as possible.

4.7.3 Appointment of Members - The members of the committee for equal opportunity shall be appointed in the following manner and shall include, insofar as reasonably possible, persons broadly representative of the town's inhabitants in terms of race, sex, religion, national origin, age and special need. The board of selectmen shall appoint one from among its members and four other residents who are involved, directly or indirectly, in the providing of municipal services to the town. The school committee shall appoint one from among its members and four other residents who are involved, directly or indirectly, in the providing of educational services to the town. The moderator shall appoint five additional residents.

4.7.4 Time for Appointments - Appointments to the committee for equal opportunity shall be made as soon as possible after the establishment of the committee and, in subsequent years, shall be made within thirty days following the dissolution of the spring town meeting.

4.7.5 Duties - The committee for equal opportunity shall evaluate the need for, shall develop and shall assist the various town officers, town agencies, organized civic groups and the residents of the town in initiating policies and programs to assure equal opportunity for all citizens of the town regardless of race, sex, religion, national origin, age and special need. The committee shall also monitor the implementation and administration of such policies and programs and evaluate their effectiveness. The committee shall report its findings and recommendations to town officers, town agencies and others as it deems appropriate and shall at least annually make a written report to the school committee, board of selectmen and moderator, which report shall be included in the annual town reports. Town officers and agencies shall assist the committee for equal opportunity in performing these responsibilities.

4.7.6 Filling of Vacancies - Whenever a vacancy occurs on the committee, it shall be filled by the appointing board or officer who originally appointed the member whose seat has become vacant.

4.7.7 Duration - The committee for equal opportunity shall remain in existence through the end of the 1985 spring town meeting unless further extended by a vote of the town meeting amending this section.

Section 5. OTHER COMMITTEES

The town meeting may from time to time establish such other committees as it shall deem appropriate, having such composition, terms and duties not inconsistent with law, as the town meeting shall determine.

Section 6. MAILING OF REPORTS¹⁵

The time for distributing copies of the reports required of all standing committees described in this chapter shall be the same as the time for the distribution of the warrant.

¹⁵ Article 5 Spring Town Meeting 2012

CHAPTER 3

ELECTED OFFICERS

Section 1. ANNUAL TOWN ELECTIONS

The annual town election to fill elected town offices, to elect members of the representative town meeting and to determine any matters which are required to be determined by referendum election shall be held on the last Tuesday of March.

Section 2. HOURS OF VOTING

During all annual town elections and any special town elections, the polls shall open at 7:00 a.m. and shall remain open until 8:00 p.m. at which time they will close subject to the following. The officer in charge of each polling place shall at 8:00 p.m. determine the voter last arrived before then, shall record his name, and shall permit him and any voters who had arrived at the polling place and had remained in line before him to vote.

Section 3. ADDITIONAL POWERS AND DUTIES OF BOARD OF SELECTMEN

In addition to those powers and duties given by Section 3-2 of the charter or otherwise given by law, the board of selectmen shall have the following powers and duties:

3.1 The board of selectmen shall be the agents of the town to institute, prosecute, defend and compromise any and all claims, actions and proceedings by or against the town or in which the rights or interest of the town are or may be involved.

3.2 deleted¹

3.3 deleted

3.4 The board of selectmen shall at least twice annually review the report of the treasurer regarding the advisability of instituting suit to establish or collect any sum or account due the town, and shall take such action with respect thereto as they deem expedient and consistent with the rights and interests of the town.

¹ Art 3 of the 1983 Fall Town Meeting deleted Sections 3.2 and 3.3, thereby deleting reference to Town Counsel whose appointment and duties are now found in the Charter.

3.5 The board of selectmen shall have authority to authorize the sale or other disposal of any property or material within the possession or control of any town agency which has become obsolete or is not required for further use by the town agency and shall have the sole authority to authorize in writing the sale or other disposal of any such property having a value of more than \$500 and not exceeding \$1,000 in value.

3.6 The board of selectmen shall at such times as they may deem appropriate, but at least on or before each July 31st, request and receive from the town manager reports:

(a) on the condition of the town's water works and of the lands and other property connected therewith, which reports shall be in such detail and scope as the selectmen shall request and shall contain any additional information or suggestions which the town manager may deem important; and

(b) stating the number of water takers, the amount of water rates assessed and the amounts of all abatements during the period specified by the board of selectmen or the prior fiscal year, whichever period is greater; and

(c) on the condition of Wildwood Cemetery and of the plans for utilization, expansion, capital improvements, and purchase of lots and graves as provided under Chapter 4, Section 1.3 of these by-laws, which reports shall be in such detail and scope as the board of selectmen shall request and shall contain any additional information or suggestions which the town manager may deem important; and

(d) of the Wildwood Cemetery trust funds, including acquisitions and disbursements, as provided under Chapter 6, Section 2 of these by-laws, and of the income, derived from these funds, and all expenditures during the period specified by the board of selectmen or the prior fiscal year, whichever is greater.

3.7 The board of selectmen shall have the authority and duty, consistent with other laws, to issue and revoke licenses to specific persons to engage in the activities set forth below. Such licenses may specify the terms and conditions under which such activities may be conducted. Such activities are:

(a) the purchasing, selling or bartering of junk, old metals or secondhand articles within the town;

(b) the setting up, using or driving of hackney carriages for the conveyance of persons for hire from place to place within the town or from within the town to places outside the town;

(c) the hawking or peddling of fruit or vegetables within the town; and

(d) the discharging, exploding, setting off (or causing any of the foregoing) of fireworks within the town.

Every license so granted shall expire on the first day of May next after the date thereof. No license shall become effective until the licensee shall have paid to the town treasurer the fee therefor established by the board of selectmen. No license may be sold, assigned or transferred without the consent of the board of selectmen endorsed thereon.

3.8 The board of selectmen shall have the authority and duty, consistent with other laws, to issue and revoke permits to specific persons to engage in the activities set forth below. Said permits may specify the terms and conditions under which such activities may be conducted. Such activities are:

- (a) the placing of any house, or other building, in any street in the town; and
- (b) the placing of any obstruction in any street or on any sidewalk within the town and allowing it to stay there.²

3.9 The board of selectmen, unless otherwise provided by law, shall at least annually establish and promulgate fees to be charged:

- (a) by the selectmen for licenses or permits issued by them
- (b) by town agencies for permits or other services rendered by said agencies unless fees or conditions have been established by law or otherwise
- (c) by the director of public works for the towing and storage of vehicles removed because of their interference with the work of removing or plowing snow or ice as established in Chapter 8, Section 30.1 of these by-laws.
- (d) by the chief of police for the towing and storage of vehicles removed because of violations established in Chapter 8, Section 30.3 and 30.4 of these by-laws
- (e) by the fire chief for towing and storage of cars that were illegally parked or standing during a fire or other emergency in a fire lane or within ten (10) feet of a hydrant as established in Chapter 8, Section 30.2 of these by-laws.

3.10 The board of selectmen may restrict the use of large quantities of water for commercial or special purposes whenever, in its judgment, it deems it necessary to conserve water for domestic uses.

3.11 The board of selectmen shall have the authority and duty, consistent with other laws to approve the rules and regulations, as established by the department of public works, for the operation of Wildwood Cemetery.

² Art 20 of the 1985 Fall Town Meeting deleted “a sidewalk” and inserted “any street or sidewalk within the town”.

3.12 The board of selectmen shall have the authority and duty, consistent with other laws, to continually evaluate the operation and the general condition of Wildwood Cemetery and to issue an annual written report.

CHAPTER 4
TOWN MANAGER

Section 1. ADDITIONAL POWERS AND DUTIES OF TOWN MANAGER

In addition to those powers and duties given by Article 4, Section 4-2 of the charter, the town manager shall have the following powers and duties:

1.1 He shall, on or before each July 31st, and at such other times as the selectmen may request, prepare and submit reports relating to the water works and water system as prescribed in Chapter 3, Section 3.6 of these by-laws.

1.2 He shall, at such time as the board of selectmen may direct but, in any event, not later than February 15, submit to the finance committee a proposed budget for the ensuing fiscal year, as prescribed by Article 6, Section 6-3 of the charter.

1.3 He may, subject to approval by the board of selectmen, authorize the purchase of lots and graves or parts of lots and graves in Wildwood Cemetery from persons who no longer wish to retain ownership of same.

1.4 He shall have the authority and duty, consistent with other laws, to issue and revoke permits to specific persons to engage in the breaking or digging up of any part of any street and the removal of earth or gravel therefrom, or aiding in the same. Any person who engages or aids in the foregoing activities without such a permit may be punished by a fine not exceeding fifty dollars (\$50) for each offense.

CHAPTER 5

ADMINISTRATIVE ORGANIZATION

Section 1. CREATION OF TOWN AGENCIES AND OFFICERS

In addition to those town agencies and officers created by the charter, and until the town meeting shall approve an administrative code, the following town agencies and officers are hereby created:

- (a) town clerk
- (b) town treasurer, who shall also be the town collector
- (c) town engineer
- (d) constables, in such number as the board of selectmen shall deem necessary
- (e) board of trust fund commissioners consisting of three members¹

Section 2. TOWN CLERK - TERM AND ELIGIBILITY

The person appointed by the town manager as town clerk shall be appointed for a term of one year and shall be a resident of the town.

Section 3. TOWN CLERK - ADDITIONAL DUTIES

In addition to those powers and duties given by the charter, by other sections of these by-laws or otherwise given by law, the town clerk shall have such additional powers and duties as the town manager shall assign, consistent with law.

Unless otherwise specified in these by-laws, by the charter, by a rule or regulation of a town agency or by other law, the town clerk's office shall be the official place for filing of any document which may or should be filed in the town.

It shall be the duty of the town clerk to have available a supply of current copies of the "Winchester Home Rule Charter", "Code of By-Laws, Town of Winchester", "Zoning By-Law of the Town of Winchester", and all other rules and regulations, for which a minimum fee shall be charged.

The town clerk shall, on or before each October 1st, and at such other times as the committee on rules may request, notify in writing each town meeting member who is subject to forfeiture of office for any of the reasons stated in Article 2, Section 2-5 (c), of the charter and submit a list of these town meeting members to the committee on rules.

¹ Art 12 of the 1984 Fall Town Meeting deleted Town Counsel and renumbered others.

Section 4. Deleted²

Section 5. Deleted

Section 6. TOWN TREASURER - TERM AND ELIGIBILITY

The person appointed by the town manager to be town treasurer shall be appointed for a term of one year.³

Section 7. TOWN TREASURER - ADDITIONAL DUTIES

In addition to those powers and duties otherwise given by law or which the town manager shall assign, consistent with law, the town treasurer shall have the following powers and duties:

(a) The town treasurer shall supervise and be responsible for the collection and receipt of all sums and accounts due, owing or paid to the town, including taxes and fees, and shall act as the town collector of taxes.

(b) The town treasurer shall report directly to the board of selectmen at such times as they may direct or as he may deem appropriate, but at least semi-annually, as to all uncollected claims or accounts due or owing to the town. Such reports shall include the town treasurer's recommendations as to whether suit should be instituted on behalf of the town for the establishment or collection of any claim or account for the benefit of the town.

(c) The town treasurer shall supervise and be responsible for the prompt deposit, safekeeping and management of all monies collected or received by the town.

(d) The town treasurer shall be the custodian of all funds, monies, securities or other things of value which are or have been given, bequeathed or deposited in trust with the town for any purpose, including the preservation, care, improvement or embellishment of Wildwood Cemetery, or of burial lots therein. The town treasurer shall invest the same as directed by the board of trust fund commissioners and shall distribute the income therefrom on the order of or with the approval of the board of trust fund commissioners.

² Art 3 of the 1983 Fall Town Meeting deleted Sections 4 and 5 which set forth the eligibility and duties of Town Counsel since such language is now found in the Charter.

³Art 15 of the 2003 Fall Town Meeting deleted the requirement that the Treasurer be a resident of the Town.

Section 8. TOWN ENGINEER - TERM AND ELIGIBILITY

The town manager shall appoint in March an employee who is a registered professional engineer in Massachusetts.

Section 9. TOWN ENGINEER - ADDITIONAL DUTIES

In addition to those duties otherwise given by law or which the selectmen or the town manager may request or authorize the town engineer to perform, consistent with law, the town engineer shall have the following powers and duties:

- (a) Unless otherwise provided, the town engineer shall have custody of all plans and engineering records of the town.
- (b) The town engineer shall supervise and direct all engineering work undertaken by any town agency in the performance of its duties or necessary in connection with any work or undertaking authorized by any town agency. In performing this duty, he shall prepare, or cause to be prepared, all necessary plans and shall furnish all necessary engineering data obtainable from the records or by use of the facilities of his office.
- (c) The town engineer, under the direction of the town manager, shall assign numbers to all buildings in the town (other than garages and other buildings adjacent and appurtenant to dwellings) on or near the lines of streets or private ways in accordance with a plan of uniform spacing in each district established by the zoning by-law.

Every building in the town may be identified by the number so assigned to it or to a building to which it is appurtenant. The owner of every building in the town shall affix and maintain thereon, or place and maintain on or near the entrance walk thereto, the number so assigned in figures of such size and so placed as to be visible from the street on which it abuts.

- (d) The town engineer shall generally advise and assist all town agencies with respect to engineering matters.

Section 10. CONSTABLES - TERM AND ELIGIBILITY

The persons appointed by the town manager as constables shall be appointed for a term of one year, shall be residents of the town and shall make application for such office in accordance with Chapter 41, Section 91B of the General Laws.

**Section 11. COMMISSIONERS OF TRUST FUNDS -
TERM AND ELIGIBILITY**

The persons appointed by the board of selectmen as members of the board of trust fund commissioners shall be appointed for a term of three years, so arranged that the term of one member expires each year. The members of the board of trust fund commissioners shall be residents of the town.

**Section 12. COMMISSIONERS OF TRUST FUNDS -
ADDITIONAL DUTIES**

In addition to those powers and duties otherwise given by law or which the selectmen or town manager may assign, consistent with law, the board of trust fund commissioners shall also have the management and control of all funds, monies, securities or other things of value which are or have been given, bequeathed, or deposited in trust with the town treasurer in accordance with Chapter 114, Section 19 of the General Laws or otherwise.

CHAPTER 6

FINANCES AND FISCAL PROCEDURES

Section 1. ACCOUNTING SYSTEM

All accounts of the town shall be kept in accordance with the system established by the director of accounts of the Massachusetts Department of Corporations and Taxation, and said accounts shall be audited at such times as he shall determine under the supervision of said director pursuant to the provisions of Chapter 44, Section 35 of the General Laws. Said accounts may be audited by an independent auditor retained by the town at such times and in such manner as the board of selectmen may determine in their sole discretion.

Section 2. SEGREGATION OF CEMETERY TRUST FUNDS

All funds, monies, securities or other things of value which are or have been given, bequeathed or deposited in trust with the town treasurer in accordance with Chapter 114, Section 19 of the General Laws, or otherwise, for the preservation, care, improvement or embellishment of Wildwood Cemetery, or of burial lots therein, shall be kept separate from other funds, monies, securities and assets of the town, and separate accounts shall be kept for same.

Section 3. DISPOSAL OF TOWN PROPERTY

Any town agency may sell, or otherwise dispose of, any property or material within its possession or control which has become obsolete or is not required for further use by it, not exceeding five hundred dollars (\$500) in value in accordance with procedures established by the town manager.

Section 4. WATER REVENUE ACCOUNT

All water revenue shall be placed in a special account. It shall be used to cover all or a portion of the cost of providing domestic water to the town and is to be used for no other purpose. Any unexpended balances in this account shall be carried forward to the next fiscal year.

Section 5. DENIAL, REVOCATION OR SUSPENSION OF LICENSES AND PERMITS¹

5.1 The Town Treasurer shall annually furnish to each department, board, commission or division, hereinafter referred to as the licensing authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, bet-terments or other municipal charges for not less than a twelve month period, and that such party

¹ Amended Chapter 6 to add Section 5 from Spring Annual Town Meeting, April 23, 2007 Article 3.

has not filed in good faith a pending application for an abatement of such taxes or a pending petition before the appellate tax board.

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

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

5.4 The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in Chapter 268A, Section 1, of the General Laws, in the business or activity conducted in or on said property.

CHAPTER 7

WATER WORKS AND SEWERAGE SYSTEM

Section 1. ADMINISTRATION

The water and sewer functions and services, including maintenance of the water supply and distribution, sewers and sewerage systems shall be performed by the department of public works.

1.1 The department of public works shall have and exercise all the powers vested in the town by the general laws or special acts pertaining to the water and sewer systems. The town manager or his designee may appoint such officers, agents and assistants as shall be necessary to accomplish the administration of the water works and sewerage systems.

1.2 The town manager shall, on or before each July 31st, present to the board of selectmen a report on the condition of the town's water works and of the lands and other property connected therewith, as specified in Chapter 3, Section 3.6(a) of these by-laws.

1.3 The department shall cause to be read all meters used for the purpose of measuring water supplied by the town at least twice in each year, and at more frequent intervals if so directed by the town manager. It shall, whenever water service is discontinued at the request of the owner of any premises or for nonpayment of water rates, or for any other reason, forthwith read or cause to be read, the meter of the water taker. The town manager or his designee shall assess all charges for water supplied by the town in accordance with the rates as established from time to time, and the same shall be committed to the collector, who shall, after notice to the persons to whom they are assessed, collect the same and pay the proceeds to the town treasurer. All charges for water shall be due and payable to the collector at the time when he shall mail or deliver to the water takers notice of commitment of the same to him.

1.4 The board of selectmen shall have the authority and the duty to adopt, issue and administer rules and regulations for the administration and operations of the water and sewer functions and services, water usage and all subjects related to the functioning of the water works and sewerage system.

Section 2. OPERATIONS¹

2.1 An application for the use of water, signed by the owner or agent of the premises where it is desired, must be made at the office of the department. The application shall contain such information as shall be prescribed by the board of selectmen.

¹ Art 14 of the 1983 Spring Town Meeting deleted the original Section 2 and replaced it with this text.

2.2 Each service pipe shall be of such size and material as the department shall determine in each application. All water services shall be maintained by the department from street main to curb valve near the property line with a proper service box, at no expense of the property owner. A replacement of an existing line with a larger service and all new services shall be at the expense of the property owner.

The service pipe from the curb valve may be furnished and installed by any competent person whose work shall be satisfactory to the department or its inspector. The department may lay service pipe from curb valve to and through the cellar wall and place a meter valve on the end of the pipe. A department estimate of the cost of the work to be performed by the town shall be made and the amount shall be deposited with the town treasurer before the work is begun.

2.3 The town shall furnish, up to and including, one ¾" meter per building. Meters above this size shall require a proportional service charge to be paid to the town treasurer in advance of the installation.

The town shall maintain or replace a meter with an existing size meter at no cost to the property owner. Should a larger size meter be requested in an existing building, the property owner shall pay for all related costs.

Meters and their appurtenances, including outside meter reading devices shall be located by the department, at the discretion of the department head or his designee, and shall remain in the property of the town.

2.4 When a water taker fails to receive a sufficient supply of water through his service pipe, he shall furnish information satisfactory to the department that the pipe is clear of obstructions within his own premises to the curb valve before any opening will be made in the street by said department.

2.5 The following regulations shall be considered a part of the contract with every person who takes water and every such person by taking the water shall thereby express his assent to be bound thereby. Whenever any regulation is violated, the water shall be cut off from the building or place of such violation, although two or more parties may receive the water through the same pipe, and it shall not be let on again except by order of the board of selectmen and on the payment of all the applicable fees; and in case of such violation, said board shall have the right to retain as liquidated damages for such violation, any payment made for the water by the person committing such violation.

- (a) Every person taking the water shall, at his own expense, keep the pipes within his premises in good repair and protected from frost and shall be held liable for all damage which may result from his failure to do so.
- (b) Every person taking the water shall prevent all unnecessary waste of water and shall not conceal the purpose for which water is used.

- (c) No alteration shall be made in any of the pipes, meters or appurtenances belonging to the town except by its agents.
- (d) No water shall be supplied to a person not entitled to its use under these rules and regulations, except by special permission of the board of selectmen.
- (e) A representative of the department may enter the premises of any water taker to install, repair or read meters, or to examine pipes and fixtures used and the manner of their use.

Section 3. RATES

Water rates shall be set by the town meeting after a public hearing and recommendations by the board of selectmen.

3.1 If a meter fails to register, the consumer shall be charged upon the basis of the average consumption for a corresponding period as shown by the meter when in order.

3.2 No charge shall be made for water used through fixtures which are installed solely for protection against fire.

3.3 The charge for turning on water shall be set by the board of selectmen within such limits as may be established by law.

3.4 The town manager or his designee may make adjustments in the water charges to a consumer to correct an error in billing or usage.

A system of sewer use charges together with suitable procedures for monitoring and enforcing compliance with sewer use regulations shall be set by the town meeting after a public hearing and recommendations by the board of selectmen.

Section 4. WATER AND SEWER LINE CONSTRUCTION

4.1 The town manager or his designee may grant an application for an extension of the water pipes on an unaccepted way, if, in his judgment, the increase in the value of the land abutting on or reached from such way, due to the extension of the water service, will be sufficient to yield an increase in taxes, exclusive of water rates, equal to six per cent, at least, on the cost of such extension; provided, however, that any such extension shall be subject to, and in conformance with, applicable sub-division control laws, regulations and procedures.

4.2 Two-thirds of the cost of the construction hereafter of any sewer or extension of any existing sewer or the doing of any other work in connection therewith, except particular sewers from common sewers to the lines of ways, shall be assessed upon the estates especially benefited thereby, under and subject to the provisions of applicable law, and such cost shall be the average cost, to be determined by the department of public works in each year, of such construction and

extension and other work in connection therewith in a period of three years next preceding the year in which such average cost is to be determined.

Section 5. PENALTIES²

Whoever violates the provision of any section of this chapter or any rule or regulation adopted hereunder shall be liable to the town in the amount of fifty dollars (\$50) for the first violation and one hundred dollars (\$100) for each subsequent violation. Fines shall be recovered on complaint before the district court, or by non-criminal disposition in accordance with Section 21D of Chapter 40 of the General Laws. Each day of violation shall constitute a separate offense.

² Art 4 of the June 10, 2002 Special Town Meeting added this section.

CHAPTER 8

PUBLIC ORDER

Section 1. OPERATION OF HACKNEY CARRIAGES

No person, unless licensed by the board of selectmen in accordance with Chapter 3, Section 3.7 (b) of these by-laws, shall engage in the business of operating or otherwise set up, use or drive any hackney carriages, as defined in these by-laws, for the conveyance of persons for hire from place to place within the town or from within the town to places outside the town. Any person who shall violate this provision may be punished by a fine not to exceed twenty dollars (\$20) for each time such carriage is used.

Section 2. ENGAGING IN BUSINESS IN JUNK AND ANTIQUES

No person, unless licensed by the board of selectmen in accordance with Chapter 3, Section 3.7 (a) of these by-laws, shall engage in the business of purchasing, selling or bartering junk, old metals or secondhand articles within the town.

Section 3. HAWKING OR PEDDLING FRUIT OR VEGETABLES

No person, unless licensed by the board of selectmen in accordance with Chapter 3.7 (c) of these by-laws, shall hawk or peddle fruit and vegetables within the town.

Section 4. HAWKING OR PEDDLING OF OTHER ITEMS

No person shall hawk or peddle newspapers, publications, ice, flowering plants, meats, butter, cheese, fish or such flowers, fruits, nuts and berries as are wild or uncultivated within the town until and unless he shall have recorded his name and residence with the chief of police, and shall have been assigned a number by the chief of police, nor unless any vehicle or receptacle in which he may carry or convey such articles shall have painted on the outside thereof in letters and figures at least two inches in height the name of the person so selling and the number given him by the chief of police.

Section 5. CRYING OF WARES

No person hawking, peddling, selling or exposing for sale any article enumerated in Section 3 and 4 preceding shall cry his wares in the town.

Section 6. FIREWORKS

No person, unless licensed by the board of selectmen in accordance with Chapter 3, Section 3.7(d) of these by-laws, shall discharge, explode or cause to be discharged or exploded any fireworks within the town.

Section 7. HAULING REFUSE

No person, unless he is the holder of a permit issued by the board of health and except in accordance with the terms and conditions of such permit, shall carry in or through any of the streets, sidewalks or public places in the town any refuse, as defined in these by-laws.

Section 8. DELETED¹

Section 9. PLACING BUILDINGS IN STREETS

No person, unless he is the holder of a permit issued by the board of selectmen in accordance with Chapter 3, Section 3.8 (a) of these by-laws, and except in accordance with the terms and conditions of such permit, shall obstruct any street by placing therein any house or other building.²

Section 10. PLACING OBSTRUCTIONS IN STREETS OR ON ANY SIDEWALKS³

No person, unless he is the holder of a permit issued by the board of selectmen in accordance with Chapter 3, Section 3.8 (b) of these by-laws, and except in accordance with the terms and conditions of such permit, shall place an obstruction in any street or on any sidewalk within the town and allow it to remain there, or allow shrubbery to overhang sidewalks so as to impede free passage of pedestrians and snow removal equipment.

Section 11. USE OF SIDEWALKS

No person shall drive or draw any cart, wagon, sled or other vehicle (except invalid's or children's hand carriages) over or upon any sidewalk in the town, provided, however, that bicycles may be ridden on sidewalks outside districts zoned for general business. A person operating a bicycle on the sidewalk shall yield the right of way to pedestrians and give an audible signal before overtaking and passing any pedestrian.

Section 12. STANDING ON SIDEWALKS

No person shall stand on any sidewalk in such a manner as to obstruct the free passage of pedestrians after a request to move on is made to him by a police officer.

¹ Art 17 of the 2007 Fall Town Meeting Deleted the section Dumping or Using Pig Manure.

² Art 3 of the 1983 Fall Town Meeting corrected the designation of Section 3.8 (a) and (b).

³ Art 21 of the 1985 Fall Town Meeting added "OR ON ANY SIDEWALKS" to the title of this section.

Section 13. DAMAGE TO STREETS

No person traveling on a street within the town shall break or injure the surface thereof by the use of brakes, chains or other mechanism so applied to the wheels of any vehicle under his control as to cause said wheels to slide, slip or coast on said way.

Section 14. DAMAGE TO TREES

No person shall in any manner cut or mutilate any tree, not his own, standing in any street or public place in the town, nor shall any person tie or fasten any horse or other animal to any such tree.

Section 15. DAMAGE TO GRASS BORDERS

No person shall maliciously or negligently injure, or permit or suffer any animal or vehicle of any kind under his care to injure any grass borders or other ornamental borders upon the streets, parks or other public places in the town.

Section 16. DELETED⁴

Section 17. FAILURE TO COVER WELLS

Every person owning or possessing land or having it under his control whereon is located an abandoned well or a well in use shall provide a covering for such well capable of sustaining a weight of three hundred (300) pounds or shall fill same to the level of the ground. Any person who shall violate this by-law shall be punished by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for each violation.

Section 18. WINDOW PEEPING

No person, except an officer of the law in the performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a residence or of spying in any manner upon any person or persons therein.

Section 19. THROWING OBJECTS IN STREETS

No person shall throw any snowball, stone or other substance in any street, as defined in these by-laws, within the town.

Section 20. GAMES IN STREETS

No person shall engage in any amusement, game or exercise in any street in such manner as to interfere with the free, safe and convenient use thereof, unless otherwise permitted by law.

⁴ Art 17 of the 2007 Fall Town Meeting Deleted the section Livestock.

Section 21. PUBLIC DRINKING OF ALCOHOL

No person shall drink any alcoholic beverage (as defined in General Laws, Chapter 138, Section 1 as amended) while in or upon any street, sidewalk, park, playground or other public place in the town or while in or upon any private land or place in the town without the consent of the owner or person having control thereof. All alcoholic beverages being used in violation of this section shall be seized and safely held by the police until final disposition of the charge against the person or persons charged with violating this section, at which time they shall be returned to the person or persons entitled to possess them.

Section 22. DISCHARGING FIREARMS AND AIR RIFLES

No person shall, except as authorized or required by law, fire or discharge any gun, fowling piece, or other firearm or any air rifle in the town. This section shall not apply to the use of such weapons by police officers in the performance of their duties, to the use of such weapons at any lawful military exercise or to the use of such weapons in the lawful defense of his person, family or property by any citizen. Nothing in this section shall derogate from the rights and privileges of an owner or lessee of land as set forth in Chapter 131 of the General Laws.

Section 23. SNOW AND ICE IN STREETS⁵

No person shall cause snow or ice to be deposited on a street, sidewalk or gutter other than in line with and contiguous to snow and ice plowed by the town.

Section 24. PROHIBITION OF POWER DRIVEN CRAFTS⁶

All power driven crafts except those driven by battery powered trolling motors shall be prohibited from use on Wedge Pond, Big and Little Winter Ponds with the exception of: Police, Fire Rescue Craft, State Law Enforcement or Research Vessels and any other crafts as may be authorized by the Board of Selectmen.

Section 25. DISORDERLY BEHAVIOR⁷

No person shall behave in a disorderly manner, or use obscene, profane or abusive language in any public place, or near any dwelling house, or other building in the town, or be or remain on any sidewalk, or upon any doorstep, or other projection from any house or other building, so as to obstruct any passage to such house or building, and every person being or remaining as aforesaid

⁵ Art 5 of the 1987 Fall Town Meeting added this new section.

⁶ Art 17 of the 1997 Fall Town Meeting added this new section.

⁷ Art 3 of the 1983 Fall Town Meeting deleted the language in this section and replaced it with the language now shown.

when ordered by any constable or police officer, or by the owner or occupant of any such building, shall immediately and peacefully depart and stay therefrom.

Section 26. TAMPERING WITH TOWN WATER SYSTEM

Except in case of fire or where authorized in writing by the board of selectmen, the town manager or the town manager's designees, no person shall open any town water hydrant, nor lift or remove the cover thereof, nor make any opening in or connection with any town pipe or reservoir, nor turn on or off the water from any town water hydrant, pipe, reservoir or fountain. For the purposes of this section, each successive day on which any violation is committed or continued shall be deemed a separate offense.

Section 27. DISTURBING PUBLIC SAFETY AIDS

No person shall, except as authorized or required by law, remove, alter the position of, deface, or disturb in any manner, any barrier, sign, manhole cover, or grating, placed or installed in or on any street, sidewalk or public place within the town in the interests of safety or necessity.

Section 28. FAILURE TO CLEAR SIDEWALKS OF SNOW AND ICE

Except as provided in Section 29 of these by-laws, no person owning, possessing or having under his control real estate abutting a sidewalk next to a street, which real estate is being used in whole or in part for any commercial enterprise or as a place to which the public may be expected to resort, shall place any snow or ice on such sidewalk or suffer snow or ice to remain thereon for more than five hours between sunrise and sunset on any business day. Any person who shall violate this provision may be punished by a fine of not more than ten dollars (\$10) for each offense. For the purposes of this section, each successive day during which any violation is committed or continued shall be deemed a separate offense.

Section 29. EXCEPTIONS

The preceding Section 28 of these by-laws shall not apply:

- (a) in any instance involving property which is used solely for residential purposes;
- (b) in any instance where, due to weather conditions, snow or ice is evenly spread over a sidewalk and frozen thereto so that removal is difficult, so long as such sidewalk is kept in a safe condition by sanding or otherwise.

Section 30. REMOVAL OF VEHICLES

30.1 Any vehicle on a public way that interferes with the work of removing or plowing snow or removing ice therefrom may be removed with police department approval to a convenient place and stored by or under the direction of the director of public works or his designee. The director of public works shall forthwith notify the chief of police of any such vehicle and of the

place to which it has been removed and stored. The owner of the vehicle shall be subject to the penalties established pursuant to Chapter 3, Section 3.9

30.2⁸ Any vehicle, wherever located, that interferes with the performance of the fire department duties during a fire or any other emergency, or may threaten to interfere with the performance of the fire department in the event of a fire or other emergency, may be removed to a convenient place and stored by or under the direction of the fire chief or the commanding officer. This individual shall forthwith notify the chief of police of any such vehicle and of the place to which it has been removed and stored. If the vehicle is in violation of these by-laws, the owner shall be subject to the penalties established pursuant to Chapter 3, Section 3.9, subsection (e) hereof.

30.3 No person shall allow, stand or suffer any vehicle registered in his name, corporation or other entity to stand or park on a public way in any of the following places:

- (a) upon or over any sidewalk, except in residential districts where due to extenuating circumstances the board of selectmen has granted exemption
- (b) upon or over any crosswalk
- (c) within ten (10) feet of a fire hydrant
- (d) in such a way that blocks access or egress to any driveway, private road or public way
- (e) in any legally posted "Tow Away Zone"

No person shall allow, permit, stand or suffer any vehicle registered in his name, corporation or other entity to stand or park upon a designated fire department approved fire lane, wherever located and properly posted, or in any legally accessible parking space designated for handicapped persons and properly posted.

Vehicles found in violation of any of the provision in this paragraph may be removed to a convenient place and stored under the direction of the chief of police or his designee. The owner of the vehicle shall be subject to the penalties established pursuant to Chapter 3, Section 3.9.

30.4 Any stolen vehicle, unregistered or uninsured motor vehicle, or any vehicle that has been unattended on a public or private way for more than seventy-two (72) hours and shall be deemed by the chief of police to have been abandoned may be removed to a convenient place and stored under the direction of the chief of police or his designee. The owner of the vehicle shall be subject to the penalties established pursuant to Chapter 3, Section 3.9.

⁸Art 16 of the 2007 Fall Town Meeting deleted the language in this section and replaced it with the language now shown.

30.5 The police department shall keep a record of all vehicles towed or removed under the provisions of this section. Such record shall be retained for one (1) year and shall contain at least the following information:

- (a) The registration number, if available, and identification information of the vehicle
- (b) The location from where it was towed and the time and date of the tow order
- (c) The location to which it was towed and/or stored
- (d) The fee charged for towing and storage
- (e) Name of the town contractor or tower
- (f) Name and rank of officer who authorized towing

30.6 The police department shall give notice to the registered owner of any vehicle towed or removed under the provisions of this section. The owner, before being permitted to remove the vehicle, shall establish his right to do so, shall pay to the town any fines assessed, and shall pay to the keeper of the place of storage the fees of removal and storage resulting therefrom as established pursuant to Chapter 3, Section 3.9.

If the owner of a vehicle, that has been towed or removed, cannot be determined, then the chief of police may dispose of said vehicle, without liability, as in accordance with the disposition of other unclaimed or lost property. If said vehicle is worth less than the cost of removal and storage, then the chief of police may without incurring liability on his part or the part of the town take possession of such motor vehicle and dispose thereof as refuse.

30.7 The tower shall be liable to the owner for any damage to the vehicle arising out of negligence during the course of removal and storage.

Section 31. PERMITTING OBSTRUCTIONS TO VISION AT INTERSECTIONS

No person owning, possessing or having under his control any real estate abutting any intersection of streets in any section of the town zoned for residential uses, shall erect, place, plant or permit or suffer the erection, placing or planting or maintenance of anything in such a manner that it shall materially impede the vision of operators of motor vehicles between a height of two and one half (2 1/2) and ten (10) feet above the centerline grades of the intersecting streets in the area bounded by the street lines of said real estate and a line joining points thirty (30) feet along said street lines from the point of intersection of said street lines.

Any person who violates this provision and, after being notified of violation by the board of selectmen in writing, permits said violation to continue for 30 days after receipts of notice, may be punished by a fine of not more than fifty dollars (\$50). For the purposes of this section, each

successive day during which any violation is committed or continued shall be deemed a separate offense.

Section 32. COASTING ON STREETS OR SIDEWALKS

No person shall coast in or upon any streets or sidewalks in the town unless such places have been designated for such purpose by the board of selectmen.

Section 33. PENALTIES

Whoever violates the provisions of any section of this chapter of these by-laws, except Sections 1, 17, 28 and 31, may be punished by a fine not exceeding three hundred dollars (\$300)⁹ for each offense.

Section 34. RECOVERY BY TOWN FOR EXPENSES OF ACHIEVING COMPLIANCE

Whenever any provision of these by-laws imposes a duty and affixes a penalty for the neglect or violation thereof, if such neglect or violation shall nevertheless occur, the selectmen may perform or cause the performance of such duty, at the expense of the persons liable to perform the same; and such expense, to an amount not exceeding the penalty, may be recovered in contract by the town.

Section 35. VIOLATIONS OF BOARD OF HEALTH RULES AND REGULATIONS¹⁰

35.1 Whosoever violates any provision of this section or any rule or regulation of the board of health shall be penalized by a criminal complaint brought in the district court or by a noncriminal disposition pursuant to Chapter 40, Section 21D of the General Laws.

35.2 Any person who upon application of a criminal complaint brought in the district court and found guilty of a misdemeanor shall be fined in an amount not to exceed three hundred dollars (\$300.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

35.3 Any person who is penalized by a noncriminal disposition brought pursuant to the provisions of Chapter 40, Section 21D of the General Laws, shall be subject to a specific penalty of fifty dollars (\$50.00), provided however, that any person who violates any rule or regulation of the board of health which restricts the feeding of water fowl shall be subject to a specific penalty of five dollars (\$5.00). Each day such violation is committed or permitted to continue shall con-

⁹ Art 16 of the 1984 Fall Town Meeting changed the fine from \$50 to \$300.

¹⁰ Art 6 of the 1991 Fall Town Meeting added this new section; Sections 35.3 and 35.4 were revised by Art 12 of the 1993 Spring Town Meeting .

stitute a separate offense and shall be punishable as such hereunder. Violations of this section may be enforced by any member of the board of health, health director or other enforcing person as defined by the rules or regulations of the board of health.

35.4 Any person who, ten (10) days after receipt of written notice of a violation of any rule or regulation of the board of health, permits such violation to continue, shall be punished in accordance with the provisions of Section 35 as above, provided however, that no such written notice of violation or waiting period shall be required for violation of any rule or regulation of the board of health which restricts the feeding of water fowl.

Section 36. REGULATION OF PARKING AREAS FOR THE VEHICLES OF DISABLED VETERANS OR HANDICAPPED PERSONS¹¹

36.1 Any person or body having ownership and/or lawful control of improved or enclosed property designed for and/or used as an off-street parking area serving business establishments, shopping malls, theatres, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings or any other place or area where the public has a right of access as invitees or licensees, shall reserve parking spaces in said places or area for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by G.L. Chapter 90, Section 2 or for any vehicle transporting a handicapped person and displaying the special identification plate authorized by section two of chapter ninety or for any vehicle bearing the official identification of a handicapped person issued by any other state, or any Canadian Province. This section shall be binding upon all such places and areas whether the same be owned by and/or under the control of governmental agencies, and education, charitable and religious institutions.

36.2 Spaces so reserved in such place or area for disabled veterans and/or handicapped persons, or vehicles shall be in accordance with the following provisions:

If the number of parking spaces is more than five but not more than twenty-five, one parking space; more than twenty-five but not more than forty, five percent of such spaces but not less than two; more than forty but not more than one hundred, four percent of such spaces but not less than three; more than one hundred but not more than two hundred, three percent of such spaces but not less than four; more than two hundred but not more than five hundred, two percent of such spaces but not less than six.

36.3 Parking spaces designated as reserved under the provisions of paragraph 36.1 shall be identified by the use of above grade signs with white lettering against a blue background and shall bear the words "Handicapped Parking: Special Plate Required. Unauthorized Vehicles May Be Removed at Owner's Expense"; shall be as near as possible to a building entrance or walkway; shall be adjacent to curb ramps or other unobstructed methods permitting sidewalk access

¹¹ Art 11 of the 1998 Fall Town Meeting added this new section.

to a handicapped person; and shall be twelve feet wide or two, eight foot wide areas with four feet of cross hatch between them.

36.4 No vehicle, not bearing a distinguishing license plate or placard so authorized by G.L. Chapter 90, Section 2, shall be left unattended within parking spaces so reserved, under Paragraph 36.1 for use by disabled veterans or handicapped persons.

36.5 No vehicle shall be left unattended in such places and/or areas as described in Paragraph 36.1, hereof, in such a manner as to obstruct a curb ramp constructed therein for use by handicapped persons as a means of egress to a street or public way.

36.6 Penalty for the violation of this section shall be not less than twenty-five dollars (\$25.00) or in excess of one hundred dollars (\$100.00).

Section 37. REMOVAL OF ANIMAL LITTER¹²

37.1 **Duty to Dispose** - It shall be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any sidewalk, street or other public area in the Town. It shall further be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any private property neither owned nor occupied by said person.

37.2 **Duty to Possess Means of Removal** - No person who owns, possesses or controls such dog shall appear with such dog on any sidewalk, street, park or other public area without the means of removal of any feces left by such dog. Furthermore, no person who owns, possesses or controls such dog shall appear with such dog on any private property neither owned nor occupied by said person without the means of removal of any feces left by said dog.

37.3 **Method of Removal and Disposal** - For the purposes of this regulation, the means of removal shall be any tool, implement or other device carried for the purpose of picking up and containing such feces without physical contact with said person or public. Disposal shall be accomplished by transporting such feces to a place suitable for the disposal of canine feces, or as otherwise designated as appropriate by the Board of Health.

37.4 **Complaints** - A complaint form must be sworn to by the complainant before any enforcement action is taken except when the Dog Officer, Animal Control Officer or Board of Health Agent observes the offense.

¹² Art 9 of the 1999 Spring Town Meeting added this section.

37.5 **Fines**¹³ - Violation of this by-law shall be punishable as follows:

First Offense by a fine of \$85.00

Second Offense by a fine of \$115.00

Third Offense and each subsequent offense by a fine of \$175.00

37.6 **Non-Criminal Disposition** - Enforcement of Chapter 8 Section 37 of the Code of By-Laws shall be pursued through the provisions of Chapter 40, Section 21D of the Massachusetts General Laws, which provides for the non-criminal disposition of by-laws. The enforcing persons shall be the Animal Control Officer, Board of Health Agents and Dog Officer of the Town. This amendment does not apply to guide dogs accompanied by handicapped persons.

37.7 **Right to Hearing** - Any person who is the subject of a complaint by a private citizen may seek a hearing before a hearing officer designated by the Board of Health by filing a request for hearing with the Board within seven days after such person's receipt of notice of violation. The filing of the request for hearing shall automatically stay further proceedings under G.L. 40, Section 21D until such person receives notice of the hearing officer's decision.

¹³ Art 18 of the 2007 Fall Town Meeting Changing Fees.

CHAPTER 9

SIGNS

Section 1. DEFINITIONS

As used in this Chapter:

1.1 “Sign” shall mean any word, letter, symbol, drawing, picture, design, device, article, and object that advertises, calls attention to, or indicates any premises, person, or activity, whatever the nature of the material and manner of composition or construction and however displayed, and which is on a public way or private property within public view of a public way, public park, or reservation.

1.2 “Accessory sign” shall mean any sign which with respect to the premises on which it is located advertises, calls attention to, or identifies either the person occupying the premises on which the sign is located, or the business or activity being conducted on such premises, or which advertises the sale, rental, or lease of such premises, or any part thereof, and which contains no other advertising matter.

1.3 “Non-accessory sign” shall mean any sign which is not an accessory sign.

1.4 “Free standing sign” shall mean any sign which is not attached to a building.

1.5 “Temporary sign” shall mean any sign, including its supporting structure, which is intended to be maintained for a continuous period of not more than sixty (60) days, and in fact removed within that period, and not repeated for a period of twelve (12) months after removal.

1.6 “Permanent sign” shall mean any sign which is not a temporary sign.

1.7 “Area of a sign” shall be determined in accordance with the following:

(a) The area of a sign shall be considered to include all lettering, wording, and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign and any “cutouts” or extensions, but shall not include any supporting structure or bracing.

(b) The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall, or window shall be considered to be that of the smallest quadrangle or triangle which encompasses all of the letters and symbols.

(c) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross-section of that object.

(d) In computing the area of a sign, only one side of back-to-back sign shall be counted.

1.8 “Zoning by-law” shall mean the Zoning By-Law of the Town of Winchester as from time to time in effect.

1.9 “Public way” shall mean any street, road, or way as defined by the zoning by-law.

1.10 “Lot” shall mean any lot as defined by the zoning by-law.

Section 2. GENERAL REQUIREMENTS

2.1 No sign shall contain any moving, flashing, or animated lights, or lights varying in color, or visible moving or movable parts, except such portions of a sign as consist solely of indicators of time and/or temperature.

2.2 No sign shall be illuminated between the hours of 10 p.m. and 6 a.m. unless, in the case of an accessory sign, the premises on which it is located are open for business and except for sign identifying police or fire stations, hospitals, and for such other signs as the board of appeals by special permit may authorize. Signs may be illuminated only by the following means:

- (a) By a white, steady, stationary light of reasonable intensity shielded and directed solely (or by silhouette) at the sign. The foregoing is applicable to signs exterior to a building and to permanent interior signs designed to be visible through a door or window.
- (b) By fully shielded indirect light sources in accordance with Section 12 of the Zoning By-Law Outdoor Lighting. No sign may utilize translucent panels, canvas or other fabric, letters, devices or other similar components to create an image by allowing light to pass through. The foregoing is applicable to signs exterior to a building and to permanent interior signs designed to be visible through a door or window.¹

2.3 No sign shall be placed so as to produce glare at any point on a public way or adjacent property or to cast light into any dwelling unit or dwelling building.

2.4 No sign shall be erected at or near the intersection of any streets or of a street and driveway in such manner as to obstruct free and clear vision or at any location where, by reason of the position, shape, color, illumination, or wording, the sign may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal, or device, or otherwise constitute a hazard to pedestrian or vehicular traffic because of intensity or direction or illumination.

¹ Articles 9 and 10 of the 2003 Fall Town Meeting amended subsections (a) and (b).

2.5 No sign shall be painted or posted on the surface of any wall without any intermediary removable surface and such intermediary surface shall be securely affixed to such wall. The foregoing, however, shall not prevent installation of a sign by individual letters or devices cut into or securely affixed to the exterior wall of a building, provided that such letters or devices have a minimum depth or thickness of one-fourth (1/4) of an inch and a maximum depth or thickness of four (4) inches.

2.6 Except for the provisions of Section 1 and this Section 2, the provisions of this chapter shall not apply to the following signs:

- (a) Any sign which is required or authorized by any law, rule, regulation, or permit of the federal or state governments, or any agency thereof, or any public authority created thereby.
- (b) Any sign erected or placed on any town premises under the provisions of any town by-law or zoning by-law or by direction or order of the town board or committee having lawful jurisdiction over such premises.
- (c) Signs otherwise permitted pursuant to Section 6 but subject to the terms and conditions of such section.
- (d) Any sign, not exceeding four (4) square feet in area, limited solely to directing traffic within a parking area or indicating parking restrictions in the use of such parking area.
- (e) Any sign, not exceeding one (1) square foot in area, marking or identifying privately owned land.
- (f) Customary signs on gasoline pumps indicating in usual size and form the name and type of gasoline and the price thereof.
- (g) Signs permanently fixed on registered motor vehicles regularly used to transport merchandise or persons.
- (h) The following temporary signs:
 - (1) One (1) sign on each lot which advertises the sale, rental, or lease of such premises or any part thereof, provided that such sign shall not exceed six (6) square feet in area and provided further that such sign shall be removed within five (5) business days after such sale, rental, or lease has been completed.
 - (2) One (1) sign on each lot which advertises the name and address of the owner, architect, engineer, and/or contractor responsible for any construction on

such premises, or any part thereof, provided that such sign shall not exceed twenty (20) square feet in area and provided further that such sign shall be removed within five (5) business days after the completion of such construction.

(3) One (1) sign located in a residential subdivision of two (2) or more lots which advertises the development and/or the sale, rental, or lease of the individual lots therein, provided that such sign shall not exceed fifty (50) square feet in area.

(4) Signs affixed to the interior of windows, provided that the aggregate area of the window covered by all signs, including signs other than temporary signs, shall not exceed thirty (30) percent of the window area.

(i) Signs in the interior of a building which are intended to be viewed from inside the building even if they can be seen through a window or door.

(j) Displays of merchandise.

2.7 The following signs are prohibited under this chapter:

(a) Non-accessory signs.

(b) Wind signs, including banners, pennants, flags, spinners, streamers, and other wind-actuated components, except to the extent provided under Section 5.3.

(c) String lights used in connection with commercial premises, except for temporary lighting used for holiday decoration during the specific holiday season.

(d) Any sign which advertises or identifies a business which is no longer being conducted or a product which is no longer being sold.

(e) Exposed luminous tube and exposed incandescent lamp signs, including exposed neon and exposed fluorescent.²

(f) Any sign not otherwise permitted under this chapter.

2.8 Every sign shall be maintained in good condition. If a sign shows corrosion or deteriorated paint over twenty-five (25) percent of the area of one side or if damage to a sign causes the loss of ten (10) percent of its surface or if a sign suffers damage or deterioration which creates a risk of harm to the person or property of another, it shall be repaired or removed.

2.9 No sign shall contain lettering in excess of forty (40) inches in height.

² Art 13 of the 1988 Fall Town Meeting changed subsection (e) to become (f) and added a new subsection (e).

Section 3. SIGNS IN RESIDENCE AND CONSERVANCY DISTRICTS

3.1 Any activity legally conducted in a residential district from time to time established under the zoning by-law shall erect signs only conforming with the provisions of this Section 3.

3.2 The following signs shall be permitted in any residential district from time to time established under the zoning by-law.

(a) One (1) sign, not exceeding two (2) square feet in area, displaying the street number and/or name of the occupant of the premises. Such sign may include identification of any permitted use of the premises.

(b) With respect to any apartment building (as defined by the zoning by-law), one (1) additional wall-mounted accessory sign not exceeding ten (10) square feet in area.

3.3 The following signs shall be permitted in any conservancy-institutional district from time to time established under the zoning by-law:

(a) One (1) bulletin or announcement board, identification sign, or entrance marker for each public entrance to the premises of a church, synagogue, school, or other structure in which an activity permitted in the district is conducted, provided that the aggregate area of all such signs shall not exceed thirty (30) square feet.

(b) One (1) free-standing sign, not exceeding thirty (30) square feet in area, on the premises upon which the church, synagogue, school or other structure in which an activity permitted in the district is conducted.

Section 4. SIGNS IN BUSINESS AND INDUSTRIAL DISTRICTS

4.1 Signs complying with the following requirements shall be permitted in any business or industrial districts from time to time established under the zoning by-law:

(a) Location

(1) Accessory signs affixed parallel to the wall of a building, and not extending beyond the face of such wall, horizontally or vertically, nor, with respect to any sign having horizontal dimensions which are equal to or greater than its vertical dimensions, extending within twelve (12) inches from the end of such wall or to a line which divides businesses sharing such wall.

(2) One (1) accessory sign affixed perpendicular to the wall of a building and not extending above the top of such wall, provided that such sign (A) shall be two (2) feet in its horizontal dimension and two and one-half (2 1/2) feet in its vertical dimension (excluding mounting hardware) on a geometric plane, (B) shall

be mounted with the lowest part of the sign ten (10) feet above the ground, and(C) shall not project from the face of the wall of a building more than two and two-thirds (2 2/3) feet (including mounting hardware).³

(3) One (1) accessory sign affixed to or forming part of the roof of any building, provided that such sign shall not obscure, when viewed from the public way which the building faces, the building eaves, ridge, or rakes and provided further that a special permit therefor has been granted by the board of appeals under the procedures of Section 7.

(4) Permanent signs affixed to a window or visible through a window, which do not occupy an area in excess of thirty (30) percent of the area of such window.

(5) Free-standing signs, provided that (A) the building which any such sign advertises shall not be located within forty (40) feet of the street edge of a public way, (B) the base of any such signs shall be at least thirty (30) inches above the ground, (C) any such signs shall not be more than twenty-five (25) feet from the ground, and (D) a special permit therefor has been granted by the board of appeals under the procedures of Section 7.

(b) Size

(1) The aggregate area of all signs permitted pursuant to Sections 4.1(a) (1) through (4), 5.2, and 5.3 shall not exceed (A) the product of two (2) square feet times the number of linear feet or major fraction thereof located on the wall in which the principal entrance to the business for which the signs will be erected or maintained is located, less (B) the aggregate area of all accessory signs (other than free-standing signs) for such business including signs legally erected before the adoption of this chapter which do not conform to the provisions of this chapter.

(2) The area of a sign permitted pursuant to Section 4.1 (a) (3) shall not exceed fifty (50) percent of the aggregate area of signs permitted for such business pursuant to Section 4.1 (b) (1).

(3) The area of a sign permitted pursuant to Section 4.1 (a) (5) shall not exceed (A) one (1) square foot for each two (2) feet of frontage on a public way of the lot on which such sign rests and toward which public way such sign faces, less (B) the aggregate area of all free-standing signs on such lot legally erected before the adoption of this chapter which do not conform with the provisions of this chapter.

³ Art 3 of the 1983 Fall Town Meeting 1983 deleted the language in Section 4.1 (a) (2) and inserted the language now shown.

(c) Number

(1) Up to two (2) signs permitted pursuant to Sections 4.1 (a) (1) and 4.1 (a) (2) may be affixed to each wall of the building. Any accessory sign affixed to a wall which was legally erected before the adoption of this chapter and which does not conform to the provisions of this chapter shall be counted for the purpose of determining the number of signs which may be affixed to each wall of a building.

(2) Up to two (2) signs permitted pursuant to Section 4.1 (a) (5) may be erected and maintained on each lot, provided that if the lot on which such signs shall rest has less than two hundred (200) feet of frontage on a public way, no more than one (1) sign shall be permitted on such lot. Any free-standing sign which was legally erected before the adoption of this chapter and which does not conform to the provisions of this chapter shall be counted for the purpose of determining the number of free-standing signs permitted under this Section 4.1 (c) (2).

4.2 In addition to the signs permitted under Section 4.1, there may be one (1) directory sign of the businesses occupying a building affixed parallel to the wall of the building at each public entrance to the building. Such directory sign shall not exceed an area determined on the basis of one (1) square foot for each business in the building.

Section 5. SPECIAL SIGNS

5.1 Gasoline filling stations and garages may display one (1) state automobile inspection sign, not exceeding twelve (12) square feet in area.

5.2 Canopies and metal or cloth awnings, whether containing advertising or not, shall be permitted under this chapter provided that they are used primarily to protect the building front and/or entrance from the weather or to conserve energy.

5.3 Banners, flags and pennants, whether containing advertising or not, shall be permitted under this chapter provided that (a) they contain an area of no more than four (4) square feet, (b) no more than one (1) such banner, flag, or pennant shall be permitted for each building or, if not attached or affixed to a building, for each lot, and (c) they shall not be composed of vinyl, plastic, metal, or like material to any substantial extent.

Section 6. NON-CONFORMING SIGNS

6.1 Accessory signs legally erected before the adoption of this chapter which do not conform to the provisions of this chapter may continue to be maintained without a permit pursuant to Section 7.2, provided, however, that no such sign shall be permitted if, after the adoption of this chapter, it is enlarged or structurally altered in any substantial way, except to conform to the requirements of this chapter, and provided, further, that any such sign which has deteriorated to such an extent that the cost of restoration would exceed thirty-five (35) percent of the replace-

ment cost of the sign at the time of the restoration shall not be repaired or rebuilt or altered except to conform to the requirements of this chapter. Any exemption provided herein shall terminate with respect to any sign which:

- (a) shall have been abandoned; or
- (b) shall advertise or call attention to any products, businesses, or activities which are no longer sold or carried on, whether generally or at the particular premises; or
- (c) shall not have been repaired or properly maintained within thirty (30) days after notice to that effect has been given by the building commissioner.

Section 7. ADMINISTRATION AND ENFORCEMENT

7.1 The building commissioner is hereby designated and authorized as the officer in charge of the enforcement of this chapter. The building commissioner shall transmit all sign applications to the Winchester design review committee (DRC) for its review and recommendation prior to acting upon sign permit applications.⁴

7.2 No sign subject to this chapter shall be erected on the exterior of any building or on any land, and no such sign shall be altered or enlarged, until an application, on appropriate forms furnished by the building commissioner, has been filed with the building commissioner with such information, including photographs, plans, and scale drawings, as he may require, and a permit for such erection, alteration or enlargement has been issued by him. Such permit shall be issued only if the sign complies or will comply with all applicable provisions of this chapter. The fee for such permits shall be determined from time to time by the board of selectmen.

7.3 The building commissioner may order the repair or removal of any sign and its supporting structure which in his judgment is dangerous or in disrepair or which is erected or maintained contrary to this chapter.

7.4 If the building commissioner shall find that any provision of this chapter is being violated, he shall notify in writing the person deemed responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall cause to be instituted civil or criminal actions to secure enforcement of the provisions of this chapter or shall take any other action authorized by this chapter to insure compliance with or prevent violation of its provisions.

7.5 An appeal may be taken to the board of appeals by any office or board of the town, or by any person aggrieved by any order or decision of the building commissioner under this chapter. Such appeal must be taken within thirty (30) days from the date of the order or decision which is being appealed, by filing a motion of appeal, specifying the grounds therefor, with the town

⁴ Art 8 of the 2003 Fall Town Meeting added the second sentence of this subsection.

clerk, who shall forthwith transmit copies thereof to the building commissioner and to the members of the board of appeals. Any applicant shall provide the information required under Section 7.2 and specific information in the form of perspectives, renderings, photographs, or other representations sufficient to show the nature of the proposed sign, its effect on the immediate surroundings, and the reasons for allowing it.

7.6 The board of appeals shall fix a reasonable time for the hearing of any appeal or other matter referred to it under this chapter and shall cause a notice of the time and place of such hearing hereof and of the subject matter, sufficient for identification, to be published at the expense of the appellant or petitioner in a newspaper of general circulation in the town once in each of two successive weeks, the first publication to be not less than fourteen (14) days before the day of the hearing, and also send notice by mail, postage prepaid, to the appellant or petitioner and to the owners of all property deemed by the board of appeals to be affected thereby. The publication required by this section shall contain the following, printed in bold face type:

- (a) the name of the appellant or petitioner,
- (b) the location of the area, sign or premises which are the subject of the appeal,
- (c) the date and place of the public hearing.

7.7 All hearings of the board of appeals hereunder shall be open to the public. The chairman or acting chairman may administer oaths, summon witnesses, and call for the production of papers. The decision of the board of appeals shall be made within forty-five (45) days after the conclusion of the hearing. The board of appeals shall issue its decision in writing, setting forth clearly the reason or reasons for such decision. A copy of the decision shall be filed with the town clerk and shall be a public record. Notice of a decision of the board of appeals shall be mailed to the appellant or petitioner. All decisions of the board of appeals shall be by a majority vote.

7.8 The board of appeals may grant special permits as permitted by this chapter and may by special permit allow the erection or maintenance of a sign otherwise prohibited under this chapter, provided, however, that the board of appeals may not by special permit allow the erection or maintenance of any sign otherwise prohibited under Sections 2.7 (e)⁵, 4.1 (a) (5) (c), 4.1 (b) (3) and 4.1 (c) (2). Such a special permit shall be granted only if the board of appeals determines that such a sign would not be adverse to the public interest. In determining the public interest, the board of appeals shall consider (a) the architecture of any building which is involved, (b) the location of such building with reference to the street, (c) the nature of the use of such building and the premises on which the sign will be located (d) the hardship to the applicant if the sign is not permitted, (e) with respect to signs contemplated by Section 4.1 (a) (3), whether and to what extent signs may be affixed to the face of the building, and (f) the size, location, design, color, texture, lighting, and materials of the proposed sign and its impact upon the character, use and

⁵ Art 13 of the 1988 Fall Town Meeting added the reference to Section 2.7 (e).

enjoyment of proposed buildings and structures and surrounding properties. In granting any such permit, the board of appeals shall specify the size, height, type and location of the sign and impose such other terms, restrictions and conditions as it may deem to be in the public interest.

7.9 The penalty for violations of any provision of this chapter, or failure to comply with any of its requirements, shall be a fine not greater than ten dollars (\$10) for each day the violation continues, not to exceed the maximum penalty permitted by Chapter 93, Section 33 of the General Laws.

Section 8. GENERAL

8.1 The invalidity of any part or provision of this chapter, or of the application hereof to any particular subject matter, shall not invalidate any other part or provision hereof or affect the application hereof to any other subject matter.

8.2 All signs shall be subject to any and all other applicable by-laws and regulations of the Town of Winchester and the Commonwealth of Massachusetts.

CHAPTER 10
DOG LEASH LAW

Section 1. PROHIBITION AGAINST UNLEASHED DOGS

No person keeping, owning or having possession, charge, custody or control of any dog shall cause, permit, suffer or allow the dog to stray, run, be or go in any manner at large in or upon any public street, way, sidewalk, school yard or grounds, park, or private property of others without the express consent of the owner of such private property, except such dog that may be under control by means of a chain or leash, not longer than six feet in length.

Section 2. AUTHORITY AND DUTIES OF DOG OFFICER

Any dog found to be at large in violation of this by-law shall be caught and confined by the dog officer, who shall notify forthwith the licensed owner or keeper of said dog. The owner or keeper of said dog shall have ten days from receipt of notice thereof to reclaim said dog from the dog officer. Return of the dog to the licensed owner or keeper shall be dependent on admission of ownership or the keeping of the dog, the assumption of responsibility thereof, and the payment of any fee or charges due for such confinement as provided by this by-law.

Section 3. FEES FOR DOGS CONFINED

The owner or keeper of any dog so confined by the dog officer, under the provisions of this by-law, shall be responsible for a fee of ten dollars (\$10.00)¹ per day for each day of confinement, for the costs of such care and maintenance of such dog. Any fees so collected shall be turned over to the town.

Section 4. DISPOSAL OF UNCLAIMED DOGS

Any dog under confinement of the dog officer that shall not have been claimed by the owner or keeper at the end of the said ten day period shall be transferred or sold to the care and control of the Massachusetts Society for the Prevention of Cruelty to Animals or some other similar organization or person offering to pay all charges for confinement. In no case shall a dog be sold or delivered or given to any person or organization intending to use said dog for vivisection purposes.

¹ Art 7 of the 1990 Fall Town Meeting changed confinement fee in Section 3 from \$2 to \$10 and changed the language of Section 5 to the language shown

Section 5. RABIES VACCINATIONS

No person or organization shall own or keep in this town any dog, after six (6) months of age, which does not have a current vaccination against rabies.

**Section 6. NOISY OR BITING DOGS
CONFINEMENT OF UNSPAYED FEMALE DOGS**

No person or organization shall own or keep in this town any dog that bites, or by barking, howling, or in any other manner disturbs the peace or quiet of any neighborhood or endangers the safety of any person. No person or organization shall own or keep any unspayed female dog in season when not confined in an adequate enclosure², as determined by the dog officer, on the property or housed in a veterinarian hospital or registered kennel. It shall be the duty of the dog officer to apprehend any such dog and to impound such dog in a suitable place, or to order the owner thereof to restrain such dog. Any dog so impounded may be reclaimed or disposed of as provided in Section 3 or 4.

Section 7. LICENSE FEES AND PROCEDURE^{3&4}

The annual fee for a dog license shall be twenty dollars (\$20.00) for a female or male dog unless a certificate of a registered veterinarian who performed the operation certified that such dog has been spayed or neutered, in which case the fee shall be fifteen (\$15.00). A certified copy of such certificate on file in the office of any town clerk within the commonwealth may be accepted as evidence that such operation has been performed. If the town clerk is satisfied that a certificate of the veterinarian who spayed or neutered the dog cannot be obtained, he may accept in lieu thereof a statement signed under the penalties of perjury by a registered veterinarian doing business in this commonwealth stating that he has examined said dog and that it appears, in his opinion, to have been spayed or neutered or a receipt of a bill from the veterinarian who performed the operation that spayed or neutered said dog. No fee shall be charged for a license for a dog specially trained and currently utilized to lead or serve a person with special needs. April 15th is established as the deadline date for procurement of a dog license. After that date, a penalty charge of ten dollars (\$10.00) will be added to the license fee.

No kennel license shall be issued in the town and no person or household shall keep more than three (3) dogs over the age of three (3) months. This provision shall not apply to the dog officer, who may keep dogs in accordance with his duties.

² Art 7 of the 1990 Fall Town Meeting clarified the determination of “adequate enclosure” in Section 6, changed the language of the first paragraph of Section 7 to the language now shown, and increased the penalties in Section 10.

³ Art 30 of the 2000 Spring Town Meeting increased the fees to \$15 for a female or male dog and \$10 for a spayed or neutered dog.

⁴ Art 12 of the 2006 Spring Town Meeting increased the fees to \$20 for a female or male dog and \$15 for a spayed or neutered dog.

Section 8. EXCEPTION

The provisions of this by-law shall not apply to any person or organization who owns, keeps or maintains any dog as a part of a canine corps for the commonwealth or any of its political subdivisions while actually engaged in the performance of official duties.

Section 9. AUTHORITY TO PROSECUTE VIOLATIONS

The dog officer or, if none, the police department of the town shall prosecute any violations of this by-law.

Section 10. PENALTIES⁵

A violation of this by-law shall be punished by a fine of forty dollars \$40.00 for the first offense, fifty dollars \$50.00 for the second offense, and sixty dollar \$60.00 for the third or subsequent offense during any one calendar year.

⁴Art 21 of the 2007 Fall Town Meeting Changing the Penalties.

CHAPTER 11

ANTI-LITTER

Section 1. DEFINITIONS

For the purpose of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

1.1 “Aircraft” is any contrivance now known or hereafter invented, used or designed for navigation or for flight in the air. The word “aircraft” shall include helicopters and lighter than air dirigibles and balloons.

1.2 “Private Receptacle” is a litter storage and collection receptacle as required and/or authorized in the town.

1.3 “Commercial Handbill” is any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper, booklet, or any other printed or otherwise reproduced original or copies of any manner of literature:

- (a) which advertises for sale any merchandise, product, commodity, or thing; or
- (b) which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales; or
- (c) which directs attention to or advertises any meeting, theatrical performance, exhibition or event of any kind, for which an admission fee is charged for the purpose of private gain or profit; but the terms of this clause shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under the ordinary rules of decency, good morals, public peace, safety and good order:
PROVIDED, that nothing contained in this clause shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition, or event of any kind, without a license, where such license is or may be required by any laws of this commonwealth, or under any by-law of this town; or
- (d) which, while containing reading matter other than advertising matter, is predominantly and essentially an advertisement, and is distributed or circulated for advertising purposes, or for the private benefit and gain of any person so engaged as advertiser or distributor.

1.4 “Garbage” is putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

1.5 “Litter” is “garbage”, “refuse”, and “rubbish” as defined herein and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

1.6 “Newspaper” is any newspaper of general circulation as defined by general law, any newspaper duly entered with the post office department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording officer as provided by general law; and, in addition thereto, shall mean and include any periodical or magazine regularly published and distributed to the public.

1.7 “Non-commercial Handbill” is any printed or written matter, any sample, or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet, or any of the printed or otherwise reproduced original or copies of any manner of literature not included in the aforesaid definitions of a commercial handbill or newspaper.

1.8 “Park” is a park, reservation, playground, beach, recreation center or any other public area in the town, owned or used by the town and devoted to recreation or conservation.

1.9 “Person” is any person, firm, partnership, association, corporation, company or organization of any kind.

1.10 “Private Premises” is any dwelling, house, building, or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenant to such dwelling, house, building or other structure.

1.11 “Public Place” is any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

1.12 “Refuse” is all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleaning, dead animals, abandoned automobiles or trucks, and solid market and industrial wastes.

1.13 “Rubbish” is nonputrescible solid wastes consisting of both combustible and non-combustible wastes, such as paper, wrappings, cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass, bedding, crockery and similar materials.

1.14 “Vehicle” is every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, including devices used exclusively upon stationary rails or tracks.

Section 2. LITTER IN PUBLIC PLACES

No person shall throw or deposit litter in or upon any street, sidewalk, or other public place within the town except in public receptacles, in authorized private receptacles for collection, or in official town dumps or incinerators.

Section 3. PLACEMENT OF LITTER IN RECEPTACLES TO PREVENT SCATTERING

Persons placing litter in public receptacles or in authorized private receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any street, sidewalk or other public place or upon private property.

Section 4. SWEEPING LITTER INTO GUTTERS PROHIBITED

No person shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalk in front of their premises free of litter.

Section 5. MERCHANTS DUTY TO KEEP SIDEWALKS FREE OF LITTER

No person owning or occupying a place of business shall sweep into or deposit in any gutter, street or other public place within the town the accumulation of litter from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying places of business within the town shall keep the sidewalk in front of their business premises free of litter.

Section 6. LITTER THROWN BY PERSONS IN VEHICLES

No person, while a driver or passenger in a vehicle, shall throw or deposit litter upon any street or other public place within the town, or upon private property.

Section 7. TRUCK LOADS CAUSING LITTER

No person shall drive or move any truck or other vehicle within the town unless such vehicle is so constructed or loaded as to prevent any load, contents or litter from being blown or deposited upon any street, alley or other public or private place; and all such vehicles, when so required, shall be duly licensed according to the provisions of the general laws of the commonwealth and the rules, regulations and by-laws of the town.

Section 8. LITTER IN PARKS

No person shall throw or deposit litter in any park within the town except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements upon any part of the park or upon any street or other public place. Where public receptacles are not provided, all such litter shall be carried away from the park by the person responsible for its presence and properly disposed of elsewhere as provided herein.

Section 9. LITTER IN LAKES AND FOUNTAINS

No person shall throw or deposit litter in any fountain, pond, lake, stream, river or any other body of water in a park or elsewhere within the town.

Section 10. THROWING OR DISTRIBUTING COMMERCIAL AND NON-COMMERCIAL HANDBILLS IN PUBLIC PLACES

No person shall throw or deposit any commercial or non-commercial handbill in or upon any sidewalk, street or other public place within the town. Nor shall any person hand out or distribute or sell any commercial handbill in any public place. Provided, however, that it shall not be unlawful on any sidewalk, street, or other public place within the town for any person to hand out or distribute without charge to the receiver thereof, any non-commercial handbill to any person willing to accept it.

Section 11. PLACING COMMERCIAL AND NON-COMMERCIAL HANDBILLS ON VEHICLES

No person shall throw or deposit any commercial or non-commercial handbill in or upon any vehicle. Provided, however, that it shall not be unlawful in any public place for a person to hand out or distribute without charge to the receiver thereof, a non-commercial handbill to any occupant of a vehicle who is willing to accept it.

Section 12. DEPOSITING COMMERCIAL AND NON-COMMERCIAL HANDBILLS ON UNINHABITED OR VACANT PREMISES

No person shall throw or deposit any commercial or non-commercial handbill in or upon any private premises which are temporarily or continuously uninhabited or vacant.

Section 13. PROHIBITING DISTRIBUTION OF HANDBILLS WHERE PROPERLY POSTED

No person shall throw, deposit or distribute any commercial or non-commercial handbill upon any private premises, if requested by anyone therein not to do so, or if there is placed on said premises in a conspicuous position near the entrance thereof, a sign bearing the words: "No Trespassing", "No Peddlers or Agents", "No Advertisement", or any similar notice, indicating in

any manner that the occupants of said premises do not desire to be molested or have their right of privacy disturbed, or to have any such handbills left upon the premises.

**Section 14. DISTRIBUTING COMMERCIAL AND NON-COMMERCIAL
HANDBILLS AT INHABITED PRIVATE PREMISES**

No person shall throw, deposit or distribute any commercial or non-commercial handbill in or upon private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant, or other person then present in or upon such private premises. Provided, however, that in case of inhabited private premises which are not posted, as provided in this by-law, such person, unless requested by anyone upon such premises not to do so, may place or deposit any such handbill in or upon such inhabited premises, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets, or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.

14.1 EXEMPTION FOR MAIL AND NEWSPAPERS - The provisions of this section shall not apply to the distribution of mail by the United States, nor to newspapers (as defined herein) except that newspapers shall be placed on private property in such a manner as to prevent their being scattered by the elements upon any street, sidewalk or other public place.

Section 15. DROPPING LITTER FROM AIRCRAFT

No person in any aircraft shall throw out, drop, or deposit within the town any litter, handbill or any other object.

Section 16. POSTING NOTICES PROHIBITED

No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamp post, public utility pole or shade tree, or upon any public structure or building, except as may be authorized or required by law.

Section 17. LITTER ON OCCUPIED PRIVATE PROPERTY

No person shall throw or deposit litter on any occupied private property within the town, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles or structures for collection in such a manner that litter will be prevented from being carried by the elements or deposited upon any street, sidewalk or other public place or upon any private property.

Section 18. OWNER TO MAINTAIN PREMISES FREE OF LITTER

The owner or person in control of any private property shall at all times maintain the premises free of litter. Provided, however, that this section shall not prohibit the storage of litter in private receptacles or in otherwise lawful conforming structures.

Section 19. LITTER ON VACANT LOTS

No person shall throw or deposit litter on any open or vacant private property within the town whether owned by such person or not, unless duly licensed by the board of health under applicable provisions of the general laws of the commonwealth or by-laws of the town.

Section 20. CLEARING OF LITTER FROM OPEN PRIVATE PROPERTY BY THE TOWN

20.1 NOTICE TO REMOVE - The board of health is hereby empowered to notify the owner of any open or vacant private property within the town or the agent of such owner to properly dispose of litter located on such owner's property, which is dangerous to public health, safety or welfare, or the board of health may proceed to abate a nuisance as defined and provided by General Laws, Chapter 111 as amended. Such notice shall be by registered mail or certified mail, addressed to said owner at his last known address or such notice may be served upon such owner or agent by a constable or other legal officer as provided by law, and authorized to serve such process.

20.2 ACTION UPON NON-COMPLIANCE - Upon the failure, neglect or refusal of any owner or agent so notified, to properly dispose of litter dangerous to the public health, safety or welfare, within twenty four (24) hours, or within such other time as the board of health deems reasonable, after receipt of such written notice provided for in sub-section 20.1 preceding, or within fifteen (15) days after the date of such notice in the event the same is returned to the town post office department because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner or agent, the board of health is hereby authorized and empowered to pay for the disposing of such litter or order its disposal by the town.

20.3 CHARGE INCLUDED IN TAX BILL - When the town has effected the removal of such dangerous litter or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of fourteen percent (14%)¹ per annum from the date of the completion of the work, if not paid by such owner prior thereto, shall be charged to the owner of such property on the next regular tax bill forwarded to such owner by the town and said charge shall be due and payable by said owner at the time of payment of such bill. And such claim for the expense by said board or town in so doing shall constitute a debt due the town upon the completion of the work and the rendering of an account thereof to the owner, and is recoverable from such owner in an action of contract, together with interest thereon at the rate of fourteen percent (14%) per annum from the date said debt becomes due and payable.

20.4 RECORDED STATEMENT CONSTITUTES LIEN - Where the full amount due the town is not paid by such owner within thirty (30) days after the disposal of such litter, as provid-

¹ Art 15 of the 1984 Fall Town Meeting increased the interest rate in the first and second sentences from 6% to 14%.

ed for in subsections 20.1 and 20.2 of this by-law, then, and in that case, the board of health or town may cause to be recorded, in the registry of deeds, a sworn statement showing the cost and expense incurred for the work, the date the work was done and the location of the property on which said work was done. The recording of such sworn statement shall constitute a lien on the property, and shall remain in full force and effect for the amount due in principal and interest, plus costs of court, if any, for collection, until final payment has been made. Said costs and expenses shall be collected in the manner fixed by law for the collection of taxes. Sworn statements recorded in accordance with the provisions hereof shall be prima facie evidence that all legal formalities have been complied with and that the work has been done properly and satisfactorily and shall be full notice to every person concerned that the amount of the statement, plus interest, constitutes a charge against the property designated or described in the statement and that the same is due and collectible as provided by law. Such lien may be dissolved by filing with the register of deeds for record or registration, as the case may be, in the county or district, if the county is divided into districts, where the land lies, a certificate from the collector of taxes of the town that the debt for which the lien attached, together with interest and costs thereon, has been paid or abated. Such collector shall have the same powers and be subject to the same duties with respect to such claim as in the case of the annual taxes upon real estate; and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof, and the redemption of land so sold or taken shall apply to such claim.

Section 21. PENALTIES²

21.1 Whosoever violates any provision of this chapter or any rule or regulation of the board of health shall be penalized by a criminal complaint brought in the district court or by a non-criminal disposition pursuant to Chapter 40, Section 21D of the General Laws.

21.2 Any person who upon application of criminal complaint brought in the district court and found guilty of a misdemeanor shall be fined in an amount not to exceed three hundred dollars (\$300.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

21.3 Any person who is penalized by a non-criminal disposition brought pursuant to the provisions of Chapter 40, Section 21D of the General Laws, shall be subject to a specific penalty of fifty dollars (\$50.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Violations of this section may be enforced by any member of the board of health, health director, inspector agent or other enforcing person as defined by the rules or regulations of the board of health.

² Superseded by 11/7/85 Art 22; replaced the language of Section 21 with that shown.

CHAPTER 12

REPEAL AND TRANSITION

Section 1. REPEAL OF PRIOR INCONSISTENT BY-LAWS

All by-laws or provisions thereof heretofore adopted which are inconsistent with the provisions of this code of by-laws are hereby repealed and annulled; but the provisions of this code of by-laws, insofar as they are the same as the provisions of by-laws heretofore adopted, shall be construed as a continuation thereof and not as new enactments.

Section 2. ACTION TAKEN UNDER PRIOR BY-LAWS PRESERVED

The repeal of any by-law or portion thereof heretofore adopted shall not be construed to revoke, invalidate or otherwise alter acts done, ratified or confirmed in compliance therewith or under authority thereof, or any right accrued or established or any action, suit or proceeding commenced or had in any case, nor shall any such repeal affect any punishment, penalty or forfeiture incurred under any such prior by-law.

Section 3. SEVERABILITY

The provisions of this code of by-laws, as amended from time to time, are severable. If any provision of this code of by-laws, or any amendment thereto, is held invalid, the other provisions of this code of by-laws shall not be affected thereby. If the application of such provision, or any amendment thereto, is held invalid, the application of such provision to other persons and circumstances shall not be affected thereby.

Section 4. SPECIFIC PROVISIONS PREVAIL

To the extent that any specific provision of this code of by-laws, as amended from time to time, shall conflict with any provision expressed in general terms, the specific provision shall apply.

Section 5. CONTINUATION OF EXISTING RULES REGULATIONS AND TOWN MEETING VOTES

All prior town meeting votes and all rules and regulations of or pertaining to the town or any town agency which are in force when this code of by-laws takes effect and which are not specifically or by clear implication repealed hereby, shall continue in full force and effect until amended or rescinded by due course of law or until they expire by their own limitation. In the event of any inconsistency between this code of by-laws and any such town meeting vote, rule or regulation, this code of by-laws shall be deemed controlling.

CHAPTER 13¹

WETLANDS

Section 1. PURPOSE

The purpose of this by-law is to protect the wetlands, related water resources, and adjoining land areas in the town by prior review and control of activities deemed to have an adverse effect upon wetland values, including, but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, recreation, wildlife habitat and aesthetics, collectively known as the interests protected by this by-law. Adverse effects may include, but are not limited to, one or more of the following:

- (a) any actual or potential contamination of public or private groundwater supply including aquifers or recharge areas, land or water containing fisheries, including the biological life necessary to support a freshwater ecosystem;
- (b) any reduction of the flood storage capacity of a wetland, river or stream;
- (c) any alteration of a river, stream or wetland which results in any increase in the volume or velocity of water which may cause flooding;
- (d) any action which will remove, fill, dredge or alter any area subject to this by-law and will result in any threat to the health, welfare or safety of the individual or the community;
- (e) any work in an area consisting of “very poorly drained soil” as described by the National Cooperation Soil Survey or the U.S. Department of Agricultural Soil Conservation Service; and
- (f) any work in an area which would be flooded as a result of the 100 year storm event as that storm event is defined as part of the Federal Emergency Management Agency 100 year floodplan.

Section 2. DEFINITIONS

As used in this chapter:

2.1 “Abutter” shall mean a property owner whose land abuts the parcel subject to commission review, or would abut, if not for an intervening street, sidewalk, pathway, stream, river, ditch, etc., or combination thereof not more than seventy-five (75) feet in width.

2.2 “Activity” shall mean any operation by a person.

¹ Art 10 of the 1987 Fall Town Meeting added this new chapter.

- 2.3 “Adjoining land area” shall mean the one hundred (100) foot zone outside of wetlands, banks and bodies of water. These one hundred (100) feet shall be measured horizontally.
- 2.4 “Aesthetics” shall mean the natural scenery and quiet of an area which is visually accessible from a public area or public way.
- 2.5 “Alter” shall include, without limitation, the following actions:
- (a) removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
 - (b) changing of pre-existing drainage characteristics, flushing characteristics, rate or patterns of sedimentation, flow patterns, and flood retention characteristics;
 - (c) drainage or other disturbance of water level or water table;
 - (d) dumping, discharging or filling with any material which may degrade water quality;
 - (e) placing of fill or removal of material which would alter elevation;
 - (f) driving of piles or erection of buildings or structures of any kind;
 - (g) placing of obstructions or objects in water;
 - (h) destruction or dislocation of plant life, including cutting and moving of trees;
 - (i) changing water temperature or changing its biochemical oxygen demand and other physical or chemical characteristics; and
 - (j) any activity, change or work which pollutes or causes displacement of any body of water or groundwater.
- 2.6 “Application” shall mean an application for a permit under this by-law, together with plans and all supporting documents.
- 2.7 “As-built plan” shall mean a plan which adequately describes the project, completed, at the time the request is made for a certificate of compliance.
- 2.8 “Bank” shall mean the rising land normally bordering and confining a body of water.
- 2.9 “Certificate” shall mean a certificate of compliance, given by the commission when a project has been completed in accordance with the order of conditions.

- 2.10 “Commission” shall mean the Winchester Conservation Commission.
- 2.11 “Determination” shall mean a determination of applicability.
- 2.12 “Erosion control” shall mean the prevention or reduction of the detachment or movement of soil particles or rock fragments by natural or artificial means.
- 2.13 “Extension” shall mean a request for an extension of the life of a permit.
- 2.14 “Flooding” shall mean a temporary inundation of water or a rise in the surface of a body of water, such that it covers land not usually under water.
- 2.15 “Groundwater” shall mean water below the earth’s surface in the zone of saturation.
- 2.16 “Inundation by groundwater” shall mean having groundwater at or near the surface of the ground during a portion of the year.
- 2.17 “Land” shall mean any ground, soil or earth, including drain ways and any areas not permanently covered by water.
- 2.18 “Permit” shall mean an approved application, including the list of limitations and required actions which regulate or prohibit activity of the applicant.
- 2.19 “Person” shall mean an individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or other legal entity, its legal representatives, agents, or assigns.
- 2.20 “Water pollution” shall mean the contamination, degradation, or change in the physical, chemical or biological characteristics of surface or ground-water.
- 2.21 “Wetland” shall include, but not be limited to, wet meadows, bogs, and swamps, and may include land within one hundred feet of any bank, lake, river, pond, or stream, land under said waters, or land subject to flooding or inundation by groundwater or surface water.
- 2.22 “Wetlands Protection Act” shall mean Chapter 131, Section 40, of the General Laws.
- 2.23 “Wildlife habit” shall mean those areas which due to their plant community, composition and structure, hydrological regime or other characteristics, provide important food, shelter, migratory or over-wintering areas, or breeding areas for wildlife.
- 2.24 “Work” shall mean the same as activity.
- 2.25 “Zone of saturation” shall mean the subsurface zone in which all pore spaces are filled

with water.

Section 3. JURISDICTION

Except as permitted by the commission or as provided in this by-law no person shall remove, fill, dredge, alter, or build upon or within one hundred (100) feet of any freshwater wetland, wet meadow, bog, or swamp; within one hundred (100) feet of any bank; upon or within one hundred (100) feet of any lake, river, pond, stream; upon any land under said waters; upon any land subject to flooding or inundation by groundwater or surface water; or within the foregoing areas in such a way as to detract from visual access to the Aberjona River, Horn Pond Brook, Winter Pond, Wedge Pond, Judkins Pond, Mill Pond, Smith Pond or Mystic Lake.

Section 4. EXCEPTIONS

The permit and application required by this by-law shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth of Massachusetts or a political subdivision thereof; and provided that advance notice, oral or written, has been given to the commission prior to commencement of work or within 24 hours after commencement; and provided that the commission certifies the work as an emergency project; and provided that the work is performed only for the time and place certified by the commission for the limited purposes necessary to abate the emergency. Within 21 days of commencement of an emergency project an application shall be filed with the commission for review as provided in this by-law.

If certification was improperly granted, or the work allowed thereunder is excessive or not required to protect the health and safety of the citizens of the Commonwealth, the commission may revoke the emergency certification, condition the work permitted thereunder, or take such other action that it deems appropriate.

Section 5. REQUEST FOR A DETERMINATION OF APPLICABILITY

5.1 With the exception of emergencies as noted in section 4, any person who desires a determination as to whether this by-law applies to any area, or work to be performed on said area, shall submit a written request to the commission, accompanied by a fee as specified in section 10.

5.2 A request for determination shall be sent by certified mail, or hand delivered. The commission may require that additional information be submitted to aid in the evaluation. A written determination as to the applicability of this by-law shall be valid when signed by a majority of the commission and shall be rendered within twenty-one (21) days after the date of receipt of all necessary materials.

Section 6. APPLICATION FOR A PERMIT

6.1 No activity within the jurisdiction of this by-law shall be performed without first receiving and complying with a permit as set forth in this by-law. An application shall include such information and plans as deemed necessary by the commission and shall be accompanied by a fee as specified in this by-law.

6.2 The applicant shall agree in writing to pay the costs and expenses of an expert consultant deemed necessary, and approved by the commission, to review the application.

Section 7. NOTICE AND HEARINGS²

7.1 Any person filing an application or a request for determination shall supply a list of abutters and their mailing addresses according to the records of the town. When an applicant requesting a determination is other than the owner, copies of the request, the notice of the hearing, and the determination itself shall be sent to the owner and to the applicant by the commission.

7.2 The commission shall conduct a public hearing on the application or request for determination, with written notice given at the expense of the applicant five (5) days prior to the hearing, in a local newspaper. The commission shall mail a notice of the hearing to the abutters.

7.3 The commission shall commence the public hearing on a completed application or request for determination within twenty-one (21) days from its receipt.

7.4 The commission shall have authority to continue the hearing to a new date for reasons stated at the hearing, which may include, but are not limited to, receipt of additional information offered by the applicant or others; information and plans required by the commission; or comments and recommendations of town boards and officials.

7.5 The Conservation Commission shall issue its decision in writing for all proposals within the (Large-Scale, Ground-Mounted Solar Photovoltaic Installation Overlay District) (SOL-D) within 365 calendar days of the receipt by the Conservation Commission of an application under this bylaw determined by it to be administratively complete and containing sufficient information for it to review the project and render its decision. In the event that the applicant fails to provide a response to a Conservation Commission request for information within thirty (30) days or such other time frame as the Commission may require of the Commission's request, any additional time over that time frame shall extend the time for the three hundred and sixty five (365) day deadline.

² Art Fall Town Meeting 2010

Section 8. PERMIT AND CONDITIONS

8.1 If the commission issues a permit, the permit shall include conditions to protect the interests of the by-law and all work shall be done in accordance with those conditions.

8.2 The commission may require, as a condition of a permit, that certain work shall be performed within specified time periods.

8.3 The commission may specify that certain conditions of the permit shall run with the land.

8.4 A permit shall expire three (3) years from the date of issuance. A permit may be extended once for an additional one (1) year period.

8.5 The commission may revoke or modify a permit for good cause provided that it has conducted a public hearing.

Section 9. PRE-CONSTRUCTION REQUIREMENTS

9.1 No activity shall be undertaken until the permit has been recorded in the Registry of Deeds or the Land Court.

9.2 Prior to commencement of site alteration, the petitioner shall display at the entrance of the site a sign, not less than two (2) square feet: nor more than (3) square feet in area, giving the wetlands by-law file number assigned to the project as follows: “WINCHESTER WETLAND BY-LAW NO. _____”. The sign shall be displayed at all times and shall not be removed until a final release has been issued by the commission. Failure to display the sign at all times prior to final release shall be cause for a stop-work enforcement order.

Section 10. FEES^{3&4}

10.1 Permit fees shall be calculated by the conservation commission, are payable at the time of application, and are non-refundable. Town projects shall be exempt from fees.

These fees are in addition to the fees charged under Chapter 131, Section 40 of the General Laws, or take any other action in relation thereto.

Minor project (house addition, tennis court, swimming pool, utility work, etc.)	\$200.00
Single family dwelling	\$600.00
Subdivision (road and utilities only)	\$500.00+\$2/ft. of roadway sideline within 100 ft. of wetlands or within land subject to Flooding + \$0.02/sq. ft. of land within 25 ft. of wetland disturbed.
Multiple dwelling structures	\$750.00+\$150.00 per unit all or part of which lies within 100 feet of a resource area or within riverfront area, land subject to flooding or discharges storm water within an area subject to bylaw jurisdiction.
Commercial or industrial project	\$2,500.00
Extension of Permit	\$150.00
a. Single family dwelling or minor project	
b. Other	\$300.00
Re-filings of previously denied project within three 3 years	Original fee or \$1,500.00 whichever is less
Determination	\$150.00
Abbreviated Notice of Resource Area Delineation	\$150.00

³Art 22 of the 2007 Fall Town Meeting changing the fees.

⁴Art 30 of the 2012 Spring Town Meeting changing the fees.

Section 11. PLANS AND DRAWINGS

11.1 Plans shall adequately describe the proposed activity and its effect on wetlands, related water resources, and adjoining land areas.

11.2 All drawings shall be drawn (1"=40' max.) with the title designating the name of the project location, and name(s) of the person(s) preparing the drawings, and the date prepared, including all revision dates. Drawings shall be stamped and signed by a registered professional engineer and/or a registered land surveyor of the Commonwealth of Massachusetts. Pencil notations will not be accepted.

11.3 The following items are set out as a minimum standard:

- (a) maximum and minimum groundwater elevations;
- (b) calendar dates of measurements, including but not limited to samplings, contours, and percolation tests;
- (c) indicate soil characteristics in representative parts of the property, including depth of peat and mulch in wetlands. Include test borings, unless a variance is allowed;
- (d) a description, including calculations and data of any alterations to the one hundred (100) year flood storage capacity of the site. If a change of flood storage capacity is proposed, the applicant must demonstrate incremental compensatory storage at every elevation of the flood plain; and
- (e) methods to be used to control any embankments with a slope of 3:1 or steeper.

The applicant may submit, or may be required to submit additional information.

11.4 The drawings shall include:

- (a) the one hundred (100) foot buffer zone;
- (b) the "limit of work" line;
- (c) a cross section of all wetlands, showing slope, bank, and bottom treatments;
- (d) existing trees, stone walls, fences, buildings, historic sites, rock ridges, and outcroppings;
- (e) a delineation of all wetlands, natural and manmade. Such delineation must be made at the expense of the applicant, by a wetlands professional acceptable to the commission, and shall not be made when the area is snow covered; and

- (f) a clear delineation of all alterations proposed in or adjacent to wetlands and floodplains. All such alterations shall be explained in text or footnoted.

11.5 Plans and data shall show the existing and proposed locations and elevations listed below. All elevations shall be Town of Winchester base.

- (a) the rim elevations of all catch basins, drains, culverts, and other drainage structures immediately upstream and downstream of the site, as well as those on site;
- (b) the sizes and slopes of all culverts and pipes;
- (c) a runoff plan and calculations showing runoff conditions for comparative purposes;
- (d) temporary and permanent on-site pollution and erosion control devices, such as hooded catch basins, oil absorption pillows, detention/retention basins, flow dissipators or vegetative buffers;
- (e) the extent and area of all structures, roadways, paved areas, septic systems, wells, tanks and utility easements;
- (f) any fill material which will be stored on site; and
- (g) the lowest elevation of cellars and floors.

Section 12. CHANGES IN SUBMITTED PLANS

12.1 The applicant shall notify the commission in writing if there is a change in the proposed activity after a determination of applicability or permit has been issued. No work associated with these changes shall commence until the commission has reviewed the changes and issued its decisions.

12.2 The commission shall review these changes and issue a written decision if a new application or request is warranted.

12.3 The person making this request shall be notified by the commission within twenty-one (21) days of the receipt of the request.

Section 13. APPEAL

Any person aggrieved by a decision of the commission, whether or not previously a party to the proceeding, may appeal according to the provisions of the General Laws.

Section 14. CERTIFICATE OF COMPLIANCE

14.1 Upon completion of the project, the applicant shall request in writing a certificate of compliance from the commission. This request shall be accompanied by an as built plan, as certified by a registered professional engineer and/or land surveyor certifying substantial compliance with the approved plans.

14.2 If, after a site inspection, the commission determines that the requirements of the permit have not been satisfactorily met, the request for a certificate of compliance may be denied. The decision, along with the reasons for denial, shall be forwarded to the applicant within twenty-one (21) days of the receipt of the request.

14.3 On the certificate of compliance, the commission may specify that certain conditions of the permit shall run with the land.

14.4 The person to whom the certificate of compliance is issued shall record it within ten (10) days in the Registry of Deeds or in the Land Court in the chain of title of the affected property and shall notify the commission, in writing, of the recording.

Section 15. BURDEN OF PROOF

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not harm the interests protected by this by-law. Failure to provide supporting evidence that the proposed work will not harm the interests protected by this by-law shall be sufficient cause for the commission to deny a permit, or grant with conditions or continue the hearing to another date.

Section 16. PRE-ACQUISITION VIOLATION

Any person who acquires real estate upon which work has been done in violation of this by-law shall comply with any order to restore said land to its condition prior to said violation; provided, however, that no action, civil or criminal, shall be brought against such person, unless commenced within three (3) years following the date of acquisition of the real estate by such person.

Section 17. ENFORCEMENT

17.1 The commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this by-law and may make such examinations, surveys or sampling as the commission deems necessary.

17.2 The commission shall have authority to enforce this by-law, its regulations, and permits issued there under by violation notices, administrative orders, and civil and/or criminal court actions.

17.3 Any person violating any of the provisions of this chapter, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding three hundred dollars (\$300.00). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

CHAPTER 14¹

DEMOLITION OF HISTORIC BUILDINGS

Section 1. PURPOSE

This by-law is adopted to preserve and protect significant buildings within the Town which reflect distinctive features of the architectural, cultural, political, economic or social history of the Town; to encourage property owners of significant buildings to seek ways to preserve, rehabilitate or restore such buildings rather than demolish them; and by furthering these purposes, to preserve the resources of the Town and to promote the public welfare and to make the Town a more attractive and desirable place in which to live.

Section 2. DEFINITIONS

As used in this chapter:

2.1 “Building” shall mean a combination of any materials, having a roof, to form a structure for the shelter of person, property or animals.

2.2 “Commission” shall mean the Winchester Historical Commission, created by vote of Winchester Town Meeting pursuant to Massachusetts General Law, c. 40A, sec. 8D.

2.3 “Demolition” shall mean any act of pulling down, destroying, removing or razing a building or commencing the work of total destruction.

2.4 “Permit” shall mean a permit issued by the building commissioner for the demolition of a building pursuant to an application.

2.5 “Significant building” shall mean any building or portion thereof²

(a) which is listed on, or is a contributing building within an area listed on, the National or State Registers of Historic Places ("National Register") or

(b) which is included in the Massachusetts Historical Commission's **“Inventory of Historic and Archeological Assets of the Commonwealth”** (the "Inventory").

¹ Art 23 of the 1995 Spring Town Meeting added this new chapter.

² Art 8 of the 2001 Spring Town Meeting amended the definition of “significant building”.

Section 3. PROCEDURES³

3.1 An application to the building commissioner for a demolition permit shall be made or co-signed by the owner of record at the time of application. The building commissioner shall provide each applicant for a demolition permit with a copy of this by-law and require each applicant to acknowledge receipt of the by-law. The demolition application shall contain the following:

- (a) The address of the building to be demolished
- (b) The owner's name, address and telephone number
- (c) Copy of the original building permit application, tax assessment records and/or other indicia evidencing the building's date of construction

3.2 Upon receipt of an application for a demolition permit for a building, the building commissioner shall forward a copy thereof to the chairperson and vice-chairperson of the commission. No demolition permit shall be issued at that time.

3.3 The chairperson or vice-chairperson shall determine whether the subject of the application is a significant building based on available information. If inadequate information exists in the demolition application, the chairperson or vice-chairperson may deem the building referenced in the application to be a significant building, and therefore a hearing held in accordance with these by-laws. If the building is a significant building, the chairman shall notify the building commissioner in writing within seven (7) days of receipt of the copy of the application that this by-law does apply to the building and that no demolition permit may be issued at that time. After the expiration of ten (10) days from the date the chairperson received the copy of the application, if the building commissioner has not received notification that the building is a significant building, the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the demolition permit.

3.4 The commission shall hold a hearing on an application for demolition of a significant building within twenty-one (21) days of receipt of the copy of the application unless the commission and the applicant shall jointly agree to extend the period. The commission shall give public notice of the hearing by publishing notice of the time, place and purpose of the hearing in a local newspaper at least seven (7) days before such hearing. At least seven (7) days before such hearing, the commission shall mail a copy of such notice to the applicant, to the owners of property abutting the property which is the subject of the hearing, and to other parties deemed by the commission to be affected thereby.

3.5 If, after such hearing, the commission determines that the demolition of the significant building would not be detrimental to the historical or architectural heritage or resources of Winchester, the commission shall notify the building commissioner within ten (10) days of such determination. Upon receipt of such determination, or after the expiration of fifteen (15) days from

³ Art 3 Spring Town Meeting 2012 amended Section 3.1, 3.2, 3.3 and 3.6

the date of the hearing, if the building commissioner has not received notification from the commission, the building commissioner may, subject to the requirements of the State Building Code and other applicable law, issue the demolition permit.

3.6 If the Commission determines that the demolition of the significant building would be detrimental to the historical or architectural heritage or resources of the Town, such building shall be considered a preferably-preserved significant building. The determination by the Commission that the significant building shall be preferably preserved may include the following criteria:

(a) Historical Importance. Consideration of whether the building:

1. Has character, interest or value as part of the development, heritage or cultural characteristics of the Town of Winchester, the Commonwealth of Massachusetts, or the nation,
2. Is the site of an historic event,
3. Is identified with a person or group of persons who has some influence on society, or
4. Exemplifies the cultural, political, economic, social, or historic heritage of the community;

(b) Architectural Importance. Consideration of whether the building:

1. Portrays the environment of a group of people in an era of history characterized by a distinctive architectural style,
2. Embodies the distinguishing characteristics of an architectural type,
3. Is the work of an architect, master builder, or craftsman whose individual work has influenced the development of the town, or
5. Contains elements of architectural design, detail, materials or craftsmanship, which represents a significant
6. innovation; or

(c) Geographic importance. Consideration of whether the building:

1. Is part of, or related to, a square, park, or other distinctive area, or
2. Represents an established and familiar visual feature of the neighborhood, district, street, context, town
3. center, or the community as a whole due to its unique location or its physical characteristics.

3.7 Upon determination by the commission that the significant building which is the subject of the application for a demolition permit is a preferably-preserved significant building, the commission within ten (10) days shall so advise the applicant and the building commissioner and no demolition permit may be issued until twelve (12) months after the date of the application for a demolition permit.⁴

⁴ Art 6 of the 2006 Spring Town Meeting amended Ch. 14 S. 3.7

3.8 Within ten (10) days of the determination, the commission shall in writing invite the owner of record of a preferably-preserved significant building and any other persons deemed appropriate to participate in an investigation 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 building.

3.9 Notwithstanding the provisions of section 3.5, the building commissioner may issue a demolition permit for a preferably-preserved significant building at any time after receipt of written advice from the commission to the effect that either:

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

(b) The commission is satisfied that for at least twelve (12) months the owner has made continuing bona fide and reasonable efforts to locate a purchaser to preserve, rehabilitate and restore the subject building, and that such efforts have been unsuccessful.⁵

3.10 Notwithstanding the provisions of section 3.5, the building commissioner may issue a demolition permit subject to conditions agreed to by the commission and the applicant for a preferably-preserved significant building at any time after receipt of written advice from the commission and the applicant to the effect that the commission is satisfied that demolition of the preferably-preserved significant building subject to the conditions specified is the outcome most likely to secure the intent of this by-law and that the applicant agrees to abide by the conditions specified.

3.11 An appeal from a determination by the historical commission that the subject of a demolition permit application is a preferably preserved significant building may be taken to the board of appeals.

Section 4. ENFORCEMENT AND REMEDIES

4.1 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 thereof.

4.2 No building permit shall be issued with respect to any premises upon which a significant building has been voluntarily demolished in violation of this by-law for a period of two (2) years

⁵ Art 6 of the 2006 Spring Town Meeting amended Ch. 13 S. 3.9(b)

after the date of the completion of such demolition. As used herein “premises” includes the parcel of land upon which the demolished significant building was located. The demolition of a significant building pursuant to a demolition permit issued on the basis of incorrect information shall be considered to be voluntary demolition in violation of this by-law.

4.3 Upon a determination by the commission that a building is a preferably-preserved significant building, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the building commissioner. Should the owner fail so to secure the building, the loss of such building through fire or other cause shall be considered voluntary demolition for the purposes of section 4.2.

Section 5. 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.

Section 6. OPPORTUNITY FOR REMOVAL⁶

Property owners will have a single opportunity to be removed by written reply mailed or delivered to the commission (an “Opportunity for Removal”) from the protective status of this by-law as follows:

- i. The commission will notify each property owner listed on the Inventory by certified mail within six (6) months of the effectiveness of this amendment and such property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice;
- ii. To the extent any properties are added to the National Register or to the Inventory, the commission shall deliver notice thereof to each property owner affected thereby by certified mail within six (6) months of said property being added to the National Register or Inventory and such property owner shall be afforded an Opportunity for Removal within thirty (30) days of receipt of such notice; and,
- iii. Such notification will describe the effect of this by-law and permit such property owner the opportunity to notify the commission that they wish to have their property removed from its status as a Significant Building.

A listing of all Significant Buildings shall be kept by the commission and shall be available to the public.

⁶Art 8 of the 2001 Spring Town Meeting added this new section.

CHAPTER 15¹

PROHIBITION OF SMOKING IN RESTAURANTS AND OTHER PUBLIC PLACES

Section 1. DEFINITIONS

As used in this chapter:

1.1 “Enclosed area” is an area completely enclosed by ceilings, walls and doors with ventilation only to the outside.

1.2 “Health Care Facility” is any institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals, clinics, offices of any surgeons, physical therapists, dentists, physicians and all specialists within these professions, weight control clinics, nursing homes, and homes for long term care.

1.3 “Person” is any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to an owner, operator, manager, proprietor or person in charge of any building, establishment, business, or retail store, or the agents or designees of any of the foregoing.

1.4 “Private Club” is any body or association lawfully operating under a charter granted by a parent body so chartered, and including also any organization owning, hiring or leasing a building, or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members provided that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the members.

1.5 “Public place” means

(a) Any building or facility owned or operated by the town, including school buildings and school grounds;

(b) Any enclosed area open to the general public, including but not limited to the following:

Auditoriums;
Banks;
Elevators accessible to the general public;
Entrance ways;

¹ Art 7 of the 1995 Fall Town Meeting added a new chapter “Prohibition of Smoking in Restaurants”; Art 3 of the 1998 Spring Town Meeting deleted that chapter and replaced it with the language now shown.

Exits;
Funeral homes;
Halls;
Hair cutting and cosmetology establishments;
Health care facilities;
Laundromats;
Libraries;
Lobbies;
Museums;
Public restrooms;
Restaurants;
Recreational facilities;
Retail food stores;
Retail stores;
Stairways;
Waiting areas;
Winchester Housing Authority offices and common areas.

1.6 “Restaurant” is any establishment serving food for consumption on the premises, including any coffee shop, cafeteria, sandwich stand, pizza shop, private and public school cafeteria, and any other eating establishment which gives or offers food for sale to the public, guests or employees.

1.7 “Smoking” is lighting, inhaling, exhaling or burning any cigar, cigarette, pipe or other tobacco product.

1.8 “Tobacco” means cigarettes, cigars, pipe tobacco or tobacco in any of its smoked forms.

Section 2. PROHIBITION OF SMOKING IN RESTAURANTS AND OTHER PUBLIC PLACES

2.1 Smoking is prohibited in all restaurants and other public places within the Town of Winchester with the following exceptions:

- (a) A designated smoking area is permissible as long as the area so designated is an “enclosed area” that is, completely enclosed by ceilings, walls and doors with ventilation only to the outside. Notice of an intent to establish a designated smoking area must be given to the board of health in writing for its approval.
- (b) A private residence is not a public place.
- (c) Private clubs shall not be subject to this by-law with the following exception:

(i) when a private club is rented for a private function, and the sponsor of the private function desires that the function be smoke-free, the private club shall designate the function smoke-free.

(ii) For the purposes of this by-law, religious function halls fit within the definition of private clubs.

(d) Private or semi-private rooms of nursing homes and long term care facilities, occupied by one or more patients, all of whom have requested in writing to be placed in rooms where smoking is permitted.

(e) Limousines for hire, when the driver and all passengers affirmatively consent to smoking in such vehicle.

(f) To the extent permissible by law, and not in conflict with other applicable health, safety or fire codes, regulations or statutes, this by-law shall not prohibit smoking in a completely enclosed private office, not open to the general public, used by an individual that is located within a facility described in Section 1.5(B).

2.2 Notwithstanding any other provisions of this section, any owner, operator, manager, or other person who controls any establishment as described in this section may declare that entire establishment as a non-smoking establishment.

Section 3. POSTING OF SIGNS

3.1 Every person having control of premises upon which smoking is prohibited, except those with designated smoking areas pursuant to Section 2.1 (a) above, shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

3.2 Those persons having control of premises with designated smoking areas pursuant to Section 2.1 (a) shall have posted at every entrance a conspicuous sign, provided by the board of health, clearly stating that smoking is prohibited except in said designated areas.

3.3 No person shall remove a sign posted under the authority of Section 3 of this by-law.

Section 4. ENFORCEMENT

4.1 The board of health or its agent shall enforce this chapter as provided for in M.G.L. Chapter 40, Section 40, Section 21D (Non-Criminal Disposition.)

4.2 Any person [or entity] who desires to register a complaint pursuant to this chapter may complain in writing to the board of health. The board of health or its agent shall respond to the complainant, in writing, within thirty (30) days.

4.3 Compliance monitoring of this chapter and its requirements may be enforced through periodic inspections.

Section 5 VIOLATION AND PENALTIES

5.1 It shall be a violation for any person who owns, manages, operates or otherwise controls the use of any [restaurant] public place subject to regulation under this chapter to fail to comply with any of its provisions.

5.2 It shall be a violation for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

5.3 Any person who violates any provision of this chapter shall be subject to a fine of fifty (\$50) dollars for the first violation, one hundred (\$100) dollars for the second violation, and two hundred (\$200) dollars for a third or subsequent violation during any one calendar year.

Section 6 OTHER APPLICABLE LAWS

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable health, safety or fire codes, regulations or statutes.

Section 7 SEVERABILITY

Each provision of this chapter is construed as separate to the extent that if any section, item, sentence, clause or phrase is determined to be invalid for any reason, the remainder of this chapter shall continue in full force and effect.

Section 8 EFFECTIVE DATE

This chapter will be effective thirty (30) days from the date of approval by the Office of the Attorney General of the Commonwealth of Massachusetts.

CHAPTER 16¹

TEMPORARY REPAIR OF PRIVATE WAYS

Section 1. GENERAL

In accordance with Massachusetts General Law Chapter 40 Section 6N, the board of selectmen may authorize temporary repairs to be made to private ways. In accordance with this by-law the board of selectmen may authorize temporary or necessary repairs to be made to private ways.²

Section 2. TYPE OF REPAIRS

The repairs may include, but are not limited to: filling, grading, patching and surface coating, and may include repairs to drainage swales, conduits, systems and structures as are necessary to preserve the roadway. All repairs must be determined by the town engineer and director of public works to be required for public health, safety, or welfare.

Section 3. PETITION

The board of selectmen may make a determination on the need for said repairs with or without a petition of abutter(s) to the private way.

Section 4. BETTERMENT CHARGES

Betterment charges may be assessed by the board of selectmen on the abutter(s) of such way up to an amount equal to the cost of such repairs. If betterments are to be assessed, they shall be assessed upon each parcel of land benefiting from such repair in proportion to linear frontage on the portion of the way to be improved or other proportional method as may be approved by the board of selectmen.

Betterments shall be apportioned over such a period as the board of selectmen deem appropriate, after considering such matters as the estimated useful life of the proposed repairs and the source of funds to be used for the same.

Section 5. DEPOSIT

The town manager may require a cash deposit up to the amount of the estimated cost of such repairs, as determined by the town engineer and director of public works, to be paid to the town prior to the commencement of such repairs. The town manager may use any appropriate collection process deemed necessary in collecting such deposit from the abutter(s). The town

¹ Art 7 June 17, 2002 Special Town Meeting added this chapter.

² Art 2 April 25, 2005 Annual Town Meeting added the second sentence.

manager, with the approval of the selectmen, may enter into contracts on behalf of the town with abutters or associations of abutters providing for other methods of payment for such repairs by abutters which the town manager deems reasonable.

Section 6. STATUS OF WAY

This by-law does not confer any obligation or duty on the town or its agents to either initially place or to thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or want of repair. The making of such temporary or necessary³ repairs to private ways, no matter how often or to what extent, does not constitute an acceptance by the town of such private ways as public ways, nor does it constitute a way being “maintained and used as a public way” under the Massachusetts Subdivision Control Law.

Section 7. LIABILITY

It is intended that the town shall have no liability as a result of any such repairs, and no repairs to a private way shall be undertaken until the board of selectmen has determined that satisfactory arrangements have been made to appropriately reduce or eliminate any liability to the town arising from the same. Such arrangements may include, but are not necessarily limited to, the provision of insurance by repair contractors and/or by abutters or associations of abutters insuring the town’s interests or the provision of suitable indemnity agreements by abutters or by associations of abutters.

Section 8. INDEMNITY AGREEMENT

The indemnity agreement contemplated by Section 7 shall indemnify and hold the town harmless from additional damage and claims arising from repairs undertaken hereunder, shall provide that the making of such repairs does not constitute a commitment by the town, express or implied, to provide any maintenance or repair to the way in the future, and shall provide that the making of such repairs shall not constitute “maintenance” of such way so as to give the way the status of a way “maintained and used as a public way” under the Massachusetts Subdivision Control Law.

³ Art 2 April 25, 2005 Annual Town Meeting inserted the words “or necessary” after the word temporary.

CHAPTER 17¹

REGULATION OF NEWS RACKS

Section 1. DEFINITIONS

The following terms shall be defined, for the purposes of this by-law, as follows:

Person - Any individual, corporation, society, association, partnership, organization or other entity circulating printed matter;

Printed Matter - Any newspaper, directory, handbill, advertising matter, magazine, circular, flyer, book, pamphlet, catalogue or other publication;

News rack - Any container, box, bin, vending machine, display, stand, rack or other device used for the purpose of dispensing printed matter with or without cost to the consumer;

Director - The director of public works of the town of Winchester or his designee;

Permit - Certificate of compliance issued by the director;

Public Way - The entire width between property lines of every street or highway that is open to the public for purposes of travel;

Sidewalk - That portion of a public way that is set aside for pedestrian travel;

Roadway - That portion of a public way that is intended for the use of motor vehicles;

Crosswalk Curb Return - The point at which the crosswalk pavement markings meet the sidewalk.

Section 2. PERMITS

(a) Any person who places a news rack or causes a news rack to be placed upon any sidewalk or public way in the town prior to the effective date of this by-law and who wishes to maintain said news rack on and after said date shall, within thirty (30) days after said date, apply for a permit from the director in accordance with the provisions of this by-law.

(b) On or after the effective date of this by-law, no person shall place a news rack or cause a news rack to be placed on a sidewalk or public way in the town, without first obtaining a permit from the director in accordance with the provisions of this by-law.

¹ Art 11 of the 2003 Fall Town Meeting added this new chapter.

(c) The director shall provide a permit application form, which shall be completed by every person who desires to place or maintain a news rack on a public way in the town of Winchester. The form shall require the applicant to provide the following information:

(1) a description sufficient to show the precise address and location of each news rack;

(2) the name, address and telephone number of the owner of each news rack and the name, address and telephone number of a person responsible for the maintenance and operation of the news rack who may be contacted in an emergency; and

(3) a certification that the specified location and the news rack comply with the provisions of this by-law.

(d) Each applicant for a permit or renewal of a permit shall prepare a single application form upon which all news racks owned by that person and located on a public way or sidewalk in the town shall be listed.

(e) Permits shall be valid for a period of one year from the date of issue and, upon application, may be renewed by the director on an annual basis.

(f) Each person granted a permit or renewal thereof under this by-law shall thereafter give notice to the director of any change in the location of a news rack or the installation of a news rack in a location not previously listed on a permit by the submission of a quarterly amendment application to the director. Upon receipt by the director, the amendment application shall constitute an amendment to the permit subject, however, to all other applicable provisions of this by-law. The director shall specify on the permit the dates for receipt of such quarterly amendment applications provided that they occur at intervals of not less than ninety (90) days commencing on the date the permit was issued.

(g) The board of selectmen is authorized to establish reasonable fees for original permit applications, annual renewal applications and amendment applications. News racks owned by the town of Winchester shall be exempt from fees.

(h) Within 14 days after receipt of an application for a permit or renewal of a permit under this by-law, the director shall either issue or renew the permit or deny the application by giving written notice and a statement of reasons to the applicant. A denial shall be based upon the failure of the applicant to satisfy the requirements set forth in this by-law.

(i) If the director has not acted on a permit application within 14 days of receipt thereof, pursuant to subsection (h), the permit will be deemed issued or renewed subject, however, to all other applicable provisions of this by-law.

(j) If the director denies an application, in whole or in part, the applicant may appeal the director's decision to the board of selectmen by giving written notice to the board within 10 days after receipt of notice of the director's decision.

(k) The board of selectmen shall hold a hearing on the appeal no later than 30 days after receipt of said notice by the board and shall, within 14 days after a hearing, issue an order affirming, reversing or modifying the director's decision. If an order has not been issued by the board within 14 days after hearing, the director's decision shall be deemed affirmed.

Section 3. STANDARDS FOR PLACEMENT OF NEWS RACKS

- (a) No person shall place, cause to be placed or maintain a news rack on any public way or sidewalk:
- (1) within 5 feet of any handicapped access ramp;
 - (2) within or overhanging any roadway;
 - (3) within 18 inches of, and not more than 24 inches from, any curb;
 - (4) within 5 feet of any curb return of any marked crosswalk;
 - (5) within 5 feet of any fire hydrant or fire hose connection;
 - (6) within 3 feet of any manhole, service gate, valve cover, sewer grate or other access panel or cover located in a public way or sidewalk;
 - (7) within 5 feet of any driveway;
 - (8) immediately adjacent to any designated loading zone, any handicapped parking space, or any zone reserved for emergency vehicles;
 - (9) so as to reduce the width of any sidewalk to less than 4 feet for the passage of travelers unless the width of the sidewalk is otherwise reduced to less than 4 feet, as determined by the director, in which case the news rack may be installed so as to avoid further reducing the width of the sidewalk;
 - (10) so as to impede egress from legally parked motor vehicles;
 - (11) so as to impede the operation of standard sidewalk snow plows in use by the town of Winchester except where said sidewalk snow plows would be otherwise impeded, as determined by the director;
 - (12) within 4 feet of the door of any building measured in a line perpendicular from the horizontal line made by the door when closed;
 - (13) within six hundred (600) feet of any other news rack distributing the same publication;

- (14) so as to create an imminent danger of harm to persons or property;
- (15) directly abutting any public flower bed, memorial or sculpture;
- (16) or that is attached to any town-owned tree or traffic control signal device;
- (17) directly in front of and on the same side of the street as any parcel zoned solely for residential use as defined in the town of Winchester zoning by-law, except at designated bus stops and MBTA railroad platforms, crossings and parking lots. This restriction shall not apply to parcels zoned for a mixed residential and business use;
- (18) in a manner that violates any provision of state or federal law.

(b) News racks may be secured to one another provided that they are no more than six inches apart and provided that the news racks are aligned in a row that is parallel to the nearest curb line. Individual news racks shall be installed parallel to the nearest curb line. No group of news racks shall extend for a distance of more than eight (8) feet along a curb or wall and a space of not less than five (5) feet shall separate each group of news racks.

(c) No news rack shall be chained, bolted, or otherwise attached to any property owned or maintained by the town.

(d) News racks shall not exceed the following dimensional requirements: Height: 4 feet from the ground; Width: 2 feet; Length: 2 feet. News racks shall be placed and maintained so that they do not constitute a hazard or safety problem for travelers and others using the sidewalks and public ways. They shall be maintained in good repair and clean and safe condition and shall be removed if not so maintained or if empty of publications for more than 15 days.

(e) No news rack shall bear any advertising other than that directly relating to the printed matter dispensed by the news rack. A news rack may dispense more than one publication (printed matter) if it is published by the owner of the news rack or an affiliate thereof and the news rack may bear advertising directly related to each publication dispensed by the news rack.

Section 4. INSURANCE

Any distributor placing news racks on sidewalks or other public places within the town shall provide liability insurance in the amount of one million dollars (\$1,000,000.00) for each occurrence for bodily injury and in the amount of five hundred thousand dollars (\$500,000.00) for each occurrence for property damage naming the town as an insured. Any such distributor shall further agree to hold the town, its official bodies, other committees and their employees, agents and assigns, harmless in any suit brought against the town or any of its official bodies other committees and their employees, agents and assigns arising out of the use, operation or maintenance of the news racks. Any distributor placing news racks on sidewalks or other public places within the town shall further indemnify and hold the town, its official bodies other committees and their

employees, agents and assigns, harmless from any damage caused to any news rack by virtue of the town performing snow removal or other municipal services on the town's public streets, roadways and sidewalks.

Section 5. VIOLATIONS

- (a) No person shall place, cause to be placed or maintain a news rack upon any sidewalk or public way in the town in violation of the provisions of this by-law. In the event that a news rack is determined to be in violation of any of the provisions of this by-law,
 - (1) the director shall provide written and/or telephone notice to the owner or the owner's agent that the news rack is in violation of this by-law. Such notice shall state the substance of the violation and shall set a date for compliance which shall not be less than 10 business days after the date notice is given; and
 - (2) if the director determines that the violation has not been corrected on or after the date for compliance, the director may initiate removal proceedings in accordance with the provisions of section (b), below, and may assess a fine in accordance with provisions of section 17.6.
- (b)
 - (1) Except as provided in section 17.5(b) (3) and (4), the director may remove and store at the owner's expense any news rack that remains in violation for more than 7 days after the date for compliance specified in section 17.5(a) provided that the director shall give written notice of removal to the owner stating the date the news rack was removed, the reasons for removal, the storage location, and the procedure for claiming the machine.
 - (2) Except as provided in section 17.5(b) (3) and (4), the owner of any news rack may avoid removal of the news rack by:
 - (i) correcting the violation and so informing the director; or
 - (ii) by making a written request for a hearing on the violation before the director prior to the date set for compliance in which case the news rack may remain in place pending the director's decision on the matter. Said hearing shall be held no later than 10 days after receipt of a written request for a hearing and a decision shall be rendered within 10 days thereafter.
 - (3) Notwithstanding any other provisions of this by-law, if the director or a public safety official determines that a news rack constitutes an imminent danger of harm to persons or property, the director or a public safety official may remove the news rack provided that the owner of the news rack shall be notified of such removal and provided that the news rack shall be stored for a reasonable period of time so that the owner may retrieve it.

(4) If maintenance, repair, or construction of a public way, sidewalk or public or private property in or adjacent to the public way cannot be accomplished without the removal of a news rack, the director shall give written and/or telephone notice to the news rack's owner ordering removal of the news rack provided that said notice shall specify the reason for the removal and the date for compliance which shall not be less than 10 days after the date of notice. If the director determines that delay would cause an unreasonable risk of harm to persons or property or would cause a delay in the maintenance, repair or construction work, the director may remove the news rack, provided that the owner of the news rack shall be notified of the removal; that the news rack shall be stored for a reasonable period of time so that the owner can retrieve it, and further provided that the owner may replace the news rack when said maintenance, repair or construction is completed.

(5) The director, with the approval of the board of selectmen, is authorized to establish fees for the removal and storage of news racks that are removed at the direction of the director or public safety officials in accordance with provisions of this by-law.

(6) If a news rack remains unclaimed for more than 60 days after the news rack is removed, possession of the news rack shall be transferred to the police department and the news rack shall be disposed of as unclaimed property in accordance with law.

Section 6. PENALTY

In the event that a news rack is not in compliance with any of the provisions of this by-law as of the date set for compliance under section 17.5(a) of this by-law, then the owner of such news rack shall be subject to a fine of \$25.00 per day for each day of non-compliance until the date the violations are corrected or the news rack is removed.

Section 7. SEVERABILITY

The provisions of this by-law are severable. If any provision of the by-law is held invalid, its invalidity shall not affect other provisions of this by-law which shall remain valid.

CHAPTER 18¹

PUBLIC SHADE TREES

Section 1: FINDINGS

The Town of Winchester finds that mature trees have aesthetic appeal, contribute to the distinct character of certain neighborhoods, improve air quality, provide glare and heat protection, reduce noise, aid in the stabilization of soil, provide natural flood and climate control, create habitats for wildlife, provide traffic calming, enhance property values and provide natural privacy to neighbors.

Section 2: INTENT AND PURPOSE

This by-law is enacted for the purpose of preserving and protecting public shade trees pursuant to the Massachusetts General Laws, Chapter 87 and to protect trees on municipal property. The provisions of this by-law, when pertaining to private property, apply only when there is concern or threat of unapproved maintenance or removal of a public shade tree, which is located in the public way or on the boundaries thereof and to permit the town to act, with the permission of the landowner or after obtaining a warrant, to remove a privately owned tree or a portion thereof which is a public safety hazard and a danger to the residents of the community.

To achieve these purposes, this by-law relies on the Winchester Board of Selectmen, as street commissioners and as the public entity who oversees the powers of the Tree Warden(s), in accordance with MGL Chapter 87, Section 2. This bylaw also relies on the Permanent Street Tree Committee, which was established in 2009 and empowers the committee, in conjunction with the tree warden, to work with the Board of Selectmen to regulate the removal and replacement of trees in certain circumstances, and to promote the planting and protection of trees throughout the town.

It is desirable that the town plant more trees than are removed to compensate for tree losses and the length of time to maturity.

Section 3: DEFINITIONS

(a) When used in this by-law, the following definitions shall apply:

BOARD OF SELECTMEN—An elected body of five individuals tasked with oversight of the public shade trees under Chapter 87, Section 2 and as otherwise described in the Town of Winchester Code of By-laws, Chapter 3.

CALIPER --Diameter of a tree trunk (in inches) measured six inches above the ground for trees up to and including four-inch diameter, and 12 inches above the ground for larger trees.

¹ Article 3 Spring Town Meeting April 29, 2013 – Addition of new Chapter 18

PERMANENT STREET TREE COMMITTEE—A committee, consisting of representatives from the Planning Board, Town Forest Committee, Conservation Commission, Design Review Committee and Department of Public Works/Tree Warden, who are appointed by the Board of Selectmen to oversee and advise on street tree planting, procedures and tree removal within the Town of Winchester.

PERSON --Any person, firm, partnership, association, corporation, company or organization of any kind including public or private utility and municipal department.

PUBLIC SHADE TREE -- All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of M.G. L. Chapter 87, Section 7 shall be public shade trees; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highway cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.

PUBLIC WAY -- The entire parcel of land intended or designed to provide access and rights of passage extending from the boundary of one parcel to the boundary of another parcel. The public way may include a street, drainage, curbing, sidewalk(s), trees and/or shrubs, street lights, bicycle paths and other amenities that allow vehicles, bicycles and pedestrians to travel within it.

TREE MANUAL/RULES AND REGULATIONS—A manual, consisting of rules and regulations, prepared by the Tree Warden and the Permanent Street Tree Committee, that outlines the town’s policies and procedures on how to plant, maintain, inventory and manage the town’s public shade trees. Under this by-law, the Board of Selectmen may hold a public hearing and adopt rules and regulations in accordance with M.G.L. Chapter 87, Section 2.

TOWN TREE - Any tree within a public park or open space under the jurisdiction of the Board of Selectmen acting as Park Commissioners, on public school grounds, or on any other town-owned land, except for Wildwood Cemetery, which is overseen by the Wildwood Cemetery Advisory Committee, an appointed committee who are advisory to the Board of Selectmen.

TREE REMOVAL –The cutting down of any public shade or town tree and all other acts which cause the actual removal or the effective death of a public shade or town tree, including but not limited to, excessive or improper pruning, excavation or construction damage.

TREE WARDEN-- The Department of Public Works director shall serve as the Tree Warden unless another designee is appointed by the Winchester Board of Selectmen.

UTILITY- For the purposes of this by-law “utility” shall mean a company engaging in the distribution of electricity, gas, telecommunications, water and sewer or for the collection of drainage or owning, operating or controlling distribution facilities; provided, however, that a distribution company shall not include any entity which owns or operates plant or equipment

used to produce electricity, steam and chilled water, or an affiliate engaged solely in the provision of such electricity, steam and chilled water, where the electricity produced by such entity or its affiliate is primarily for the benefit of hospitals and nonprofit educational institutions, and where such plant or equipment was in operation before January 1, 1986.

(b) The Permanent Street Tree Committee and the Tree Warden may provide other such definitions or terms in rules and regulations, approved by the Board of Selectmen, deemed useful to implement this by-law.

Section 4: APPLICABILITY

(a) Applicability. The circumstances under which the tree protection, removal and replacement regulatory process delineated in this by-law shall apply are as follows:

(1) Proposed cutting (trunk, limbs or roots) of existing public shade trees on public ways or of town trees on town-owned (or leased land being used as a public facility) by any person.

(2) Proposed utility maintenance, as follows:

(i) A utility may, or at the request of the tree warden shall, submit an annual vegetation management plan describing the maintenance work to be performed in a municipality. The plan shall include, but not be limited to, a map of the circuits where the maintenance work will be performed, the tree maintenance standards that will be followed and any foreseeable variance from those standards. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date the utility proposes to begin its maintenance work. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, a utility shall be exempt from the requirements of M.G. L. Chapter 87, Sections 3 and 5 for the work described in the approved plan.

(ii) A utility may, or at the request of the tree warden shall, submit an annual hazard tree removal plan describing hazard tree removal work to be performed in a municipality. The plan shall include, but not be limited to, the specific trees that the utility has identified as a hazard and proposes to remove. The plan shall comply with local ordinances and regulations. The plan shall be submitted not less than 90 days prior to the date a utility proposes to begin tree removal. Upon receipt of the plan, the tree warden, or a designee thereof, shall notify the utility within 60 days, in writing, whether or not the plan has been approved. Upon

receipt of written notification that the plan has been approved, or approved with modifications agreed to by both parties, the utility shall be exempt from the requirements of sections 3 and 5 for the work described in the approved plan.

If a tree warden fails to notify a utility whether a vegetation management plan or hazard tree removal plan has been approved within 60 days of the warden's receipt of the plan, the utility may request a decision by the Board of Selectmen.

Notwithstanding approval of a vegetation management plan or hazard tree removal plan, a utility shall notify a tree warden, in writing, not less than 14 days prior to beginning maintenance work or tree removal work in a municipality. If a local ordinance or regulation requires more than 14 days notice, the utility shall comply with such ordinance or regulation. The notice provided shall include the date on which the utility will begin work and the phone number of the person or persons supervising the work in the field.

The utility shall provide to the state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, a copy of any annual vegetation management plan or hazard tree removal plan and a copy of the approval or denial letter from the applicable tree warden. The state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, shall provide the utility an acknowledgment of receipt of such plans and determinations in any manner approved by said secretary.

The utility shall annually submit to the state forester's office a set of utility tree maintenance standards and specifications and evidence that these standards have been adopted by the utility company. These standards and specifications shall conform with: American National Standard Institute A-300; American National Standard Institute Z-133; and National Electric Safety Code 218 Tree Trimming and OSHA 29 CFR Part 1910 Line Clearance Tree Trimming Operations. The state forester, or such other person or agency as designated by the secretary of energy and environmental affairs, shall make these standards and specifications available to the public on their websites or other accessible locations and shall accept and maintain a publicly accessible record of comments received relative to the standards and specifications and shall transmit the comments to the utilities.

(b) Non-applicability.

This by-law shall not apply in any instance where the Planning Board, the Zoning Board of Appeals, Conservation Commission, the Department of Public Works and state agencies have established jurisdiction, or on private roadways, including but not limited to, the following:

- (1) The Planning Board regulates the planting, retention and/or replacement of public shade trees, by means of the board's authority over subdivision of land (M.G. L. Chapter 41) and/or the administration of unaccepted streets;

(2) The Zoning Board of Appeals regulates planting, retention and/or replacement of on-lot trees on private residential land, where said property is subject to a special permit under the zoning bylaw, or issues and/or recommendations emanating from a site plan review development, under the zoning bylaw;

(3) The Conservation Commission regulates the retention and/or replacement of on-lot trees, by means of administering the Wetlands Protection Act (Chapter 131 and 310 CMR) within jurisdictional areas of the property;

(4) The Department of Public Works in its ongoing routine maintenance of public shade trees as provided by Section 5 of M.G. L. Chapter 87, which allows trimming, cutting and/or removing of trees, less than one and a half inches in diameter one foot from the ground and bushes, standing in public ways; and as ordered, the removal of trees and shrubs if deemed to obstruct, endanger, hinder and incommode persons traveling thereon;

(5) Any tree trimming and/or removal on a private way;

(6) The Board of Selectmen has the ability to approve the cutting and /or removal of a tree or shrub in accordance with M.G.L. Chapter 87, Section 5.

(7) All trees, shrubs and growths within the state highways, in accordance with M.G.L. Chapter 87, Section 8. The department of highways shall be responsible for the planting, maintenance and control of all vegetation located within state highways.

Section 5: TREE WARDEN

The Department of Public Works director shall serve as the tree warden unless another designee is appointed by the Board of Selectmen.

(a) The duties or responsibilities of the tree warden or his designee shall conform to General Law Chapter 87 and shall include, but not be limited to, the following as may be further specified in this by-law:

(1) Management of all trees within public rights-of-way and on the boundaries thereof and adjacent to public buildings and commons; care and control of trees on town property if so requested by the Board of Selectmen, and on town land owned by other departments such as schools, recreation and conservation, if so requested by the respective department and approved by the Board of Selectmen;

(2) Expending funds, in coordination with the Permanent Street Tree Committee, appropriated for planting and maintaining of trees on town land under the jurisdiction of the tree warden;

(3) Determining whether trees qualify as public shade trees or town trees, in accordance with M.G.L. Chapter 87 and this bylaw;

(4) With recommendations from the Permanent Street Tree Committee, granting or denying and attaching reasonable conditions to all permits required under this by-law. The Tree Warden shall have the right to determine conditions of approval and/or mitigation measures such as replacement of trees, payment of tree removal or mitigation payments as appropriate;

(5) Work in conjunction with the Permanent Street Tree Committee to seek grants or other assistance concerning the preservation and maintenance of trees in Town;

(6) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the Permanent Street Tree Committee, to carry out the purposes and intent of this by-law for approval and promulgation by the Board of Selectmen;

(7) Enforcement of this by-law;

(8) Appointment or removal of deputy tree wardens.

(b) Moreover, the Board of Selectmen may authorize the tree warden to undertake other responsibilities consistent with the purposes and intent of this by-law.

Section 6: PERMANENT STREET TREE COMMITTEE

(a) The town shall have a Permanent Street Tree Committee that consists of five members, including representatives from the Conservation Commission, Design Review Committee, Planning Board and Town Forest Committee as well as the town's tree warden, as appointed by the Board of Selectmen. For the first appointments, two members will serve one-year terms; two members will serve two-year terms; and one member shall serve a three-year term. All members up for renewal will then serve three-year terms. The committee shall be staffed by the town planner and the Tree City USA liaison, as appropriate.

(b) The tree committee shall have the following duties and responsibilities as may be further specified in this by-law:

(1) Development of rules, regulations, tree inventory, manuals and other data, in conjunction with the tree warden, to carry out the purposes and intent of this by-law, for approval and promulgation by the Board of Selectmen;

(2) Public education and coordination with other town committees and civic groups to promote the purposes and intent of this by-law;

(3) Work in conjunction with the Tree Warden to seek grants or other assistance concerning the preservation and maintenance of trees in town.

Section 7: PUBLIC SHADE TREES AND TOWN TREES

(a) Scope. A public shade tree or town tree may not be cut, pruned, removed or damaged by any person or the town until and unless the Tree Warden issues a written permit pursuant to this section.

(b) Procedures. Any person seeking to prune or remove a public shade tree or town tree shall submit a written application to the Tree Warden in accordance with any Rules and Regulations or Tree Manual voted by the Board of Selectmen;

(c) Notification. Prior to the issuance of a demolition or building permit, the Building Commissioner shall notify the Tree Warden of the proposed demolition and/or construction so that the Tree Warden may review plans to identify if the work will require cutting, pruning or removal of a public shade tree or trees or town tree, that are subject to the provisions of this bylaw;

(d) Qualification. The Tree Warden shall determine if a tree qualifies as a public shade tree or town tree. In event of dispute between the applicant and the Tree Warden as to the status of the tree, the burden of proof shall be the responsibility of the applicant and a survey may be performed by a Professional Land Surveyor registered in the Commonwealth of Massachusetts showing the boundary of the public way or town property and the location of the tree;

(e) Hearing. When the removal of any non-hazardous public shade tree or town tree is proposed, the Tree Warden shall generate a legal notice, post a notice on the tree, and post the legal notice in two public locations. He shall then hold a public hearing on applications for removal, in accordance with the provisions outlined within General Law Chapter 87. When the application is made by a person, the applicant is required to pay for a legal notice to be placed in a local newspaper for two consecutive weeks, the first advertisement being not less than 14 days prior to the hearing. The applicant is also required to notify in writing all parties of interest within 300' of the tree proposed for removal.

(f) Decision. Based upon the hearing, a permit issued by the tree warden, with consultation of the Permanent Street Tree Committee, shall issue a written decision and specify schedules, terms, and conditions, including requiring the planting of replacement trees, requiring police details for tree removal, costs of tree removal and other pertinent conditions that protect the health, safety and welfare of the community;

(g) Final Determination. When objections are made in writing by one or more persons at or before the public hearing for removal of a non-hazardous public shade tree or town tree, the Tree Warden shall refer the matter to the Board of Selectmen for a final determination, in accordance with M.G.L. chapter 87, Section 4;

(h) Expenses. An applicant who applies to remove a non-hazardous public shade tree or town tree may be responsible for the following expenses:

- (1) Paying for both the costs of legal advertising in accordance with M.G.L. Chapter 87, Section 3 and notification requirements as set forth in this bylaw;
- (2) Cost of inspection of tree by an arborist certified by the Massachusetts Arborists Association or the International Society of Arboriculture, or any successor of either organization, if required by the Tree Warden;
- (3) Cost of removal of tree and stump, including the removal of all debris and proper filling of stump hole;
- (4) Cost of tree protection, fencing, erosion and sediment controls and any other measures deemed by the Tree Warden to be required for health, safety and the protection of the environment;
- (5) Planting of replacement trees or contributions to the fund, as deemed by the Tree Warden;
- (6) Cost of police traffic details, repair of street surfaces, sidewalks, grass plots and road shoulders, if required;
- (7) All other costs related to the removal and replanting; and
- (8) All costs are to be estimated by the Tree Warden and the applicant's payment is to be received by the Tree Warden prior to any work being performed.

(i) Planting of trees on public land. Any person seeking to plant a tree on public land under the jurisdiction of the tree warden must obtain written permission from the tree warden. Such permission may specify schedules, terms, and conditions as deemed appropriate by the tree warden. Public shade trees planted in accordance with Section 7 of M.G.L. Chapter 87 may be planted upon adjoining land at a distance not exceeding 20-feet from the layout of such public way for the purposes of improving, protecting, shading or ornamenting the public way. If a public shade tree is to be planted within 20-feet of the public way, written consent of the property owner to plant on private property shall first be obtained.

(j) Collection of voluntary contributions under this by-law shall be deposited into a fund designated for such purposes or into the Peter Van Aken tree fund. The tree warden, with input from the Permanent Street Tree Committee, will request use of these funds for tree planting, transplanting, and other tree-related needs. The request to expend these funds shall be subject to the approval by the Board of Selectmen.

(k) Trees may be planted in honor of an individual or group of individuals. The request to plant a tree in honor of an individual or individuals shall be subject to the approval by the Board of Selectmen and shall be planted in accordance with the Permanent Street Tree Committee's planting regulations and guidelines. Donations are encouraged to include the costs of the tree material as well costs of planting.

Section 8: EMERGENCIES AND EXEMPTIONS

Provisions of this by-law shall not apply to:

- (a) Trees less than one and half inches in diameter measured 12-inches from the ground and bushes standing in the public way;
- (b) Emergency projects necessary for public safety, health and welfare as determined by the Director of Public Works/Tree Warden. Where storm damage has occurred, the Tree Warden is not obligated to remove a public shade tree that has fallen on private property;
- (c) Trees that are hazardous as determined in writing by the Tree Warden. In the event the Tree Warden determines a tree located on private property presents a safety hazard to the public way or town property, the Tree Warden will notify the owner(s) of the need to immediately act to address the hazard. In the event that the owner(s) do not act in a time appropriate manner, the Tree Warden may, with the permission of the landowner or after obtaining a warrant, take action to remedy the hazard by having the tree trimmed or removed and charge the owner for the expense of the tree trimming or removal;
- (d) Trees identified by the Commonwealth that pose a risk of disease or insect infestation.

Section 9: ENFORCEMENT

- (a) Any person violating this by-law is subject to the penalties under this by-law, Massachusetts General Law Chapter 87 (for violations concerning public shade trees) and other legal enforcement action by the town. The Tree Warden is authorized to enforce the provisions of this bylaw in accordance with Massachusetts General Law, Chapter 87. Any other legal enforcement action shall be determined by the Board of Selectmen in consultation with the Permanent Street Tree Committee, the Tree Warden and Town Counsel.
- (b) Each instance in which a town tree or a public shade tree is removed without a tree permit shall constitute an offense under this by-law. When town trees or public shade trees have been removed without a permit, mitigation conditions may be imposed and the payment of fines up to \$500 and as specified in M.G.L. Chapter 87, Section 6 may be imposed.
- (c) If mitigation and the payment of fines are completed in due time as determined by the Tree Warden, the project will be approved. If not completed, then each day beyond the determined and agreed upon completion date shall constitute a new and separate offense.

Section 10: RULES AND REGULATIONS

The Board of Selectmen may promulgate, after public notice and hearing, rules and regulations or “tree manual” to effectuate the purposes and intent of this by-law. Failure by the Board of Selectmen to promulgate such rules and regulations shall not act to suspend or invalidate the effect of this by-law.

Section 11: SEVERABILITY

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

Section 12: RELATIONSHIP TO OTHER LAWS

Nothing in this by-law shall be construed to restrict, amend, repeal, or otherwise limit the application or enforcement of existing provisions of the Winchester Code of Bylaws or Commonwealth of Massachusetts laws.
