

**GENERAL BY-LAWS
OF THE
TOWN OF AUBURN,
MASSACHUSETTS**

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PART I: ADMINISTRATION

Chapter I: General Provisions

1.01: Designation

- (1) The By-laws, contained in these and succeeding chapters, shall be the By-laws of the Town of Auburn, Massachusetts.

1.02: Conflict with Statutes

- (1) Insofar as any provisions of these By-laws, as amended, are inconsistent with the provisions of any general or special law, the provisions of such general or special law, as amended, shall be controlling.

1.03: Setting of Fee Schedule and Fine Schedule

- (1) Unless otherwise provided for by law, the Board of Selectmen, not less than annually, shall set any and all fees and/or assessments required by these By-laws, and shall establish a "Fee Schedule", containing all said fees and/or assessments required by these By-laws. Said Fee Schedule, when ratified by the Board of Selectmen, shall then be placed in a publication of general circulation within the Town; shall be posted on the official web site of the Town of Auburn; and, shall be posted in the Office of the Town Clerk.
- (2) The Fee Schedule shall be a separate schedule published by the Town. The amendment of the Fee Schedule shall not be considered a By-law change and shall not be subject to or require town meeting approval.
- (3) Unless otherwise provided for by law, the Board of Selectmen, not less than annually, shall set all violations, penalties, fines, and/or any subsequent penalties for violation of any section of the By-laws, and shall establish a "Fine Schedule", containing the amount of fine for any such violation, penalty, fine and/or subsequent penalty. Said Fine Schedule when ratified by the Board of Selectmen shall then be placed in a publication of general circulation within the Town; shall be posted on the official web site of the Town of Auburn; and, shall be posted in the Office of the Town Clerk.
- (4) The Fine Schedule shall be a separate schedule published by the Town. The amendment of which shall not be considered a By-law change and shall not be subject to or require town meeting approval.
- (5) Unless otherwise provided for herein, all fines paid pursuant to a violation of these By-laws shall be paid to the Office of the Town Clerk.

1.04: Non-Criminal Disposition/Enforcement of By-laws

- (1) The Board of Selectmen shall, through the Police Chief or a respective Department Head, prosecute any breach or violation of these By-laws by filing a criminal complaint in a court of competent jurisdiction, as provided for by law.
- (2) In addition to any other enforcement or penalty allowed under the Massachusetts General Laws or Town By-law, a violation of these By-laws or any rules and regulations promulgated pursuant thereto, may be enforced through any lawful means pursuant to Massachusetts General Laws, Chapter 40, Section 21 or by noncriminal disposition pursuant to Massachusetts General Laws Chapter. 40, Section 21D by sworn police officers, who shall in all cases be considered enforcement personnel for the purposes of non-criminal enforcement. Designated municipal personnel, if any, listed for each provision set forth, shall also be enforcement personnel for each such provision.
- (3) Whosoever violates any provision of these By-laws may be penalized by indictment, or criminal complaint brought in a court of competent jurisdiction as provided for by law. The penalty shall be that fixed by By-law; provided, however, that in no case shall the maximum penalty for each violation or offense, brought in this manner, be in excess of Three Hundred Dollars (\$300.00).
- (4) Each day on which any violation or offense exists shall be deemed a separate violation or offense. Nothing contained herein shall be deemed to require the use of the noncriminal disposition method. At the option of the enforcing person, criminal and/or civil action may also be utilized.

1.05: Severability

- (1) If any provision of these By-laws is held invalid, the other provisions of these By-laws shall not be affected thereby. If the application of these By-laws or any provision relating to any person or circumstance is held invalid, the application of these By-laws and their provisions to other persons or circumstances shall not be affected thereby.

1.06: Publication

- (1) The Selectmen shall cause these By-laws to be printed in loose-leaf form to allow the inclusion of additions and/or amendments. Certified copies shall be available on request in loose-leaf print for a fee as determined by the Board of Selectmen.
- (2) A non-certified copy of the official Town of Auburn By-laws will be posted, regularly updated and available for download on the official website of the Town of Auburn.

1.07: Amending Process

- (1) Any amendment of these By-laws shall be governed by the provisions of the Auburn Town Charter.
- (2) Non-Substantive Changes to these By-laws may be made by the Town Clerk so that amendments may be made consistent with the numbering format of these By-laws.

1.08: Public Notice of Hearings

- (1) If the Town refers a matter to any committee for a public hearing, public notice of such hearing shall be made in accordance with the provisions of Massachusetts General Laws, Chapter 30A, Section 20 and 940 CMR 29.03.

Chapter II: Town Meetings

2.01: Warrants

- (1) The Warrant for all Town Meetings shall be served by posting an attested copy thereof in at least two (2) conspicuous places in each precinct, including the Town Hall and the Public Library, and by mailing a copy of such warrant to each Town Meeting Member not less than seven (7) days prior to such meeting.
- (2) Every article printed in the warrant shall bear the signature of the sponsor or sponsors, but if there is more than one (1) signer, it shall be necessary to print only the first name followed by the words “and others.”
- (3) If a town meeting adjourns for a period of forty-eight (48) hours or more, a notice of the new time and place shall be mailed forthwith to each town meeting member.

2.02: Annual Town Meeting and Election Time

- (1) The Annual Town Meeting for the transaction of all business, except the election of Town Officers and the determination of such matters as legally require a vote by ballot, shall be called to order at 7:00 P.M. on the first Tuesday of May.
- (2) The Annual Election of Town Officers and Committees shall be held on the third Tuesday in May of each year, and the polls shall be opened from 8:00 A.M. to 8:00 P.M.

2.03: Rules Governing Town Meetings

- (1) The proceedings of town meetings shall be governed by the rules of practice contained in Massachusetts Moderators Association, "Town Meeting Time", latest edition, except as modified by law or by these By-laws.

2.04: Presiding Officer

- (1) The Moderator shall preside and regulate the proceedings at all town meetings, decide all questions of order and make public declaration of all votes. If a voice vote so declared is immediately questioned, he or she shall verify it by ordering a show of hands or a standing vote, and he may appoint tellers to make and return the count.

2.05: Submitting Motions

- (1) All motions submitted for the consideration of the meeting which involve the expenditure of money shall be in writing, and all other motions shall be reduced to writing if required by the presiding officer or clerk.

2.06: Division of a Motion

- (1) If, upon the determination of the Moderator, a question is susceptible to division, or if ten (10) voters so request, it shall be divided and each question shall be separately acted upon.

2.07: Procedure for Debate

- (1) No one shall speak in debate upon a question more than once so long as the Moderator may allow the floor to a person who has not previously spoken on the question, except that the maker of the main motion under an article in the warrant, or the sponsor of the article if the maker of the motion yields to him or her, shall not be limited in the number of times he or she may debate.

2.08: Town Meeting Precinct Committees

- (1) The chairman and clerk of the town meeting members within a precinct, duly elected as hereinafter provided, may call meetings of the precinct members for the sole purpose of discussing the articles in the warrant for town meetings.
- (2) Upon petition signed by not less than one-third ($\frac{1}{3}$) of the town meeting members from a precinct, the Town Clerk shall call a meeting of the precinct members, notice of which shall be mailed to such members not less than seven (7) days before the time of the meeting. A majority of the precinct members shall constitute a quorum at such meeting and may elect, by a plurality of votes cast by ballot, one (1) of their number as chairman and one (1) as clerk to serve until the next annual election.

- (3) There shall be a Town Meeting Precinct Committee consisting of one (1) town meeting member from each precinct of the Town, appointed annually by the Moderator on or before June 1st, or by the remaining members of the Committee forthwith if a vacancy occurs.
- (4) The duties of the Town Meeting Precinct Committee shall be to maintain membership, promote attendance, and foster informed opinions at town meetings in cooperation with the proper authorities.

Chapter III: Town Officers and Committees

3.01: Elective Boards

- (1) All elective boards shall conduct regular meetings and shall within seven (7) days after the annual election publicly announce their organization and the time and place of said elective board's meetings throughout the year, and shall at the same time file such information with the Town Clerk.

3.02: Appointed Boards

- (1) All appointed boards shall conduct regular meetings and shall reorganize at the most appropriate opportunity in each fiscal year.

3.03: Recording and Minutes

- (1) Every public body, board, committee and commission, etc., shall maintain a record of all meetings in accordance with the provisions of the Massachusetts General Laws. See Massachusetts General Laws, Chapter 30A, Section 22.
- (2) All boards, committees, commissions, etc., elected or appointed, standing or ad hoc, shall keep minutes of each meeting. A copy of said minutes shall be sent to the Town Clerk within two (2) weeks of their approval.

3.04: Expiration of Terms of Office

- (1) All town officials shall, at the expiration of their terms of office, forthwith turn over to their successors in office all books, papers, documents, keys or other properties in their custody which belong to the Town.

3.05: Swearing-in of Committees

- (1) Members of all boards, commissions, and committees, whose duties include the expenditure of town funds, shall be sworn to the performance of their duties within seven (7) days of their notification by the Town Clerk. Members of any committee, not so sworn, shall be deemed to have vacated their offices, and the Town Manager, Board of Selectmen, Moderator, or other appointing authority if so named shall in accordance with law, fill such vacancies forthwith.

3.06: Comprehensive (Operating and Capital) Budget Requests

- (1) Each officer, board, commission, and committee charged with the expenditure of town money shall, before the second Monday in January of each year, prepare detailed estimates of the amounts deemed by them necessary for the operation of their respective offices or departments for the ensuing fiscal year, with explanatory statements of the reasons for any changes from the amounts appropriated for the same purpose during the current year. They shall also prepare estimates of all probable items of income which may be received by them during the ensuing year in connection with the operation of their departments or offices. Said estimates and statements shall be filed with the Chief Financial Officer and the Town Manager on or before the second Monday in January of each year. The Town Manager shall, as soon as is possible, but no later than the second week in February, prepare a report of the fiscal impact of said requested expenditures and recommendations for action to submitting officials. As soon as is possible, but no later than the first week in March, the Town Manager shall transmit to the Finance Committee the recommendations of the Town Manager and Board of Selectmen for action on the proposed comprehensive (operating plus capital) budget for the ensuing year.

Chapter IV: Board of Selectmen

4.01: General Duties

- (1) The Board of Selectmen shall have all powers and duties conferred upon it by the Constitution of the Commonwealth of Massachusetts, Massachusetts General Laws and the Town of Auburn Charter.

Chapter V: Finance Committee

5.01: Appointment

- (1) Members of the Finance Committee shall be appointed in accordance with the Auburn Town Charter. Two (2) members shall be appointed annually by the Selectmen for a term of three (3) years, and a third member appointed every third year for the same term. Appointments shall be made forthwith after the annual meeting and at other times to fill vacancies. The Board of Selectmen shall make reasonable effort to ensure that each precinct of the Town is represented by at least one (1) member of the Finance Committee.

5.02: Eligibility

- (1) No town employee, appointed town officer, or elected town official (other than a town meeting member) shall be eligible to serve on the Finance Committee.

5.03: Duties

- (1) The Finance Committee shall choose its chair and vice chair.
- (2) Members of the Finance Committee shall serve without pay.
- (3) The Finance Committee shall keep a true record of its proceedings.
- (4) In accordance with Town Charter, the Finance Committee shall consider matters relating to the appropriation, borrowing, and expenditure of money, indebtedness, and any other financial affairs of the Town of Auburn.
- (5) The Finance Committee shall duly consider all articles in warrants for annual and special town meetings which involve the expenditure or appropriation of money, and shall make a report of all matters considered by it, with recommendations relative thereto and which shall be published and distributed at least seven (7) days before said annual town meeting and at least fourteen (14) before any special town meeting.
- (6) In the discharge of its duties, the Finance Committee shall have unrestricted access to all pertinent information in the possession of any Town board, officer or committee.
- (7) The Finance Committee may make recommendations to the Town, or to any Town board, officer, or committee relative to the financial affairs of the Town of Auburn.

5.04: Budget Report

- (1) The Finance Committee shall duly consider the estimates and statements submitted to it by the various town boards, officers and committees, and may confer with them, and hold hearings, if deemed advisable. The Finance Committee shall thereupon approve or disapprove the amount, in whole or in part, of the appropriation so requested, and shall make a report of all matters considered by it, with recommendation or suggestion relative thereto. Said report shall be published and distributed at least seven (7) days before the annual Town meeting, and shall also contain:
 - (A) A statement of the doings of the Finance Committee during the year;
 - (B) A statement of the bonded indebtedness of the Town and Town's debt limit imposed by law;
 - (C) The amount of free cash in the excess and deficiency account; and
 - (D) Such recommendations or suggestions the Finance Committee may deem advisable on any matters pertaining to the welfare of the Town.

Chapter VI: Financial Affairs

6.01: Itemization of Bills

- (1) All bills presented by any town officer to the Town Manager for services rendered or materials furnished to the Town shall be itemized. All officers, boards, departments and committees authorized to expend Town money shall submit twice a month to the Town Accountant all correctly presented bills, demands, drafts, orders and accounts chargeable to the respective appropriations of which they have the expenditure.

6.02: Mileage

- (1) Any Town Officer or employee using a privately owned automobile for Town business may be reimbursed for such use based upon the mileage driven. The reimbursement rate shall be reviewed and set annually by the Chief Financial Officer in accordance with the standard mileage rate allowed by the Internal Revenue Service.

6.03: Petty Cash

- (1) On the first business day of any fiscal year, each department may draw on the Town Treasury a sum of money not in excess of a sum established by the Chief

Financial Officer for use as an emergency fund and petty cash payments. Whenever any part of this fund is expended, a requisition with voucher numbered and attached shall be made forthwith to the Chief Financial Officer for an amount equal to the sum expended, which when collected by the department making the requisition, shall be placed with such fund so that at all times the amount drawn for said fund shall be equal in cash or warrants to the amount originally drawn for said fund.

6.04: Printing of Valuation List

- (1) The Assessors shall every third year produce in electronic format copies of their valuation list of all real and personal property in the Town. Said list shall be posted on the official Town of Auburn website and made available to all voters. Hard copies will be available, for a fee, upon written request to the Town Assessor.

6.05: Burial Lot Funds

- (1) Any money, which has been or may hereafter be deposited with the Town Treasurer for the care and preservation of burial lots in any public cemeteries of the Town, shall be invested where the same shall bear interest, by and in the name of the Town, subject to the approval of the Town Manager. The income accruing from such investments shall be expended only for the care and preservation of the burial lots for which such money was deposited, unless otherwise specifically stated in a trust.

6.06: Taxes and Tax List

- (1) The Preliminary Tax Commitment shall be assessed and the tax list and warrant shall be committed to the Treasurer/Collector on or before the 15th day of June, and the actual tax shall be assessed and committed to the Treasurer/Collector on or before the 15th day of December. The Treasurer/Collector shall deliver all tax bills within fifteen (15) days after such commitments.

6.07: Statement of Taxes

- (1) On or before the seventh (7th) of each month, the Treasurer/Collector shall file with the Town Accountant a statement of taxes collected for the preceding month.

6.08: Bonds for Town Officials

- (1) All bonds of the Treasurer/Collector, Constables, or other persons bonded for the benefit of the Town shall be safely kept and retained by the Town Accountant. All such bonds shall not be surrendered or canceled until the accounts of the bonded person are closed by the Town.

6.09: Audit of Town Accounts

- (1) The accounts of the Town shall be audited under the supervision of the Chief Financial Officer, in accordance with the provisions of Massachusetts General Laws, Chapter 44, Section 35. The audit shall be conducted by a certified public accountant, or firm of such accountants, having no interest, direct or indirect, in the affairs of the town.

6.10: Chief Financial Officer to Distribute Statement of Expenses and Balances

- (1) The Chief Financial Officer shall, at regular intervals and at least as often as once each month, send to each officer, board, department, commission, and committee authorized to disperse an appropriation a statement of the amount of orders approved and warrants drawn on behalf of said officer, board, department, commission, or committee during the preceding month, together with a statement of the unexpended balance of each such appropriation.

6.11: All Purchases to be by Purchase Order: Chief Financial Officer to Give Notice of Liabilities in Excess of Appropriation

- (1) No officer, board, department, commission, or committee having the disbursement of an appropriation shall make purchases of supplies or materials or contract for services to be rendered the Town without the issuance of an approved purchase order or prescribed form; provided, however, that the provisions of this section shall not apply to the salaries or wages of officers and persons regularly or temporarily employed by the Town.

6.12: Town Vehicles

- (1) Town owned vehicles are to be used for official use only, unless otherwise authorized by the Town Manager.
- (2) Only on-duty Town employees are allowed to ride in Town-owned vehicles with the following exceptions:
 - (A) Transporting individuals for official business only, such as those in need of assistance, witnesses, detainees, prisoners, or as otherwise determined by the department head or designee;
 - (B) Personnel who are on “paid on call” status; and/or
 - (C) Individuals designated by the Town Manager.

6.13: Departmental Revolving Funds Pursuant to Massachusetts General Laws, Chapter 44, Section 53E½ (10/24/2017)

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

(5) Authorized Revolving Funds

(A) A List of Authorized Revolving Funds shall be listed in a table as shown below and identified as Figure 1.0.

(B) Figure 1.0 lists:

- (1) Each revolving fund authorized for use by a town department, board, committee, agency or officer;
- (2) The department or agency head, board, committee or officer authorized to spend from each fund;
- (3) The fees, charges and other monies charged and received by the department, board, committee, agency or officer in connection with the program or activity for which the fund is established that shall be credited to each fund by the Town Accountant;
- (4) The expenses of the program or activity for which each fund may be used;
- (5) Any restrictions or conditions on expenditures from each fund;
- (6) Any reporting or other requirements that apply to each fund; and
- (7) The fiscal years each fund shall operate under this by-law.

Figure 1.0

A	B	C	D	E	F	G
Revolving Fund	Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	Fees, Charges or Other Receipts Credit to Fund	Programs or Activity Expenses Payable from Fund	Restrictions or Conditions on Expenses Payable from Fund	Other Requirements/Reports	Fiscal Years
Council on Aging	Council on Aging	Rental fees and/or donations	Building expenses	Expenditures not to exceed \$15,000.00	Submit Annual Report and Budget to the Finance Committee	Fiscal Year 2019 and subsequent years
Police Department	Chief of Police	Fees generated from false alarms and firearms licenses	General Police Department maintenance	Expenditures not to exceed \$35,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Highway Department	Director of Department of Public Works	Fees charged for rubbish stickers for yard waste	Salaries and expenses involved in removing yard waste	Expenditures not to exceed \$30,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Department of Code Enforcement	Director of Department of Development and Inspectional Services	Fees charged for wiring, gas, plumbing and inspection services	Services of wiring, gas, plumbing inspectors and assistants	Expenditures not to exceed \$100,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Conservation Commission	Conservation Commission	Fees charged for conservation related services provided by the Town	Contract services authorized by the Conservation Commission	Expenditures not to exceed \$50,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Department of Code Enforcement	Director of Department of Development and Inspectional Services	Fees charged for demolition of structures and/or buildings deemed an immediate danger	Department of Code Enforcement salaries	Expenditures not to exceed \$25,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years

Department of Recreation	Director of Department of Public Works	Support of recreational and cultural programs offered by the Town	Expenses and supplies for development of recreational and cultural services	Expenditures not to exceed 1% of prior year's tax levy for the Town of Auburn	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Weights & Measures	Director of Department of Development and Inspectional Services	Fees charged for services provided by and associated the scales of Weights and Measures	Expenses, supplies and other services related to Weights and Measures	Expenditures not to exceed \$20,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Dr. Arthur and Dr. Martha Pappas Recreation Complex	Director of the Department of Public Works	Fees and rental charges for use of fields and facilities at the Pappas Recreation Complex	Expenses involved in the annual maintenance of the facility	Expenditures not to exceed 1% of the prior year's tax levy	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years

A	B	C	D	E	F	G
Revolving Fund	Department, Board, Committee, Agency or Officer Authorized to Spend from Fund	Fees, Charges or Other Receipts Credit to Fund	Programs or Activity Expenses Payable from Fund	Restrictions or Conditions on Expenses Payable from Fund	Other Requirements/Reports	Fiscal Years
Division of Dog Officer	Department of Development and Inspectional Services	Fees charged in the daily operations of the animal compound	Expenditures for support and maintenance of the Town dog kennel and the animals housed therein	Expenditures not to exceed \$2,500.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Board of Health	Department of Development and Inspectional Services	Expenditures related to the operations of the Flu Clinics	Fees charged and received from health insurance companies for services rendered by the Flu Clinics	Expenditures not to exceed \$7,500.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Parks, Recreation and Cemetery	Director of Department of Public Works	Fees generated for the sale of cement cremation vaults	Expenditures related to costs for financing cement cremation vaults	Expenditures not to exceed \$5,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Board of Health	Director Department of Development and Inspectional Services	Fees generated from the sale of containers for the disposal of household medical sharps	Expenditures relative to the sale of household containers for medical sharp	Expenditures not to exceed \$5,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Board of Health	Director Department of Development and Inspectional Services	Fees and costs generated from liens placed on real estate	Expenditures related to abating Public Health nuisances and causes of sickness in the Town that otherwise cannot be corrected	Expenditures not to exceed \$15,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Board of Health	Director Department of Development and Inspectional Services	Fees related to the sale of compost bins	Expenditures related to the sale of compost bins to Town residents	Expenditures not to exceed \$5,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Engineering Division	Director Department of Public Works	Fees collected from the sale of rain barrels	Expenditures incurred in the sale of rain collection barrels to residents of Auburn	Expenditures not to exceed \$5,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years
Animal Control Division	Director Department of Development and Inspectional Services	Fees from kennel fees including but not limited to reclamation, adoption and boarding fees	Expenditures for animal care veterinary medical expenses, and maintenance	Expenditures not to exceed \$10,000.00	Submit Annual Report and Budget to Finance Committee	Fiscal Year 2019 and subsequent years

Chapter VII: Capital Improvement/Expenditure Program

7.01: Purpose

- (1) The purpose of this By-law is to protect the public welfare of the community by better management of the town's financial resources and to provide for a more rational discussion and debate of community goals and priorities.

7.02: Definitions

- (1) "Appropriation": An authorization by Town Meeting to make expenditures and/or to incur obligations.
- (2) "Capital Budget": A one (1) year plan of estimated capital expenditures and the method of financing them.
- (3) "Capital Improvement Program" or "CIP": A multi-year schedule of capital projects.
- (4) "Capital Project" – A major non-recurring expenditure. A capital project shall be one that is estimated to cost more than Ten Thousand Dollars (\$10,000.00) with a life expectancy of greater than three (3) years.
- (5) "Fiscal Year": The Fiscal Year of the Town of Auburn commences July 1 of each year and terminates June 30th of the following year.
- (6) "Operating Budget": A one (1) year plan of estimating the expenditures and revenues of the Town for the fiscal year. The operating budget includes minor recurring and non-recurring expenditures.

7.03: Capital Budgeting Process

- (1) The Town Manager and the Chief Financial Officer shall annually submit to the Finance Committee a five (5) year Capital Improvement Program including a Capital Budget for the ensuing fiscal year.
- (2) The Finance Committee shall review the proposed CIP and shall prepare and submit the CIP to the Annual Town Meeting and pursuant to Section 6.03 of the Town Charter shall, with the assistance of the Town Manager, the Planning Board, and such other Town agencies as may be involved, annually prepare and submit to the Annual Town Meeting a Capital Improvement Program which shall include, a clear general summary of its contents, a list of all capital improvements proposed to be undertaken during the next ensuing five (5) fiscal years, cost estimates, recommended time schedules and methods of financing of each improvement, and the estimated overall impact on the property tax rate of

each of the five (5) fiscal years.

7.04: Submission Requirements

- (1) All proposed capital projects shall be submitted in writing to the Town Manager for inclusion in the CIP. All capital projects shall be submitted in writing no later than October 1st for inclusion in the Capital Improvement Plan for the ensuing fiscal year.
- (2) All submissions shall be in a format determined by the Town Manager.

7.05: Funds

- (1) Every officer, board, department, commission, and/or committee shall turn over to the Town Treasurer/Collector all cash, checks, and electronic fund transfers received by the Town on a daily basis, unless otherwise agreed upon by the Chief Financial Officer and said Department Head. In no event shall such money be withheld. The Town Treasurer/Collector shall furnish such officer with a receipt for such amount paid into the Treasury and shall forward a duplicate thereof to the Town Accountant.

Chapter VIII: Town Clerk

8.01: Duties of Town Clerk

- (1) The Town Clerk shall perform the duties which, by the laws of the Commonwealth, Town Clerks are required to exercise and perform.
- (2) The Town Clerk shall keep a record for the sole purpose of recording the location of all highways and town ways within the Town, with an index thereto.
- (3) The Town Clerk shall notify immediately in writing all officers and committees that may be elected or appointed at any town meeting and the nature of business upon which they are expected to act.
- (4) The Town Clerk shall notify officers and chairmen of departments and committees of votes of the Town pertaining to their respective departments.
- (5) Non-substantive changes to the numbering of Town By-laws may be made by the Town Clerk in order that amendments to the By-laws be in compliance with the numbering format of the Auburn By-laws.

Chapter IX: Licenses

9.01: Fingerprint-Based State and National Criminal History Screening (10/18/2016)

(1) Purpose, Scope and Authorization

- (A) Pursuant to Massachusetts General Law c.6, § 172B1/2, municipalities are now able to request fingerprint-based state and national criminal record checks on applicants for certain municipal licenses.
- (B) This By-law authorizes the Police Department to conduct state and national fingerprint based criminal history checks for individuals applying for specific licenses in Town to enhance public safety, as authorized by Massachusetts General Laws Chapter 6, Section 172B½.
- (C) Fingerprints taken pursuant to the provisions of this bylaw shall be submitted to the state identification bureau (SIB) and forwarded to the Federal Bureau of Investigation (FBI) for a national criminal history background check.
- (D) To carry out the criminal history checks authorized by this Bylaw, the Police Department shall be authorized to use state and Federal Bureau of Investigation records, provided, however, that such records shall not be disseminated to unauthorized entities and shall be maintained and disclosed in accordance with all applicable law.
- (E) The Bylaw further authorizes the Board of Selectmen, in consultation with the Chief of Police, to promulgate regulations to implement this Bylaw, which may include, but shall not be limited to, establishment of submission deadlines, procedures for making recommendations to the licensing authority or making a licensing as a result of the criminal history check, procedures for assessing, correcting or amending any such record, criteria for fitness determinations, security of information obtained and penalties for failure to comply with this By-law.

(2) Criminal History Check Authorization

- (A) The Police Department shall, as authorized by Massachusetts General Laws Chapter 6, Section 172B½, conduct State and Federal Fingerprint Based Criminal History checks for individuals and entities for the following licenses:
 - (1) Liquor Licensee;
 - (2) Manager or Alternate Manager of a Liquor Licensee;
 - (3) Hawker and Peddler;

- (4) Hackney Carriage (Taxi/Livery/Vehicle for hire) Owner;
- (5) Hackney Carriage (Taxi/Livery/Vehicle for hire) Operator;
- (6) Solicitor/Canvasser;
- (7) Transient Vendor;
- (8) Junk/ Second-Hand/Metal Dealer/Pawn Broker;
- (9) Ice Cream Truck Vendor;
- (10) Police Contracted Tow Truck Owner;
- (11) Police Contracted Tow Truck Operator; and
- (12) Amusement/carnival operators (paid or volunteer)

- (B) At the time of fingerprinting, the Police Department shall notify the individual being fingerprinted that the fingerprints will be used to check the individual's criminal history records and obtain the individual's consent.
- (C) After the applicant completes a consent form, provides his/her fingerprints and the appropriate fee, the Police Department shall transmit the fingerprints it has obtained pursuant to this Bylaw to the Identification Section of the Massachusetts State Police, the Massachusetts Department of Criminal Justice Information Services (DCJIS), and/or the FBI or the successors of such agencies as may be necessary for the purpose of conducting fingerprint-based state and national criminal records background checks for the license applicants specified in this Bylaw.
- (D) The Town of Auburn authorizes the Massachusetts State Police, the DCJIS and the FBI and their successors, as may be applicable, to conduct fingerprint-based state and national criminal record background checks, including of FBI records, consistent with this By-law. The Town authorizes the Police Department to receive and utilize State and FBI records in connection with such background checks, consistent with this By-law and its implementing regulations. In accordance with its implementing regulations, the Police Department shall communicate the results of fingerprint-based criminal record background checks to the appropriate governmental licensing authority within the Town.

(3) Use of Criminal Record by Licensing Authorities

- (A) Licensing authorities of the Town shall utilize the results of fingerprint-based criminal record background checks for the sole purpose of determining the suitability of the subjects of the checks in connection with the license applications specified in this Bylaw.
- (B) A Town licensing authority may deny an application for a license on the basis of the results of a fingerprint-based criminal record background check if it determines that the results of the check render the subject unsuitable for the proposed licensed activity. The licensing authority shall consider all applicable laws, regulations and Town policies bearing on an applicant's suitability in making this determination.

- (C) Licensing authorities of the Town of Auburn are hereby authorized to deny an application for any license specified herein and in the implementing regulations, including renewals and transfers of said licenses, from any person who is determined unfit for the license due to information obtained pursuant to this By-law.
- (D) Unless otherwise provided by applicable law or regulation, a criminal record shall not automatically disqualify a subject. Factors that shall be considered in making a determination of fitness shall include, but not be limited to:
 - (1) Relevance of the record to the application;
 - (2) The nature of the work to be performed;
 - (3) Time since the conviction;
 - (4) Age of the subject at the time of the offense(s);
 - (5) Nature, gravity, and specific circumstances of the offense(s);
 - (6) The number of offenses;
 - (7) Whether the subject has pending charges;
 - (8) Any relevant evidence of rehabilitation efforts or lack thereof;
 - (9) Applicable laws and regulations setting forth criminal history disqualifiers; and/or
 - (10) Any other relevant information, including information submitted by the subject.
- (E) In accordance with 28 CFR 50.12(b), dissemination of results of fingerprint-based criminal record background checks outside the receiving or related governmental agencies to governmental agencies not participating in the suitability decision, or to private entities, is prohibited. The receiving department and the related agency must have concurrent regulatory responsibilities and have a unity of purpose with respect to the use of the results of fingerprint-based criminal record background checks.
- (F) All results of fingerprint-based criminal record background checks information shall be confidential, and shall be disseminated only as authorized by law or regulation. Pursuant to and in accordance with the provisions of 28 CFR 50.12(b), any records obtained pursuant to this Bylaw may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.
- (G) Officials at the Town of Auburn authorized to submit fingerprints and receive FBI identification records under this authority shall notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI.
- (H) The Town of Auburn officials making the determination of suitability shall provide the applicants the opportunity to complete, or challenge the

accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in [28 CFR 16.34](#).

- (I) Officials making such determinations shall not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so.

(4) Fees

- (A) Fingerprinting fees include federal, state, and local fees. Before being fingerprinted, all licensing applicants must pay the statutory fingerprint fee of thirty dollars (\$30.00) with a money order or bank check payable to the “Commonwealth of Massachusetts.” In addition to a signature, the money order or bank check shall include the name of the applicant hand-printed in block letters.
- (B) The fee charged by the Town of Auburn Police Department for the purpose of conducting fingerprint-based criminal record background checks shall be established by vote of the Board of Selectmen. The Town Treasurer shall periodically consult with Town Counsel and the Department of Revenue, Division of Local Services, regarding the proper municipal accounting of those fees.
- (C) A portion of the fee, as specified in Massachusetts General Laws Chapter 6, Section 172B½, shall be deposited into the Firearms Fingerprint Identity Verification Trust Fund, and the remainder of the fee may be retained by the Town for costs associated with the administration of the fingerprinting system.

(5) Effective Date

- (A) This bylaw shall take effect upon approval by the Attorney General, so long as the requirements of MGL c. 40, § 32, are satisfied.

(6) Town of Auburn Municipal Civil Fingerprinting Policy for Occupational Licensing

- (A) The Board of Selectmen is authorized to promulgate a Municipal Civil Fingerprinting Policy for the implementation of this Bylaw, which shall be consistent with the statute, the FBI’s requirements for access to the national database, and other applicable state laws.

9.02: Yard Sales

- (1) A “yard sale” is defined as the offering for sale, trade or exchange new or used goods, articles, or wares at any residential location.
- (2) It shall be unlawful for any person to conduct a yard sale, within the Town of Auburn without first obtaining a license therefore from the Town Clerk. The Town Clerk shall enforce the provisions of this Section.
- (3) Not less than one (1) day prior to the date of proposed sale, in all residential zoning districts, an applicant for a license shall apply at the Town Clerk’s office for such license, setting forth the name and address of the applicant, the location, and date the proposed yard sale. Upon validation by the Town Clerk, the application becomes a license. The license shall be issued to the applicant and shall be posted on the premises during the sale. Licenses shall be issued only at the Clerk’s office during usual business hours.
- (4) At the time of filing of the application each applicant shall pay a license fee to the Town of Auburn. The time of the yard sale shall be limited: Monday through Saturday from 8:00 A.M. to 5:00 P.M. and Sunday from 10:00 A.M. to 5:00 P.M. A yard sale shall be conducted at the same residential location no more than four (4) days in any calendar year.

9.03: Secondhand, Pawnbroker, Article Dealer or Dealer in Junk

- (1) No person shall carry on a business of pawnbroker or keeper of a shop for the purchase, sale or barter of junk, old metals, coins, or secondhand articles unless he is licensed therefore by the Board of Selectmen.

9.04: Public Garages

- (1) No person shall carry on the operation of a public garage for the repair or storage of motor vehicles unless he or she is licensed therefore by the Board of Selectmen.

9.05: Non-Garaged - Unregistered Motor Vehicles/Trailers/Boats/Parts

- (1) No person shall store, repair, or operate any unregistered, and/or abandoned motor vehicle/trailer/boat/parts out-of-doors unless the owner or lessee of the property obtains a license therefore from the Board of Selectmen.

9.06: Amusement Park/Carnival License

- (1) No person shall operate an amusement park or carnival unless the owner or lessee of the property obtains a license therefore from the Board of Selectmen.

9.07: Taxi License

- (1) No person shall own and/or operate a taxi business within the Town of Auburn unless the operator and/or owner of such taxi first obtains a license therefore from the Board of Selectmen.

9.08: Carry-In Alcohol License (BYOB)

- (1) No person shall operate a place of business at which the patrons of the business consume alcohol beverages supplied by such patrons, unless said person first obtains a license therefore from the Board of Selectmen. This shall not include any place required to be licensed under Massachusetts General Laws, Chapter 138.

9.09: Flea Market License

- (1) No person shall conduct a flea market as defined in this By-law unless he is licensed therefore by the Board of Selectmen. A flea market is defined as the offering for sale of new or used goods, wares or merchandise outdoors or in a tent, booth or other temporary structure. A flea market shall be defined as a group of three (3) or more exhibitors.
- (2) The license, renewable annually, must be obtained by the owner of the site upon which the market will be held fifteen (15) days prior to the opening of the market.
- (3) Board of Selectmen may deny the license or impose restrictions because of traffic or other problems. The Board of Selectmen may revoke the license at any time for violation of restrictions.
- (4) A copy of the license shall be posted on the site by the applicant.

9.10: Transient Vendor or Hawker/Peddler License

- (1) No person shall conduct business as a Hawker/Peddler, or Transient Vendor, or engage in such business in the Town of Auburn unless such person is in compliance with the following By-law and is licensed by the Board of Selectmen.

9.11: Storage of Flammable Fluids

- (1) No person shall store gasoline, fuel oil, and flammable fluids in accordance with Massachusetts General Laws, Chapter 148 unless he or she is licensed therefore by the Board of Selectmen.
- (2) A fee shall be charged for the initial license for the storage of gasoline, fuel oil, and flammable fluids in accordance with Massachusetts General Laws, Chapter

148. This fee shall be paid with the application and is refundable if the application is denied.

9.12: Dog License Late Charge, Unlicensed Dogs (5/2/2017)

- (1) Each owner or keeper of a dog six (6) months old or over shall obtain an annual dog license within the licensing period of January 1st through March 31st. Applicants shall pay the licensing fee and provide proof of current rabies vaccination to the Town Clerk's office. A license shall not be issued prior to payment in full of all said fees.
- (2) Each owner or keeper of a dog who fails to obtain an annual license for such dog by April 30th shall be required to pay a late fee in addition to the license fee.
- (3) No license fee or portion thereof shall be refunded because of the subsequent death, loss, spaying, neutering, or removal from the Commonwealth or other disposal of the dog.
- (4) Application for a dog license shall be made within thirty (30) days of acquiring a new dog six (6) months old or over or of establishing residence if either occurs after March 31st. Each owner or keeper who fails to obtain a license within thirty (30) days shall be required to pay a late fee in addition to the license fee.
- (5) All unlicensed dogs are subject to a fine for each and successive offenses. These fees and fines collected shall be deposited in the Town Treasury to become part of the Town General Fund.
- (6) Any person seventy (70) years of age or older, upon proof of age, shall be exempt from the annual fee for one dog, per household, per year. The owner of a kennel license, age seventy (70) years of age or older, shall be excluded from this exemption.

9.13: Amusement Devices

- (1) For the purposes of this By-law, the term "amusement device" shall be defined as any machine, apparatus, device, or mechanism which has been approved in accordance with Massachusetts General Laws, Chapter 94, Section 283 and whereby, upon deposit therein of a coin or token, or by paying thereof either in advance or after use, any apparatus is released or set in motion or put in a position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including, but not exclusively, such devices as are commonly known as pinball machines and electronic video games or any other similar machine or device as defined in Massachusetts General Laws, Chapter 140, Section 177A.

- (2) No person shall carry on the operation of amusement devices unless he is licensed therefore by the Board of Selectmen.

9.14: Licenses of Delinquent Taxpayers

- (1) Any Town Board, Commission, Officer, or Department shall deny any application or revoke or suspend any local license, including renewals and transfers, for any person, corporation, or business enterprise who has neglected or refused to pay any local taxes, fees, assessments, betterments, or any other municipal charges or with respect to any activity, event, or other matter which is the subject of such license and which activity, event, or matter is carried out, or exercised, or is to be carried out, or exercised, on or about real estate whose owner has neglected or refused to pay any local taxes, fees, assessments, betterments, or any other municipal charges.
- (2) The Tax Collector shall annually furnish to each Town Board, Commission, Officer, or Department that issues licenses including renewals and transfers, hereinafter referred to as the licensing authority, a list of any person, corporation, or business enterprise, hereinafter referred to as the party, that has neglected or refused to pay any local taxes, fees, assessments, betterments, or other municipal charges for not less than a twelve month period, and that such party has not filed in good faith a pending application for an abatement of such tax or a pending petition before the Appellate Tax Board.
- (3) The licensing authority may deny, revoke, or suspend any license, including renewals and transfers, of any party whose name appears on said list furnished to the licensing authority by the tax collector or with respect to any activity, event, or other matter which is the subject of such license 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; provided, however, that written notice is given to the party and the tax collector, as required by applicable provisions of law, and the party is given a hearing to be held not earlier than fourteen (14) days after said notice. Said list shall be prima facie evidence for denial, revocation, or suspension of said license to any party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation, or suspension. Any findings made by the licensing authority with respect to such license denial, revocation, or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation, or suspension. Any license denied, suspended, or revoked under this section shall not be reissued or renewed until the license authority receives a certificate issued by the Tax Collector that the party is in good standing with respect to any and all local taxes, fees, assessments, betterments, or other municipal charges payable to the municipality on the date of issuance of said certificate.

- (4) 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, 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; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- (5) 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 or her immediate family, as defined in Massachusetts General Laws, Chapter 268A, Section 1, in the business or activity conducted in or on said property.
- (6) This section shall not apply to the following licenses and permits: open burning [Massachusetts General Laws, Chapter 48, Section 13]; bicycle permits [Massachusetts General Laws, Chapter 85, Section 11B]; sales of articles for charitable purposes [Massachusetts General Laws, Chapter 101, Section 33]; children work permits [Massachusetts General Laws, Chapter 149, Section 66]; clubs, associations dispensing food or beverage licenses [Massachusetts General Laws, Chapter 140, Section 21E]; dog licenses [Massachusetts General Laws, Chapter 140, Section 137]; business certificates [Massachusetts General Laws, Chapter 110, Section 5]; marriage licenses [Massachusetts General Laws, Chapter 207, Section 28]; and theatrical events, public exhibition permits [Massachusetts General Laws, Chapter 140, Section 181].

Chapter X: Public Parks and Cemeteries Rules and Regulations

10.01: Purpose

- (1) The purpose of this By-law is to protect the public welfare of the community by enacting the following rules and regulations regulating the parks, and recreational areas, and cemeteries of the Town of Auburn.

10.02: Hours of Operation

- (1) All public parks, playgrounds, beaches, and cemeteries shall be closed to all activities between the hours of 10:00 P.M. and 5:00 A.M., unless otherwise authorized by a written license issued by the Department of Public Works.

10.03: Leashing of Animals

- (1) Any animals brought into all public parks, playgrounds, beaches, and cemeteries shall be leashed unless otherwise allowed by these By-laws. All animal feces shall be picked up immediately and properly disposed of by the owner.

10.04: Parking

- (1) Parking is allowed in designated areas. Any vehicles parked in unauthorized areas or after posted park hours shall be towed at the owner's expense.

10.05: License for Exclusive Use

- (1) Exclusive use of any public facility, such as ball fields, tennis courts, performance pavilion, etc., shall be granted by obtaining a license through the Department of Public Works.

10.06: Alcoholic Beverages

- (1) No person shall drink any alcoholic beverages as defined in Massachusetts General Laws, Chapter 138, Section 1 while on, in, or upon any public park, playground, or beach.

10.07: Unlawful Activities

- (1) Within the limits of the Town of Auburn's public parks, playgrounds, beaches, and cemeteries it shall be unlawful for any person:
 - (A) To destroy, misuse, or abuse Town property or to injure trees, lawns, shrubs, or plants;
 - (B) To deface, remove, or destroy any sign, notice, or protective device;
 - (C) To engage in business, sell or expose for sale, perform any advertising of any nature, or give away any goods, wares, or circulars unless authorized by a written license issued by the Town;
 - (D) To throw, deposit, or leave any litter or rubbish except in containers placed for such purposes. Household trash, or offsite refuse shall not be deposited in said containers;
 - (E) To annoy other persons or to disturb animals, fish, or birds or to commit any act of nuisance;

- (F) To operate a stereo system, bullhorn, radio, loudspeaker or amplifier, or otherwise create noise at a level that could reasonably be expected to disturb other persons in or around any public park, playground, beach, or cemetery without first obtaining a license from the Town;
- (G) To possess or discharge any firearms or fireworks in the park unless authorized by a written license issued by the Police Department, Fire Rescue Department or Department of Public Works. No open fires shall be allowed;
- (H) To play golf or to practice same with putter or other club or stick or any kind except for areas purposely set aside for this activity or in conjunction with an organized Town event;
- (I) To obstruct, hinder, or impede the movement or work of employees on the Department of Public Works or vehicles or said department;
- (J) To erect any booth, tent, sleeping bag, stall, or other structure or to camp or lodge in any park, playground, beach, or cemetery area without prior written permission from the Town;
- (K) To place any snow or ice removed from private property upon any sidewalk, roadway, or parking area;
- (L) To drive any vehicle upon any sidewalk of any boundary road of any public park;
- (M) To drive or propel any motorized vehicle in any park, playground, beach, or cemetery area except on paved vehicle roads and/or driveways, or as otherwise authorized by the Town;
- (N) To repair cars in any public park, playground, beach, or cemetery area;
- (O) To give instruction to any person driving an automobile in any park or to learn to operate any auto, motorcycle, or any other motorized vehicle;

10.08: Enforcement

- (1) Police Officers or the Director of the Department of Public Works, or his or her Designee are the enforcing authority for this Section.

10.09: Fine

- (1) The Board of Selectmen shall establish fines for violation of this Section.

PART II:
DEPARTMENTS AND
DIVISIONS

Chapter XI: Executive Office of Town Manager

11.01: Powers and Duties of the Town Manager

- (1) The Town Manager shall have the powers and duties provided by the Town of Auburn Charter, and all other powers and duties provided by these By-laws.

11.02: Printing and Distribution of Town Report

- (1) The Town Manager annually, not less than seven (7) days before the Annual Town Meeting, shall cause copies of the Town Report to be printed and distributed to all officers and town meeting members, and shall also have printed and made available enough copies to supply all voters who may request them.

11.03: Annual Financial Liability Report

- (1) The Town Manager shall require that all boards, officers, and standing committees annually before the first day of August submit to the CFO an itemized report in writing of their activities for the preceding fiscal year. This statement shall include an itemized account of the liabilities incurred by that board, officer or committee which are outstanding on the thirtieth day of June. These reports and the records of town meetings and elections held during the preceding year shall be printed annually in the Town Report, together with an index.

Chapter XII: Department of Development and Inspectional Services

12.01: Scope

- (1) Under Authority of Section 3.06(a) of the Charter of the Town of Auburn, there is hereby established under the jurisdiction of the Town Manager a department of the Town, to be known as "Department of Development and Inspectional Services". It shall be the function of the Department to manage and operate the economic development and regulatory service functions of the Town and to provide services relating to the state building code, the zoning by-laws, the architectural access code, the state sanitary code, and all other laws, codes, regulations, and by-laws relating to health and human safety.

12.02: Building Department

- (1) The provisions of these regulations shall relate to the construction, alteration and maintenance of buildings and other structures within the limits of the Town of Auburn, County of Worcester, except such as are owned and occupied by the United States, or owned and occupied by the Commonwealth of Massachusetts, or by any County; and also excepting bridges, quays and wharves.
- (2) There shall be within the Department of Development and Inspectional Services a division to be called the Building Department; it shall be furnished with office room and supplies for the transaction of its business as the Town may provide.
- (3) The Building Code document marked and designated by the Commonwealth of Massachusetts State Building Code (780 CMR, as amended) established by authority of Chapter 802 of the Acts of 1972, effective January 1, 1975, shall be on file with the Building Inspector and with the Town Clerk, and it shall be the building code for the Town of Auburn.

12.03: Building Official

- (1) The Office of Inspector of Buildings is hereby established. The Inspector of Buildings shall be appointed and removed by the Town Manager who shall fix his or her salary and provide for reimbursement for his or her incidental expenses in the performance of his or her duties.
- (2) Any person who shall be appointed as Inspector of Buildings shall meet all requirements of the Commonwealth for appointment.
- (3) The Inspector of Buildings shall enforce all laws and regulations relating to the construction, alteration, repair, removal, demolition, equipment, use, occupancy, location, and maintenance of buildings and structures, except as may be otherwise provided. He or she shall inspect all building operations within the Town, and shall have the right of entry at reasonable hours. He or she shall require that all workmanship and all building material shall be of good quality, and that the types and methods of construction shall be in accordance with generally accepted standards of engineering practice and not inconsistent with the law. In case of violation of these regulations, he or she shall order, in writing, the suspension of the work, which notice shall state the conditions under which work may be resumed.

12.04: Records and Reports

- (1) The Inspector of Buildings shall keep records of applications, permits issued, certificates issued, inspections, reports and notices or orders issued. He or she shall make a report to the Town Manager annually or as requested by the Town Manager.

12.05: Applications for Permits

- (1) It shall be unlawful to construct, alter, remove, demolish, or change the class of occupancy of any building or structure without first filing with the Inspector of Buildings an application in writing, and obtaining a permit.
- (2) An application for a permit shall be submitted in such form as the Inspector of Buildings may prescribe, and shall be made by the owner or his or her duly authorized representative.
- (3) Applications for permits shall be accompanied by such plans, drawings and other data as the Inspector of Buildings may require. When required by the Inspector of Buildings, there shall be filed also a plot diagram drawn to scale, showing the size and location by dimension of the proposed new construction and other existing or proposed structures on the same lot and other structures on adjoining property within ten feet of the property lines.
- (4) Nothing in this section shall prohibit the filing of amendments to an application. Such amendments, after approval, shall be filed with and be deemed a part of the original application.

12.06: Permits, Inspections, Fees

- (1) It shall be the duty of the Inspector of Buildings to act upon applications for a permit, plan, or amendment thereto without unreasonable or unnecessary delay.
- (2) The Inspector of Buildings shall inspect all buildings or structures during construction to see that the provisions of these regulations are complied with and that the construction is prosecuted safely.
- (3) The fee required for a building permit shall be set annually by the Board of Selectmen.

12.07: Certificate of Occupancy

- (1) It shall be unlawful to use or permit the use of any building or premise or part thereof hereinafter created, erected, changed, or converted wholly or partly in its use or structure, until a certificate of occupancy shall have been issued by the Inspector of Buildings, certifying that the conditions of the permit have been fulfilled in accordance with the provisions of these regulations. Upon request of the holder of the permit or the owner, the Inspector of Buildings may issue a temporary certificate of occupancy for part of the building, provided that such temporary occupancy or use would not jeopardize life, limb or property.

12.08: Unsafe Buildings

- (1) Upon notice of an unsafe building, the Inspector of Buildings shall proceed in accordance with the provisions of Massachusetts General Laws, Chapter 143, Section 6 to Section 12, inclusive.

12.09: Swimming Pools

- (1) Swimming pool safety devices: Every person owning land on which there is situated a swimming pool which could hold twenty-four (24) inches or more of water in depth at any point, other than a public or semi-public outdoor in-ground swimming pool, shall erect and maintain an adequate enclosure either surrounding the property or pool area, sufficient to make such pool area inaccessible to small children. Such enclosure, including gates, shall be a minimum height of four (4) feet above the underlying ground; all gates must be self-latching with latches placed four (4) feet above the underlying ground or otherwise made inaccessible from the outside to small children. If a wood fence (i.e. stockade type) is used to satisfy the above requirements, the smooth side of such fence shall face out.
- (2) A natural barrier, hedge, pool cover or other protective device approved by the Building Inspector may be used so long as the degree of protection afforded by the substituted devices or structures is not less than the protection afforded by the enclosure, gate and latch described above.

12.10: Sealer of Weights and Measures

- (1) The Sealer of Weights and Measures shall have full authority over matters relating to relevant provisions of the Massachusetts General Laws, including Chapter 98, and shall institute all applicable enforcement proceedings through the non-criminal disposition procedures and/or legal procedures in a Court of Law.

12.11: Inspector of Weights and Measures

- (1) The Inspector of Weights and Measures shall be paid a salary determined by the Town Manager and shall account for and pay to the Town Treasurer/Collector the fees collected by virtue of his office.

12.12: Canine Care

- (1) The following definitions are applicable to Sections 12.12: Canine Care and 12.13: Animal Care.
 - (A) “Abandonment”: The failure to redeem an impounded animal within seven (7) days; leaving an animal in any place where it may suffer injury, hunger, thirst, or exposure or become a public charge; or, withholding care for a period greater than twenty-four (24) hours.

- (B) “Adult animal”: For the purpose of this By-law, any animal more than one (1) year of age shall be considered an adult.
- (C) “Animal Control Officer” or “ACO”: The Animal Control Officer of the Town of Auburn, Massachusetts.
- (D) “Animal Shelter”: A facility designated or recognized by the Town of Auburn for the purpose of impounding and caring for animals.
- (E) “At-Large”: Any animal shall be deemed to be at-large when off the property of the owner or keeper and not under restraint.
- (F) “Barking (Excessive)”: Ongoing barking, whining, howling, or other noises emitted from an animal detectable beyond the border of the property on which the animal is located that causes a nuisance or irritation to a neighbor or the neighborhood.
- (G) “Domestic Animal”: An animal designated as domestic by regulations promulgated by the department of fish and game
- (H) “Food (Adequate)”: Food and nutrition free from contamination sufficient in quantity and quality to properly nourish the animal.
- (I) “Humane Manner”: Care of an animal to include, but not be limited to, adequate heat, ventilation and sanitary shelter, and wholesome food and water, consistent with the normal requirements and feeding habits of the animal’s size, species, and breed.
- (J) “Injury”: Any physical harm that results in lacerations, bruising, discernible pain, or discomfort whether requiring medical attention or not.
- (K) “Injury Severe”: See “Severe Injury”.
- (L) “Kennel”: An establishment housing four (4) or more adult animals for the purpose of breeding, selling, or boarding dogs or cats or engaged in the training of dogs or cats on a single premise for commercial purposes and/or for personal use.
- (M) “Kennel License”: An annual license permitting a kennel to operate within the Town issued to an establishment which has demonstrated compliance with the requirements of this By-law.
- (N) “Legal Point of Disposal”: A receptacle designed and intended for disposal of sewage or solid waste or any other means used with permission of the owner or caretaker of the disposal site and as approved by the Director of Public Health or Designee.

- (O) “Licensing Authority”: The Town Clerk of the Town of Auburn or any designated representative thereof charged with administering the issuance and/or revocation of animal permits and licenses under the provisions of this By-law.
- (P) “Medical Response/Treatment”: Medical treatment in a timely manner appropriate to address any illness or injury detected on or in an animal.
- (Q) “Muzzle”: A device fitted over the head of dog or other animal designee to restrict biting and/or barking.
- (R) “Nuisance”: An act, condition, or disturbance that by its existence results in the inconvenience, discomfort, or interference with another person’s comfort or enjoyment of their property or their life or the threatening or attacking of livestock, domestic animal(s), or a person, but such threat was not a grossly disproportionate reaction under all the circumstances.
- (S) “Owner”: An adult eighteen (18) years or older who has the right of property or custody of an animal or who keeps or harbors an animal or who knowingly permits an animal to remain on or about any premises occupied by that person.
- (T) “Person”: Any individual, corporation, partnership, organization, or institution commonly recognized by law as a unit.
- (U) “Dangerous Dog”: A dog that either (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat; or (iii) engages in any behavior that requires a defensive action by any person to prevent physical injury or death to a person or domestic or owned animal.
- (V) “Public Areas”: Properties with generally free access by the general population. Public areas shall include, but not be limited to: Town Beaches, Town Greens, Commons, Parks, Playing Fields, School Properties, Greenways, Town Buildings & Grounds, Cemeteries, Public Ways and Walks, and privately-owned properties open to the public.
- (W) “Restraint”: An animal shall be considered under restraint: (i) if it is within the real property limits of its owner or keeper or on the premises of another person with the knowledge and express permission of such person and shall be secured by a leash, lead, barrier, or under the direct control of the owner where the animal shall at all times by command, order or signal, prevent the animal from bothering or chasing any person or domestic animal; or (ii) when, off property, is secured by a leash not exceeding six (6) feet in length unless expressly allowed.

- (X) “Severe Injury”: Any physical injury that results in muscle tears or disfiguring lacerations or broken bones that require multiple sutures or corrective or cosmetic surgery.
- (Y) “Trespass, Willful”: An intentional act of crossing onto private property. It shall not include approaching an obvious door or entry to request permission to access.
- (Z) “Vicious Dog”: Any dog that, when unprovoked, in an aggressive manner inflicts serious injury on or kills a person or domestic animal; or, any dog previously determined to be and currently listed as a dangerous dog, which, after its owner or keeper has been notified of this determination, continues the behavior.

(2) Licensing

- (A) Application for a license must be made within thirty (30) days after obtaining a dog over six (6) months of age, except that this requirement will not apply to a non-resident keeping a dog within the Town of Auburn for no longer than sixty (60) days. Licensing is for the period commencing April 1st and concluding March 31st of each year.
- (B) Application for a dog license shall be made to the Town Clerk and shall include the name and address of the owner and the name, breed, color, age, and sex of the dog. The application shall also note if the dog is spayed or neutered. Applicants also shall pay the licensing fee and provide proof of current rabies vaccination. A license shall not be issued prior to payment in full of all said fees. Persons who fail to obtain a license, as required, within the time specified in this section shall be subjected to a delinquent fee.
- (C) License renewal may be applied for after January 1st of each year and must be completed by March 31st or within thirty (30) days of establishing residence.
- (D) Upon acceptance of the license application and fee, the Town Clerk shall issue a durable license tag including an identifying number, year of issuance, city, and state. Both rabies and license tags must be attached to the collar of the dog. Tags must be worn at all times and are not transferable. The Town Clerk shall maintain a record of all licenses issued, and such records shall be available to the animal control officer and officers of police department.

- (3) Licensing fees, delinquent fees, penalties and fines
 - (A) All licensing fees, delinquent fees, penalties, and fines shall be set annually by the Board of Selectmen.
 - (B) Upon proof to the licensing authority, license fees shall be waived for registered service animals, as defined by the Americans With Disabilities Act, and government-owned dogs used for law enforcement.
- (4) Owner Responsibilities
 - (A) Any owner or keeper of a licensed dog that is transferred, sold, or becomes deceased shall make a report of the same to the Town Clerk within one (1) month of the event to maintain proper records and to curtail future fees and licensing requirements.
 - (B) It shall be a violation of these regulations for any owner or keeper of a dog to allow such dog to create a nuisance by any of the following:
 - (i) Nuisance by disposition: It shall be the duty of every owner of a dog, keeper of a dog, or anyone having an animal in their possession or custody to exercise reasonable care and to take all necessary steps and precautions to prevent that dog from being a nuisance by its behavior. In the event that the owner or keeper of any animal is a minor, the parent or guardian of such minor shall be responsible to ensure compliance with all provisions of this By-law.
 - (ii) Nuisance by restraint: In addition to the following no dog owner or keeper shall restrain a dog in violation of Massachusetts General Laws, Chapter 140, Section 174E, as amended:
 - (a) While on property: It shall be the duty of every owner or keeper of any dog to ensure that the animal is kept under restraint and prevented from leaving, while unattended, the real property limits of its owner, keepers, or harborers, or the real property limits of another person on whose property the dog is being held with the knowledge and express permission of the owner of such property.
 - (b) While off property: It shall be the duty of every owner or keeper of any dog or anyone having a dog in their possession to keep the dog under restraint and control at all times while the dog is off the real property limits of the owners, keepers, or custodian.

(c) The provisions of this By-law shall not apply to the following:

1. A dog under the authority or control of a Police Officer while training or performing the duties for which it is trained.
2. A service animal performing the duties for which it is trained.
3. A sporting or performing dog under the authority or control of a trainer while hunting, training or performing the duties for which it is trained, provided that the training is being conducted in an area where a the trainer has permission to enter for purposes of training or where performing and a reasonable person would expect no contact between the dog and humans, other pets, livestock or fowl or other personal property.

- (iii) Nuisance by disturbance or excessive barking: It shall be the duty of every owner or keeper of any dog or anyone having a dog in their possession to prevent the dog from causing a nuisance due to excessive barking, as defined as being continuous for a period of time longer than fifteen (15) minutes.
- (iv) Nuisance by filth: Owners or keepers of dogs are responsible to pick up and properly dispose of any fecal waste on public or private property and transport the waste to a legal point of disposal.

(5) Determination That A Dog is a Nuisance, Dangerous, or Vicious

- (A) The Animal Control Officer (ACO), upon investigation or complaint, may, without hearing, make a determination that a dog is a nuisance or dangerous or vicious. If such determination is made, the ACO may issue non-criminal violations for specific offenses. The ACO additionally may attempt to resolve the situation by informal means, such as suggesting improvements to conditions to the owner or keeper of the dog, and/or otherwise attempt to mediate the offensive conditions between the aggrieved parties. In the event that the owner, keeper, or harbinger of the dog refuses or fails to comply with conditions and otherwise allows the dog to remain a nuisance, the ACO shall report in writing the circumstances to the Director of the Board of Health or the Police Chief or their Designee who shall cause a hearing to be conducted.

(B) If any person or party is aggrieved by the actions of the ACO, they may, within seven (7) days, appeal the action in writing to the Board of Health or the Police Chief or their Designee who shall hold a hearing within fifteen (15) days of the date of said appeal.

(6) Hearing Process

(A) Any person, including the ACO or a Police Officer, may file a complaint in writing to the Director of Public Health and/or the Police Chief or their designee (hereafter "Authority") that a dog owned or kept in the town is a nuisance, dangerous, or vicious and may initiate a public hearing in accordance with Massachusetts General Laws, Chapter 140, Section 157; provided, however that no dog shall be deemed dangerous solely based upon growling and barking, based upon the breed of the dog, or if the dog was reacting to another animal or to a person and the dog's reaction was not grossly disproportionate to the circumstance.

(B) In the event a dog owner fails or refuses to attend, cooperate, or participate at the hearing, the Authority, or, upon appeal, the Board of Selectmen, may draw an inference from such actions, toward sustaining the allegations. The hearing process shall continue and any determinations or conditions may be set with the owner or keepers, non-participation or in absentia.

(7) Appeals

(A) If the owner or keeper of the dog contests the determinations made during a public hearing, he or she may, within five (5) days of receipt of the notice of determination and orders, appeal the decision in writing to the Board of Selectmen and thereafter to a court authorized to hear the appeal.

(8) Impoundment of Dangerous or Vicious Dogs

(A) If, after investigation, it is determined by the ACO or Police Officer that reasonable cause exists to believe the dog in question poses an immediate threat to public safety, the ACO or Police Officer may seize and impound the dog pending the determination of the hearings to be held pursuant to this By-law. The owner or keeper of the dog shall be liable to the Town for the costs and expenses of keeping the dog if the dog is later determined to be dangerous or vicious. When a dog has been impounded pursuant to this section, the Board of Health or its Designee may permit the animal to be confined in an approved kennel or veterinary facility at the owner's expense.

(B) Pending an appeal filed by an owner or keeper in the District Court within the judicial district in which the order relative to the dog was issued or where the dog is owned or kept, the Authority may file a petition in the court to request an order of impoundment at a facility the Town uses to shelter animals. The Town shall not incur liability for failure to request impoundment of a dog under this subsection.

(9) Ownership of Dangerous or Vicious Dogs

(A) All dangerous or vicious dogs shall be permanently identified and all other provisions in accordance with dog licensing and rabies vaccinations shall apply. The Town Clerk shall include the dangerous or vicious designation and date of determination in the registration records of the dog.

(B) If a dangerous or vicious dog dies, or is sold, transferred, or permanently removed from the town, the owner of such dog shall notify the Town Clerk in writing within two (2) business days of the changed condition and new location of the dog.

(C) No person shall transfer ownership or possession of a dog which said person knows, or reasonably should have known, has been deemed dangerous or vicious without informing the recipient in writing that the dog has been determined to be dangerous or vicious.

(D) No person under the age of eighteen (18) shall own, handle, control, care, or be responsible for a dangerous or vicious dog.

(E) All owners or keepers of dangerous or vicious dogs shall display in a prominent place on their premises a sign easily readable by the public, using the words "Beware of Dog." In addition, a similar sign is required to be posted at the kennel or pen of such dog.

(F) All dangerous and vicious dogs must be restrained and confined in accordance with Massachusetts General Laws, Chapter 140, Section 157(c), (i), (ii), and (iii).

(10) Exemptions

(A) Police Officers, Correctional Officers, and military personnel in the performance of training or other official duties are exempt from the provisions of this By-law. Additionally, law enforcement, corrections, or military K-9 dogs that bite a person in the performance of their duty shall not be quarantined or confined if they have a current rabies vaccination; however, such dog must be observed for (10) days following the bite. Any abnormal behavior from said dog during the ten (10) day observation

period must be reported to the ACO and said dog must be made available for examination.

(11) Fines and Penalties

- (A) All fines pursuant to this article shall be set by annually by the Board of Selectmen, shall be placed on the Fine Schedule, and shall be paid to the Office of the Town Clerk.

12.13: Animal Care

(1) Definitions

- (A) All definitions as written in Section 12.12(1) shall apply to the entirety of Section 12.13.

(2) Rabies Vaccinations

- (A) Except as provided, no person shall own, keep, or harbor any dog six (6) months of age or over within the Town of Auburn unless such dog is vaccinated for rabies and licensed. All rabies vaccinations on any dog kept in the Town of Auburn must be maintained current in accordance with standard veterinarian practice.
- (B) Except as may be provided, no person shall own, keep, or harbor any cat or ferret six (6) months of age or over within the Town of Auburn unless such cat or ferret is vaccinated for rabies.
- (C) All dogs, cats, and ferrets shall be vaccinated against rabies by a licensed veterinarian, in accordance with the latest “Compendium of Animal Rabies Vaccines and Recommendations for Immunization” published by the National Association of State Public Health Veterinarians and in accordance with Massachusetts state law. Any owner or keeper of any dog, cat, or ferret maintained in the Town of Auburn shall maintain a written record, supplied by the veterinarian who administered the rabies vaccine that clearly shows the date of expiration of the vaccine.
- (D) At the discretion of the licensing authority, an exemption from this section may be granted for a dog, cat, or ferret that the Board of Health has declared exempt from the rabies vaccination requirement upon presentation of a veterinarian’s certificate stating that, because of an infirmity, other physical condition, or regimen of therapy, such inoculation is considered inadvisable for a specified period of time. Dogs that have been declared exempt from the rabies vaccination requirement shall be licensed annually within the Town.

(3) Additional Owner Responsibilities

- (A) Owners and/or keepers of animals shall provide adequate nutritious food and water, free from contamination, and sufficient in quantity and quality to protect the animal from undernourishment and to prevent illness and disease related to undernourishment.
- (B) Owners and/or keepers of animals shall provide grooming care and are responsible for expenses as required.
- (C) Owners and/or keepers of animals who are housing their animal outdoors shall provide adequate shelter. Adequate shelter is described as easily accessible, offering protection from the sun and inclement weather. Shelters housing any animal shall be of durable construction with three (3) solid sides, a solid roof, and a solid floor. The fourth (4th) side shall be a flap or curtain that effectively excludes wind, rain, and snow. Such shelter shall be maintained with clean dry bedding such as cedar chips, hay, straw, or cloth materials, sufficient to insulate the animal and keep the animal warm and dry. The shelter shall be of a size that the animal can comfortably stand, lie down and turn around.
- (D) Owners and/or keepers of animals shall provide reasonable medical care, including licensed veterinary care appropriate to prevent and address any illness or injury to the animal, to minimize the suffering or debilitation of the animal. Such persons shall ensure that the animals are vaccinated in accordance with Massachusetts General Laws and remove or abate promptly ticks, fleas, worms, and other parasitic infestations or disease.
- (E) The ACO may at any time require that owners and/or keepers of animals present such animals for inspection. The ACO shall use such inspection to determine the general health of the animal and may seize any animal if the conditions in which that animal is kept and/or the health of the animal do not meet the minimum standards as outlined in this By-law.

(4) Abandonment or abuse of animals

- (A) It shall be unlawful for anyone to knowingly abandon or abuse any domesticated animal. Each person who knowingly or willingly does abandon or abuse, permits this abandonment or abuse, or aids in the abandonment or abuse of any domesticated animal shall be reported to the proper authority. Abuse for the purpose of this By-law shall mean:
 - (i) Any act meeting the definition of “cruelty to animals” in accordance with Massachusetts General Laws, Chapter 272, Section 77;

- (ii) Any mistreatment, beating, tormenting, or teasing of any animal;
 - (iii) Depriving any animal of adequate water, food, shelter, or licensed veterinary medical treatment;
 - (iv) Keeping any animal under unsanitary conditions as defined by the Board of Health;
 - (v) Abandoning /neglecting of any animal;
 - (vi) Leaving any animal unattended in a vehicle in conditions that endangers the health and safety of animal;
 - (vii) Training or subjecting any animal to fight other animals; and/or,
 - (viii) Any other circumstance which, without intervention, is potentially harmful or life threatening to the animal(s).
- (5) Unattended animals in standing or parked vehicles
- (A) No owner or caretaker may leave a dog, cat, or any other animal unattended in a standing or parked vehicle in a manner that endangers the health or safety of such animal.
- (6) Authority to Remove
- (A) A Police Officer, ACO, or agent or officer of any registered humane society may use any reasonable method, including but not limited to breaking a car window, to remove an animal being kept in a standing or parked vehicle in a manner that endangers the health or safety of such animal.
- (7) Impoundment of Animals At-Large or Abused Animals
- (A) Any animal found at- large or found suffering from abuse in violation of the provisions of this By-law shall, at the owner's expense, be impounded forthwith by the ACO and placed in an animal shelter or safe place and confined in a humane manner or, when deemed necessary by a licensed veterinarian to prevent further suffering, euthanized. Immediately upon impounding any at-large animal, the ACO shall make every reasonable effort to identify and notify the owner and inform such owner of the conditions whereby custody of the animal may be reclaimed.
 - (B) Animals impounded and unclaimed by the owner or keeper after seven (7) days may be disposed of in accordance with the provisions of Massachusetts General Laws Chapter 140, Section 151A.

- (C) When an animal is found at-large, and, after the ACO verifies its ownership, current vaccinations and license, the ACO may exercise the option of serving the owner with a notice of violation and fine in lieu of impounding the animal or both.
 - (D) An ACO who determines an animal is suffering from abuse or neglect shall forthwith report the circumstances in writing to the Auburn Police Department and/or to any state-recognized animal welfare organization's law enforcement department, such as the Massachusetts Society for Prevention of Cruelty to Animals (MSPCA) and the Animal Rescue League of Boston, for potential criminal prosecution for cruelty to animals and/or any other related crimes.
 - (E) If the ACO determines an animal is in need of veterinary or grooming care, the ACO may arrange for treatment to correct the condition at the expense of the owner.
 - (F) Disposal of an animal by any method specified herein does not relieve the owner of liability for fees, fines, and any accrued charges.
- (8) Reclamation
- (A) Any animal impounded may be reclaimed by the owner thereof within seven (7) days upon payment of an impoundment fee as set by the Board of Selectmen. Payment of impoundment fees is not considered to be in lieu of any fine, penalty, or license fees.
 - (B) No animal required to be licensed or vaccinated under this By-law may be redeemed until provisions for such licensing have been fulfilled.
- (9) Establishment and Operation of Kennels
- (A) Kennel Regulations and Licensing
 - (i) No person shall operate a kennel within the Town without first obtaining a kennel license from the Town Clerk in accordance with the provisions of this By-law and all applicable state and local laws. The following requirements shall at all times apply to a kennel:
 - (a) The location and operation of the kennel shall be appropriate for housing the number of animals allowable under this By-law and shall not be detrimental to the health and safety of the animals or persons;

- (b) The kennel shall not leave animals unsupervised in a manner that is detrimental to the health and/or well-being of the animal and shall be operated in a safe, sanitary, and humane manner; and,
- (c) A kennel shall not keep any number of animals that exceeds the limit set forth by the kennel license, at any time, including animals on the premises for the following reasons:
 - 1. Grooming;
 - 2. Medical or surgical treatment or observation;
 - 3. Boarding for recovery from medical or surgical treatment or observation.
- (ii) A kennel shall not contract with security dog firms or other businesses to board protection or security dogs (or protection or security dogs-in-training) on the premises.
- (iii) Other than a security dog kept on the premises for the kennel's own security, a kennel shall not board protection or security dogs (or protection or security dogs-in-training) on the premises.
- (iv) Upon proof to the licensing authority, no license fee shall be required of any animal shelter holding federal non-profit status. All other provisions shall apply. Any change in the category under which a license is issued shall be reported to the Town Clerk within sixty (60) days, whereupon reclassification and appropriate adjustment of the license fee shall be made.
- (v) The kennel shall at all times keep and maintain on its premises accurate records of the identities of all animals kept on the premises and the number of animals on the premises on each day.
- (vi) Upon proof to the licensing authority, Police Officers, correctional officers, or military personnel operating a kennel on their personal property to shelter and house dogs on behalf of their respective governmental agencies shall be exempt from licensing fees. All other provisions shall apply.
- (vii) The Town Clerk shall provide a kennel license application, on a form prescribed by the Town Clerk, which shall be completed by any person seeking a kennel license or renewal thereof. The application shall include a statement that the applicant

acknowledges receipt of a copy of this By-law and agrees to comply with all applicable provisions.

- (viii) Any application for a renewal of a kennel license must be submitted to the Town Clerk not later than April 1st of each year.
- (ix) Annual Kennel Fees shall be set by the Board of Selectmen.
- (x) Upon receipt of a completed application, the Town Clerk shall notify the ACO who shall conduct an inspection of the applicant's kennel and shall indicate whether the kennel meets all of the applicable requirements. If, in the judgment of the ACO, the kennel is not in compliance with all applicable requirements of the Town By-laws, the ACO may refuse to approve the license or, in the case of a renewal, may revoke or suspend the kennel license.
- (xi) Keepers of less than four (4) dogs may secure a kennel license in lieu of individual licensing.
- (xii) All kennel licenses shall be conspicuously displayed in an area viewable by the public.
- (xiii) Any kennel operating without a kennel license may be subject to fines and penalties set forth by the Board of Selectmen and may be ordered to cease and desist business until such licensure is obtained.

(B) Appeal

- (i) If the owner of a kennel or applicant for a kennel is aggrieved by any determination or action of the ACO he or she may file a request for a hearing with the Board of Health. All requests for hearings must be submitted in writing to the office of the Board of Health within seven (7) days of any action taken by the ACO. Upon a written request, records pertaining to the action will be made available to the applicant or their agent for review and/or copying.

(C) Re-Inspection

- (i) In the event a kennel license application or renewal application is denied, the applicant may request a re-inspection to demonstrate to the ACO that it has brought the kennel into compliance with the requirements of this By-law. The ACO shall then, as soon as is practicable, re-inspect the kennel and report his/her findings to the Board of Health or its Designee.

(D) Kennels Operating as a Public Health Nuisance

- (i) Any resident over the age of eighteen (18) may file a complaint with the Board of Health or its Designee declaring that they are aggrieved, or annoyed to an unreasonable extent, by one (1) or more animals at a kennel licensed by the Town, because the excessive barking, or the animal's vicious disposition, or other conditions connected with the kennel constitute a public nuisance.
- (ii) Within seven (7) days after the filing of a resident's complaint, the Board of Health or its Designee shall give notice to all interested parties that a public hearing is to be held within fourteen (14) days after the date of such notice. Within seven (7) business days after the public hearing, the Board shall make an order dismissing the petition, revoking or suspending the kennel license, or otherwise regulating the kennel.

(E) Inspection and Review After Suspension

- (i) In the event a kennel license is revoked or suspended, upon the expiration of such suspension period and after the license holder has reasonably demonstrated to the ACO that it has brought the kennel into compliance with the requirements of this By-law or otherwise acted in accordance with an order of the Board of Health or its Designee, the ACO shall, as soon as is practicable, re-inspect the kennel and report his/her findings to the Board or its Designee which shall, within a reasonable time, review the application.

(F) Appeal to District Court

- (i) Pursuant to the provisions of Massachusetts General Laws, Chapter 140, Section 137C, if the Board of Health upholds an order suspending or revoking a license, the kennel license holder may, within ten (10) business days after the entry of such order, bring a petition in the local district court praying that such order be reviewed by the court.

(10) Sale of Animals

- (A) No person or corporation may place animals for sale in exchange for monies or services without first having been granted a license from the Department of Agriculture pursuant to Massachusetts General Laws, Chapter 129, Section 39A.

- (B) All businesses having a license to sell animals must provide a copy of said license to the Department of Development & Inspectional Services Board of Health Division annually.

(11) Animal Hoarding

- (A) Any person who violates Section 3.9.1.4 of the Auburn Zoning Bylaws by keeping more than four (4) adult animals on any property, not licensed as a kennel or designated as a farm, more than two (2) times within a three (3) year period may be considered an animal hoarder.
- (B) The Town of Auburn, upon the third such violation, shall seek an injunction through a court of competent jurisdiction to remove all existing animals at the property and to further bar the individual cited from possessing domestic animals again within the Town borders.

(12) Fines and Penalties

- (A) All fines pursuant to this article shall be set by annually by the Board of Selectmen, shall be placed on the Fine Schedule, and any such fines shall be paid to the Office of the Town Clerk.

12.14: Wetland Protection

(1) Purpose

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

(2) Jurisdiction

- (A) Except as permitted by the Conservation Commission, no person shall commence to remove, fill, dredge, build upon, degrade, discharge into, or otherwise alter the following resource areas: any wetlands, marshes, wet meadows, bogs, swamps, springs, banks, reservoirs, lakes, ponds of any size, beaches, and lands under water bodies; intermittent streams, brooks and creeks; lands adjoining these resource areas out to a distance of one

hundred (100) feet, known as the buffer zone; perennial rivers, streams, brooks, and creeks; lands adjoining these resource areas out to a distance of two hundred (200) feet, known as the riverfront area; lands subject to flooding or inundation by groundwater or surface water; and lands subject to flooding (collectively the “resource areas protected by this By-law”). Said resource areas shall be protected whether or not they border surface waters.

- (B) The jurisdiction of this By-law shall not extend to uses and structures of agriculture that enjoy the rights and privileges of laws and regulations of the Commonwealth governing agriculture, including work performed for normal maintenance or improvement of land in agricultural or aquacultural uses as defined by the Wetlands Protection Act regulations, found at 310 CMR 10.04.

(3) Exemptions and Exception

- (A) The applications and permits required by this By-law shall not be required for work performed for normal maintenance or improvement of land in agricultural and aquacultural use as defined by the Wetlands Protection Act regulations at 310 CMR 10.04.
- (B) The applications and permits required by this By-law shall not be required for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to commencement of work, and provided that the work conforms to any performance standards and design specifications in regulations adopted by the Commission.
- (C) The applications and permits required by this By-law shall not be required for emergency projects necessary for the protection of the health and safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof; provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement; provided that the Commission or its agent certifies the work as an emergency project; provided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency; and provided that, within thirty (30) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided by this By-law. Upon failure to meet these and other requirements of the Commission, it may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

(D) Other than as stated in this By-law, the exceptions provided in the Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) and regulations (310 CMR 10.00) shall not apply under this By-law.

(4) Applications and Fees

(A) Written application shall be filed with the Conservation Commission to perform activities affecting resource areas protected by this By-law. The permit application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the resource areas protected by this By-law. No activities shall commence without receiving and complying with a permit issued pursuant to this By-law.

(B) The Commission in an appropriate case may accept as the application and plans under this By-law any application and plans filed under the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) and regulations (310 CMR 10.00), but the Commission is not obliged to do so.

(C) Any person desiring to know whether or not a proposed activity or an area is subject to this By-law may in writing request a determination from the Commission. Such a Request for Determination of Applicability (RDA) or Abbreviated Notice of Resource Area Delineation (ANRAD) filed under the Act shall include information and plans deemed necessary by the Commission.

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

(E) Pursuant to Massachusetts General Laws Chapter 44, Section 53G and regulations promulgated by the Commission, the Commission may impose reasonable fees upon applicants for the purpose of securing outside consultants including engineers, wetlands scientists, wildlife biologists, or other experts in order to aid in the review of proposed projects. Additional consultant fees may be requested where the requisite review is more expensive than originally calculated or where new information requires additional consultant services, as specified by the regulations of the Commission.

(5) Notice and Hearings

- (A) Any person filing a permit or other application or RDA or ANRAD or other request with the Conservation Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand-delivered, to all abutters at their mailing addresses shown on the most recent applicable tax list of the assessors, including owners of land directly opposite on any public or private street or way, and abutters and others, within one hundred (100) feet of the property line of the applicant, including any in another municipality or across a body of water. The notice shall state a brief description of the project or other proposal and the date of any Commission hearing or meeting date if known. The notice to abutters also shall include a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters. An affidavit of the person providing such notice, with a copy of the notice mailed or delivered, shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner as well as to the person making the request.
- (B) The Commission shall conduct a public hearing on any permit application, RDA, or ANRAD with written notice given at the expense of the applicant, at least five (5) business days prior to the hearing, in a newspaper of general circulation in the municipality. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed permit application, RDA, or ANRAD unless an extension is authorized in writing by the applicant. The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include the need for additional information from the applicant or others as deemed necessary by the Commission in its discretion.
- (C) The Commission shall issue its permit, other order or determination in writing within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized in writing by the applicant. The Commission in an appropriate case shall combine its hearing under this By-law with the hearing conducted under the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) and regulations (310 CMR 10.00).

(6) Coordination

- (A) Any person filing a Notice of Intent with the Commission shall provide copies thereof to the boards and officials as required by the regulations of the Commission. The Commission reserves the right to solicit comments from boards and officials to assist in evaluation of Notices of Intent. The

applicant shall have the right to receive any such comments and recommendations and to respond to them at a public hearing of the Commission.

(7) Permits and Conditions

- (A) If the Conservation Commission, after a public hearing, determines that the activities which are subject to the permit application, or the land and water uses which will result therefrom, are likely to have a significant individual or cumulative effect on the resource area values protected by this By-law, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. The Commission shall take into account the extent to which the applicant has avoided, minimized and mitigated any such effect. The Commission also shall take into account any loss, degradation, isolation, and replacement or replication of such protected resource areas elsewhere in the community and the watershed, resulting from past activities, whether permitted, unpermitted or exempt, and foreseeable future activities.
- (B) If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect said resource area values, and all activities shall be conducted in accordance with those conditions. Where no conditions are adequate to protect said resource area values, the Commission is empowered to deny a permit for failure to meet the requirements of this By-law. It may also deny a permit: for failure to submit necessary information and plans requested by the Commission; for failure to comply with the procedures, design specifications, performance standards, and other requirements in regulations of the Commission; or for failure to avoid, minimize or mitigate unacceptable significant or cumulative effects upon the resource area values protected by this By-law. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing. The Commission may waive specifically identified and requested procedures, design specifications, performance standards, or other requirements set forth in its regulations, provided that the Commission finds in writing after said public hearing, that there are no reasonable conditions or alternatives that would allow the proposed activity to proceed in compliance with said regulations; that avoidance, minimization and mitigation have been employed to the maximum extent feasible; and that the waiver is necessary to accommodate an overriding public interest or to avoid a decision that so restricts the use of the property as to constitute an unconstitutional taking without compensation.
- (C) In reviewing activities within the buffer zone, the Commission shall presume the buffer zone is important to the protection of other resource areas because activities undertaken in close proximity have a high

likelihood of adverse impact, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and loss of wildlife habitat. The Commission may establish, in its regulations, design specifications, performance standards, and other measures and safeguards, including setbacks, no-disturb areas, no-build areas, and other work limits for protection of such lands, including without limitation, strips of continuous, undisturbed vegetative cover unless the applicant convinces the Commission that the area or part of it may be disturbed without harm to the values protected by the By-law.

- (D) In reviewing activities within the riverfront area, the Commission shall presume the riverfront area is important to all the resource area values unless demonstrated otherwise, and no permit issued hereunder shall permit any activities unless the applicant, in addition to meeting the otherwise applicable requirements of this By-law, has proved by a preponderance of the evidence that:
 - (i) There is no practicable alternative to the proposed project with less adverse effects, and
 - (ii) Such activities, including proposed mitigation measures, will have no significant adverse impact on the areas or values protected by this By-law.
- (E) The Commission shall regard as practicable an alternative which is reasonably available and capable of being done after taking into consideration the proposed property use, overall project purpose (e.g., residential, institutional, commercial, or industrial), logistics, existing technology, costs of the alternatives, and overall project costs.
- (F) To prevent resource area loss, the Commission shall require applicants to avoid alteration wherever feasible; to minimize alteration; and, where alteration is unavoidable and has been minimized, to provide full mitigation. The Commission because of the high likelihood of failure of replication, may authorize or require replication of wetlands as a form of mitigation, but only with specific plans, professional design, proper safeguards, adequate security, and professional monitoring and reporting to assure success.
- (G) The Commission may require a wildlife habitat study of the project area, to be paid for by the applicant, whenever it deems appropriate, regardless of the type of resource area or the amount or type of alteration proposed. The decision shall be based upon the Commission's estimation of the importance of the habitat area considering (but not limited to) such factors

as proximity to other areas suitable for wildlife, importance of wildlife “corridors” in the area, or actual or possible presence of rare plant or animal species in the area. The work shall be performed by an individual who at least meets the qualifications set out in the wildlife habitat section of the Wetlands Protection Act regulations (310 CMR 10.60).

- (H) A permit, Determination of Applicability (DOA), or Order of Resource Area Delineation (ORAD) shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one (1) year period, provided that a request for a renewal is received in writing by the Commission prior to expiration. Notwithstanding the above, a permit may identify requirements which shall be enforceable for a stated number of years, indefinitely, or until permanent protection is in place, and shall apply to all present and future owners of the land.
- (I) For good cause, the Commission may revoke any permit, DOA, or ORAD or any other order, determination, or other decision issued under this By-law after notice to the holder, the public, abutters, and town boards, pursuant to §V and §VI, and after a public hearing.
- (J) Amendments to permits, DOAs, or ORADs shall be handled in the manner set out in the Wetlands Protection Act regulations and policies thereunder.
- (K) The Commission in an appropriate case may combine the decision issued under this By-law with the permit, DOA, ORAD, or Certificate of Compliance (COC) issued under the Wetlands Protection Act and regulations.
- (L) No work proposed in any application shall be undertaken until the permit, or ORAD issued by the Commission with respect to such work has been recorded at the Registry of Deeds or, if the land affected is registered land, in the registry section of the Land Court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the document has been recorded. If the Applicant fails to perform such recording, the Commission may record the documents itself and require the Applicant to furnish the recording fee therefore, either at the time of recording or as a condition precedent to the issuance of a COC.

(8) Regulations

- (A) After public notice and public hearing, the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this By-law, effective when voted and filed with the Town Clerk. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this By-law. At a minimum, these regulations shall reiterate the terms defined in this By-law, define additional terms not inconsistent with the By-law, and impose filing and consultant fees.

(9) Definitions

- (A) The following definitions shall apply in the interpretation and implementation of this By-law:
- (i) The term “agriculture” shall refer to the definition as provided by Massachusetts General Laws, Chapter 128, Section 1A.
 - (ii) The term “alter” shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this By-law:
 - (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind.
 - (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics.
 - (c) Drainage, or other disturbance of water level or water table.
 - (d) Dumping, discharging, or filling with any material which may degrade water quality.
 - (e) Placing of fill or removal of material which would alter elevation.
 - (f) Driving of piles, erection, expansion or repair of buildings or structures of any kind.
 - (g) Placing of obstructions or objects in water.
 - (h) Destruction of plant life, including the cutting of trees.

- (i) Changing temperature, biochemical oxygen demand, or other physical, biological, or chemical characteristics of any waters.
 - (j) Any activities, changes, or work which may cause or tend to contribute to pollution of any body of water or groundwater.
 - (k) Incremental activities which have, or may have, a cumulative adverse impact on the resource areas protected by this By-law.
- (iii) The term “bank” shall include the land area which normally abuts and confines a water body; the lower boundary being the mean annual low flow level, and the upper boundary being the first observable break in the slope or the mean annual flood level, whichever is higher.
 - (iv) The term “person” shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town By-laws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.
 - (v) The term “pond” shall follow the definition of 310 CMR 10.04 except as otherwise defined in the regulations of the Commission.
 - (vi) The term “rare species” shall include, without limitation, all vertebrate and invertebrate animals and all plant species listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife, regardless whether the site in which they occur has been previously identified by the Division.
- (B) Except as otherwise provided in this By-law or in associated regulations of the Conservation Commission, the definitions of terms and the procedures in this By-law shall be as set forth in the Wetlands Protection Act (Massachusetts General Laws Chapter 131, Section 40) and regulations (310 CMR 10.00).

(10) Security

- (A) As part of a permit issued under this By-law, in addition to any security required by any other municipal or state board, agency, or official, the

Conservation Commission may require that the performance and observance of the conditions imposed thereunder (including conditions requiring mitigation work) be secured wholly or in part by one (1) or both of the methods described below:

- (i) By a proper bond, deposit of money, or negotiable securities under a written third-party escrow arrangement, or other undertaking of financial responsibility sufficient, in the opinion of the Commission, to be released in whole or in part upon issuance of a COC for work performed pursuant to the permit.
- (ii) By accepting a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed. This method shall be used only with the consent of the applicant.

(11) Enforcement

- (A) No person shall remove, fill, dredge, build upon, degrade, or otherwise alter resource areas protected by this By-law, or cause, suffer, or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with a permit or an enforcement order issued pursuant to this By-law.
- (B) The Conservation Commission, its agents, officers, and employees shall have authority to enter upon privately-owned land for the purpose of performing their duties under this By-law and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary, subject to the constitutions and laws of the United States and the Commonwealth.
- (C) The Commission shall have authority to enforce this By-law, its regulations, and permits issued thereunder by letters, phone calls, electronic communication and other informal methods, violation notices, non-criminal citations under Massachusetts General Laws Chapter 40, Section 21D, and civil and criminal court actions. Any person who violates provisions of this By-law may be ordered to restore the property to its original condition and take other action deemed necessary to remedy such violations, or may be fined, or both.
- (D) Upon request of the Commission, the Board of Selectmen and Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Police Chief shall take legal action for enforcement under criminal law.

- (E) Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- (F) Any person who violates any provision of this By-law, or regulations, permits, or administrative orders issued thereunder shall be punished by a fine in an amount to be established by the Commission under the Wetland Protection Regulations. Each day or portion thereof during which a violation continues, or unauthorized fill or other alteration remains in place, shall constitute a separate offense, and each provision of the By-laws, regulations, permits, or administrative orders violated shall constitute a separate offense.
- (G) As an alternative to criminal prosecution in a specific case, the Commission may issue citations with specific penalties pursuant to the non-criminal disposition procedure set forth in Massachusetts General Laws Chapter 40, Section 21D, which has been adopted by the Town in accordance with Section 1.04 of the General By-laws.

(12) Burden of Proof

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

(13) Appeals

- (A) A decision of the Conservation Commission shall be reviewable in a court of competent jurisdiction in accordance with Massachusetts General Laws, Chapter 249, Section 4.

(14) Relation to the Wetlands Protection Act

- (A) This By-law is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) and regulations (310 CMR 10.00) thereunder. It is the intention of this By-law that the purposes, jurisdiction, authority, exemptions, regulations, specifications, standards, and other requirements shall be interpreted and administered as stricter than those under the Wetlands Protection Act and regulations.

12.15: Earth Removal Regulations

(1) General

- (A) The removal from any lot of topsoil, borrow, rock, sod, loam, peat, humus, clay, sand, or gravel shall be performed only in accordance with this By-law, except that the following shall be exempted from these provisions:
 - (i) The removal of less than fifty (50) cubic yards of such material within any twelve-month period.
 - (ii) Removal incidental to construction on a lot where such removal is explicitly allowed under a valid building permit, Site Plan Approval or under agreements governing road construction in an approved subdivision.
 - (iii) Removal on a parcel for which removal was authorized under a legal permit issued prior to adoption of Section 12.15 may continue until the expiration date of said permit, provided all By-laws, permits, and conditions applicable prior to the adoption of this Chapter shall be complied with. Subsequent to that date, full compliance with all the requirements of this Section must be met.
 - (iv) Removal incidental to the construction of a single family home not in a subdivision.

(2) Special Permit from the Planning Board

- (A) Removal shall be allowed only under a special permit issued by the Planning Board following written application, a copy of which shall be forwarded to the Conservation Commission. The following shall be conditions for such issuance:
 - (i) The application shall be accompanied by a plan showing all man-made features, property lines, names and addresses of all abutters if available from the Assessors, including those across any street or way, topography at five (5) foot contour interval of the site and all land within one hundred (100) feet of the area from which the above material is to be removed, together with the grades below which the finish surface will not lie, and the proposed cover vegetation and trees. If involving more than one (1) acre and/or five hundred (500) cubic yards of removal, the plan shall be prepared by a Registered Land Surveyor or Engineer.

- (ii) A performance bond in the amount determined by the Planning Board shall be posted in the name of Town assuring satisfactory performance in the fulfillment of the requirements of this By-law and such other conditions as the Planning Board may impose as conditions to the issuance of the permit.
 - (iii) Before granting a permit, the Planning Board shall hold a public hearing and give due consideration to the location of the proposed earth removal, to the general character of the neighborhood surrounding such location, to the protection of water supplies and aquifers, to the general safety of the public on the public ways in the vicinity, and to the recommendation of the Conservation Commission. Prior to said hearing, the applicant shall notify the abutters as to the time and place of the hearing and shall provide the Planning Board with proof of such notification.
 - (B) Permits for earth removal with the provisions set forth herein shall not be transferable.
- (3) Removal
- (A) Finish grade shall not lie below a level that would reasonably be considered a desirable grade for the later development of the area, or below the grades specified on the plan accompanying the permit application. The Planning Board may specify a base grade below which excavation shall in no event take place. The Planning Board from time to time may require the site be surveyed by a Registered Land Surveyor or Engineer for compliance with these By-laws. The cost of the survey shall be paid by the permit holder.
 - (B) Provision shall be made for safe drainage of water, and for prevention of wind or water erosion carrying material onto adjoining properties.
 - (C) The Board may require that up to a fifty (50) foot buffer strip shall be maintained at all boundaries, and not excavated, if they feel such a requirement is warranted.
 - (D) The visibility, sound, and airborne particulates from processing equipment shall be screened from adjacent premises through the design and location of such equipment, and through use of natural vegetation planting, overburden piles, and surge piles as screening.
 - (E) Dust shall be controlled through watering. Applying oil or chlorides for dust control is prohibited.

(F) Finish grade shall not lie below a level that is two (2) feet above the natural, seasonal high groundwater table for the site, as determined by a Massachusetts licensed soil evaluator.

(4) Restoration

(A) Following the expiration or withdrawal of a permit, or upon voluntary cessation of operations, or upon completion of removal to the extent covered by the performance bond, Section 12.15(2)(A)(ii), the entire area shall be restored as follows:

- (i) All land shall be so graded that no slope exceeds one (1) foot vertical rise in three (3) feet horizontal distance unless an evaluation has been made by a professional engineer which has found that a steeper slope can be stabilized and shall be so graded as to safely provide for drainage without erosion. The Planning Board may require that the restored site be surveyed by a Registered Land Surveyor or Engineer for compliance with these By-laws. The cost of the survey shall be paid by permit holder.
- (ii) All boulders larger than one-half (1/2) cubic yard shall be removed or buried, and all tree stumps removed.
- (iii) The entire area, excepting exposed ledge rock, shall be covered with not less than four (4) inches of topsoil, seeded and covered with two (2) inches of hay mulch.
- (iv) Performance Bond shall not be released until sufficient time has lapsed to ascertain that the vegetation planted has successfully been established and that drainage is satisfactory.
- (v) Restoration must be completed within one (1) year of the expiration or withdrawal of a permit, or upon voluntary cessation of operations, or upon completion of removal to the extent covered by the performance bond Section 12.15(2)(A)(ii).

(5) Additional Conditions

(A) The Planning Board may set conditions in addition to the above, including but not limited to: duration of the permit, hours of the day during which removal may take place and which grasses, shrubs, and trees shall be planted.

(6) Involvement of Wetlands

- (A) As provided in Massachusetts General Laws, Chapter 131, Section 40, no person shall remove, or dredge and bank, flat, marsh, meadow, or swamp, bordering on an inland waterway without filing written notice of his intention to do so with the Conservation Commission and with the Massachusetts Department of Environmental Quality Engineering.

(7) Renewals or Revocation of Permit

- (A) No permit shall be issued under the provisions of Section 12.15 for a term of more than one (1) year, but a permit may be renewed upon application and after a public hearing. Prior to renewal, inspection of the premises shall be made by the Inspector of Buildings to determine that the Applicant is in compliance with the provisions of the By-law. If the Applicant is found to be not in compliance with the provisions of the By-law, the Planning Board shall not review the permit, and the operation shall be discontinued and the area restored in accordance with Section 12.15(4).

(8) Enforcement

- (A) The Inspector of Buildings of the Town of Auburn is hereby designated as the officer charged with the enforcement of this By-law.
- (B) The Inspector of Buildings, upon a written complaint from any citizen of Auburn, or owner of property within Auburn, or upon such Inspector's own initiative shall institute any appropriate action or proceedings in the name of the Town of Auburn to prevent, correct, restrain, or abate violation of this By-law. In the case where the Inspector of Buildings is requested in writing to enforce this By-law against any person allegedly in violation of same and the Inspector of Buildings declines to act, the Inspector shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within fourteen (14) days of receipt of such request.
- (C) Violation of this By-law shall be punishable by a fine to be set by the Board of Selectmen.
- (D) This By-law shall not be construed to authorize the use of any land or structure for any purpose that is prohibited by any other provision of the Massachusetts General Laws or by any other By-law, rule or regulation or the town; nor shall compliance with any such provision authorize the use of any land in any manner inconsistent with this By-law, except as required by the Massachusetts General Laws.

12.16: Earth Filling

- (1) Purpose
 - (A) To insure against erosion, adverse drainage runoff, dust control, and encroachment onto abutting property and into wetland boundaries that may trigger Conservation and DEP approvals.
 - (B) To protect the general public from dangerous conditions such as excessive slopes, pooling and stagnation of standing water to dangerous levels.
 - (C) To protect the general public by limiting hours of operation and truck routes.
 - (D) To protect the general public by determining fencing and screening requirements prior to fill operations to protect the general public.
 - (E) Make determinations when and where retaining walls and rip rap may be required and constructed consistent with the applicable provisions of the State Building Code and accepted engineering standards.
 - (F) To insure that proper fill material and proper construction methods are being utilized.
 - (G) To review a finished site to insure proper topsoil cover and the establishment of vegetation and permanent drainage control methods.
- (2) Applicability
 - (A) The fill of any lot with topsoil, borrow, rock, sod, loam, peat, humus, clay, sand or gravel shall be performed only in accordance with this By-law.
- (3) Exemptions
 - (A) Filling is permitted in the Town of Auburn without an earth fill permit if such filling is entirely incidental to:
 - (i) The construction of a building or structure for which a valid building permit has been issued and filling is incidental to the construction. However, should said fill exceed five hundred (500) cubic yards a Special Permit from the Planning Board shall be required.
 - (ii) The construction of ways within subdivisions that have been approved by the Planning Board.

- (iii) Construction in accordance with a valid Special Permit, Variance or Site Plan Approval.
- (iv) Utility construction in public and private ways and property and incidental to municipal operations and activities.
- (v) The routine landscaping (not including significant changes in topography) of a lot with a one (1) or two (2) family residence thereon by the owner thereof, so long as the existing topography of the parcel in no location exceeds a fifteen percent (15%) grade.
- (vi) Refilling a previously excavated area to the natural grade.
- (vii) The fill of less than fifty (50) cubic yards of such material within any twelve-month period. All other filling shall require a permit from the Inspector of Buildings and any filling in excess of five hundred (500) cubic yards shall also require a Special Permit from the Planning Board.

(4) Plan Requirements

- (A) Any person seeking a permit from the Inspector of Buildings or a Special Permit from the Planning Board shall submit an application on a form to be provided by the Town. If deemed necessary by the Inspector of Buildings, an applicant may be required to submit a site plan showing the area to be filled. If filling in excess of five hundred (500) cubic yards is proposed, a site plan prepared by a Registered Land Surveyor or Engineer shall be submitted.
- (B) A plan showing all man-made features, property lines, names and addresses of all abutters if available from the Assessors, including those across any street or way, topography at five (5) foot contour interval of the site and all land within one hundred (100) feet of the area from which the above material is to be removed, together with the grades below which the finish surface will not lie, and the proposed cover vegetation and trees. If involving more than one (1) acre and/or five hundred (500) cubic yards of removal, the plan shall be prepared by a Registered Land Surveyor or Engineer.
- (C) If deemed necessary by the Inspector of Buildings or the Planning Board a performance bond in the amount determined by the Planning Board shall be posted in the name of the Town of Auburn assuring satisfactory performance in the fulfillment of the requirements of this By-law and such other conditions as the Planning Board may impose as conditions to the issuance of the permit.

- (D) Before granting a Special Permit, the Planning Board shall hold a public hearing and give due consideration to the location of the proposed earth filling, to the general character of the neighborhood surrounding such location, to the protection of water supplies and aquifers, to the general safety of the public on the public ways in the vicinity, and to the recommendation of the Conservation Commission. Prior to said hearing, the applicant shall notify the abutters as to the time and place of hearing and shall provide the Planning Board with proof of such notification.
 - (E) Permits for earth filling with the provision set forth herein shall not be transferable and shall be issued for a term not to exceed one (1) year. A permit may be renewed upon re-application.
- (5) Standards for Filling
- (A) Finish elevations shall not lie above a level that would reasonably be considered a desirable elevation for the later development of the area, or in excess of the elevations specified on the approved plan accompanying the permit applications. The Inspector of Buildings may specify a finished grade to which filling will not exceed.
 - (B) Maximum finished grades shall not exceed a slope greater than three (3) foot horizontal to one (1) foot vertical rise unless retaining walls or rip rap are employed and approved by the Inspector of Buildings and Town Engineer, or when engineering data has been submitted by an engineer showing methods of fill stabilization and approved by the Town Engineer. All retaining walls applicable to the provisions of the State Building Code (780 CMR, et seq.) shall be constructed in conformance with the applicable code provisions. All rip rap walls shall be constructed according to the specifications of the Massachusetts Highway Department.
 - (C) The area to be filled shall have all vegetation removed such as trees, brush, tree stumps, and any accumulated rubbish, junk, and debris including building products and material.
 - (D) All fill materials shall include sand, gravel, clay, stone, quarried rock, or other subsurface products free from hazardous waste material as defined by the Department of Environmental Protection as being hazardous material. The material shall also be free from organic material such as trees, stumps, and building materials. Certification shall be submitted as to location of fill material source.
 - (E) All boulders larger than one half (1/2) cubic yard shall be buried unless utilized in a landscape scheme and placed so as not to cause a danger to motor vehicle traffic and to the general public.

- (F) Filling in excess of fifty (50) cubic yards shall require a minimum of four (4) inches organic topsoil, and seeded, mulched, or established suitable vegetation to stabilize the fill material. Where filling is incidental to facilitate parking of vehicles the fill material shall be covered by a suitable binding material to prevent air borne dust and erosion.
- (G) Filling in excess of three hundred (300) yards shall require a plan to be submitted, if deemed appropriate by the Code Enforcement Officer and Town Engineer. The plan shall show methods of temporary and permanent drainage and sedimentation control and methods of final stabilization of fill material.
- (H) Temporary fencing, where deemed appropriate by the Inspector of Buildings, for the protection of the general public during fill operations, shall be at least four (4) feet high with suitable gates to exclude unauthorized persons from the site.
- (I) Provision shall be made for safe drainage of water, and for prevention of wind or water erosion carrying material onto adjoining properties. Provisions shall be made for the daily cleaning of all material carried by equipment onto public roadways.
- (J) Dust shall be controlled through watering. Applying oil or chlorides for dust control is prohibited.
- (K) The Planning Board may require that an undisturbed ten (10) foot buffer strip be maintained at all boundaries, if they determine such a requirement is warranted.
- (L) The visibility, sound, and airborne particulates from processing equipment shall be screened from adjacent premises through the design and location of such equipment, and through use of natural vegetation planting, overburden piles, and surge piles as screening.
- (M) The Planning Board may set conditions in addition to the above, including, but not limited to, duration of the permit, hours of the day during which filling may take place, and grasses, shrubs, and trees to be planted.
- (N) No permit shall be issued under the provisions of Section 12.16 that shall extend for a term of more than one (1) year. A permit may be renewed upon application and after a public hearing. The public hearing may be waived by the Planning Board for Earth Fill permit extensions.

(O) Prior to filling, an inspection of the premises shall be made by the Inspector of Buildings and Town Engineer to determine that the provisions of this By-law have been complied with. If it is determined that the Applicant is not in compliance, the Planning Board may revoke the permit, after which the operation shall be discontinued and the area restored in accordance with this By-law.

(6) Enforcement

(A) The Inspector of Buildings of the Town of Auburn is hereby designated as the officer charged with the enforcement of this By-law.

(B) The Inspector of Buildings, upon a written complaint from any citizen of Auburn, or owner of property within Auburn, or upon such Inspector's own initiative shall institute any appropriate action or proceedings in the name of the Town of Auburn to prevent, correct, restrain, or abate violation of this By-law. In the case where the Inspector of Buildings is requested in writing to enforce this By-law against any person allegedly in violation of same and the Inspector of Buildings declines to act, the Inspector shall notify, in writing, the party requesting such enforcement of any action or refusal to act and the reasons therefore, within fourteen (14) days of receipt of such request.

(C) Violation of this By-law shall be punishable by a fine to be set by the Board of Selectmen.

(D) This By-law shall not be construed to authorize the use of any land or structure for any purpose that is prohibited by any other provision of the Massachusetts General Laws or by any other By-law, rule or regulation or the town; nor shall compliance with any such provision authorize the use of any land in any manner inconsistent with this By-law, except as required by the Massachusetts General Laws.

12.17: Stretch Energy Code

(1) Definitions:

(A) "International Energy Conservation Code" or "IECC": The International Energy Conservation Code (IECC) is a building energy code created by the International Code Council. It is a model code adopted by many state and municipal governments in the United States for the establishment of minimum design and construction requirements for energy efficiency, and is updated on a three (3) year cycle. Since July 1, 2010, the baseline energy conservation requirements of the MA State Building Code defaulted to the latest published edition, currently the IECC 2009, with Massachusetts amendments as approved by the Board of Building Regulations and Standards.

(B) “Stretch Energy Code”: Codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA of the 8th edition Massachusetts Building Code, the Stretch Energy Code is an appendix to the Massachusetts Building Code, and is based on further amendments to the International Energy Conservation Code (IECC) to improve the energy efficiency of buildings built to this code.

(2) Purpose

(A) The purpose of 780 CMR 115.AA is to provide a more energy efficient alternative to the base energy code applicable to the relevant sections of the building code for both new construction and existing buildings.

(3) Applicability

(A) This code applies to residential and commercial buildings. Buildings not included in the scope of the Stretch Energy Code shall comply with 780 CMR 13, 34, 51, as applicable.

(4) Stretch Energy Code

(A) The Stretch Energy Code, codified by the Board of Building Regulations and Standards as 780 CMR Appendix 115.AA, including any future editions, amendments, or modifications, is herein incorporated by reference into the Town of Auburn General By-laws, Section 12.18.

(B) The Stretch Energy Code shall be enforceable by the Inspector of Buildings.

(C) This Stretch Energy Code is effective as of July 1, 2013.

12.18: Plastic Bag Reduction

(1) Definitions: As used in this bylaw, the following words shall have the following meanings unless the context clearly requires otherwise:

(A) “Department”, the department of environmental protection.

(B) “Person”, an individual, partnership, trust, association, corporation, society, club, institution, organization or other entity.

(C) “Postconsumer recycled material”, material used in a recycled paper bag that would otherwise be destined for solid waste disposal having completed its intended end use and product life cycle, and does not

comprise any material or byproduct generated from, and commonly reused within, an original manufacturing and fabrication process.

- (D) “Recycled paper bag”, a paper bag that (i) is 100 per cent recyclable, (ii) contains a minimum of 40 per cent postconsumer recycled materials, provided, however, that an 8 pound or smaller paper bag shall contain a minimum of 20 per cent postconsumer recycled material, and (iii) displays on the outside of the bag, the words "100% Recyclable" and “40 % postconsumer recycled content”, or such other per cent of postconsumer recycled material content as required under clause (ii), or other standard established by department regulation.
- (E) “Retail establishment”, any store or premises, in which a person is engaged in the retail business of selling or providing merchandise, goods, groceries, prepared take-out food and beverages for consumption off-premises, or the servicing of an item, directly to customers at such store or premises, including but not limited to, grocery stores, department stores, pharmacies, convenience stores, restaurants, coffee shops, and seasonal and temporary businesses, such as farmers markets and public markets, provided the use of a food truck or other motor vehicle, mobile canteen, trailer, market pushcart, moveable roadside stand, used by a person from which to engage in such business directly with customers, shall be considered a “retail establishment” for the purpose of this definition. A non-profit organization, charity or religious institution that has a retail establishment and holds itself out to the public as engaging in retail activities that are characteristic of similar type retail businesses, whether or not for profit, shall when engaging in such activity, be considered a “retail establishment”.
- (F) “Reusable carryout bag”, a bag with handles made of washable, cloth, hemp, or other fibers, fabrics or materials, or combination thereof, that is designed and manufactured specifically for multiple uses, which meets the standards established by department regulation.
- (G) “Serviced”, or “Servicing”, A service performed to clean, repair, improve, refinish or alter an item of a customer by a person engaged in a retail business of customarily providing such services, including but not limited to, dry cleaning and tailoring articles of clothing, jewelry repair, and shoe and leather repair.
- (H) “Single-use plastic carryout bag”, a plastic film-type bag with or without handles, which is 4 mils thick or less, provided by a retail establishment to customers at its business location to carry items purchased or serviced, and is not a recycled paper bag or reusable carryout bag.

(2) Prohibitions and Exemptions

- (A) Except as provided in this bylaw, a retail establishment shall not provide a customer with a single-use plastic carryout bag or provide any other carryout bag that is not a recycled paper bag, or reusable carryout bag for the customer to carry away an item purchased or serviced, from the retail establishment.
- (B) A retail establishment when delivering prepared food, or other food item, directly to a customer at a place other than the location of such establishment, shall be subject to the prohibition in subsection (a).
- (C) The prohibition in subsection (A), shall not apply to any type of bag, used by a retail establishment, or provided to its customer for: (1) prescription medications, (2) produce, meats, poultry, fish, bread, and other food items to keep such items fresh or unsoiled, (3) preventing frozen food items, including ice cream, from thawing, (4) containing products or items that are saturated, wet, prone to leak, or need to be immersed in a liquid. (5) containing products or items that are granular, powdery, dirty or greasy, (6) protecting an item from damage or contamination, or to protect a second item when both are carried together from the retail establishment, (7) protecting articles of clothing on a hanger, (8) items that contain any herbicide, pesticide, solvent, corrosive, automotive type fluid or other chemical, that can be harmful to public health, whether or not, the item is prepackaged in a sealed container or bag, (9) protecting small items from loss, and (10) any item that requires the use of a certain type bag, under federal and state laws and regulations.
- (D) A retail establishment may charge a fee for a recycled paper bag, reusable carryout bag, or other type of carryout bag. The retail business establishment shall retain any collected fees.
- (E) Notwithstanding the prohibition in subsection (a), a customer shall not be prohibited under said subsection, from bringing a clean personal bag, made or comprised of any material, to the retail establishment to carry out items purchased or serviced from such establishment.
- (F) Notwithstanding the prohibition in subsection (a), a retail establishment shall not be prohibited under said subsection, from selling, or offering for sale, to customers:
 - (1) Any package containing several bags, including but not limited to, food bags, sandwich bags, yard waste bags, garbage bags, or municipal pay-as-you-throw program trash bags;
 - (2) Any product, merchandise, or good with a protective bag, or a bag to hold related accessories, parts, and instruction manuals, or a bag

used as product packaging, that the retail establishment received with such item or product, from the manufacturer, distributor or vendor; or

(3) Any bag that is not a retail type carryout bag, which is sold, or offered for sale, as a product or merchandise, including but not limited to, sports bags, handbags, equipment bags, tent bags, or other bags specifically designed to protect or contain a particular item.

(G) Notwithstanding any provision of this bylaw, a nonprofit organization, charity, or religious institution, shall be exempt from the provisions of subsection (a), when providing or distributing, prepared foods, groceries, or articles of clothing directly to those in need, including the elderly.

(3) Enforcement

(A) The Town of Auburn shall enforce this bylaw through its authority, as determined under subparagraph (C).

(B) A retail establishment that violates the provisions of this bylaw shall be subject to enforcement in accordance with the Board of Selectmen Fine/Fee Schedule. Each day a retail establishment is in violation of this bylaw shall be considered a separate violation.

The Board of Health shall dispose of a civil violation under this subsection by the non-criminal method of disposition procedures contained in section 21D of chapter 40, without an enabling ordinance or by law, or by the equivalent of these procedures by the department under its regulations.

A retail establishment that fails to comply with this bylaw's requirements may be subject to fines/fees and closure by the Board of Health.

(C) The Town of Auburn has determined the Board of Health is responsible for the local enforcement of this bylaw and for the collection of monies resulting from civil penalties assessed for violations of this bylaw. The Town shall retain any civil penalties it collects for such violations.

(D) The Board of Health shall enforce the provisions of this bylaw and may assess additional civil administrative penalties when a retail establishment repeatedly violates the provision of this bylaw or related applicable regulations.

(4) Adoption and Implementation

- (A) The Board of Health may adopt regulations, and may amend such regulations, to implement, enforce, and administer this bylaw, consistent with the provisions of this bylaw.

The Board of Health may consult with the department of public health relating to issues of food safety regarding the materials used in single-use plastic carryout bags.

- (5) Inconsistent Provisions Null and Void
 - (A) Any existing municipal by-law, or regulation, including a regulation of a Board of Health, that is inconsistent with the provisions of this bylaw when effective, shall be null and void.

Chapter XIII: Department of Public Works

13.01: Accepting Private Ways

- (1) No town way or private way shall be accepted and allowed by the Town until all statutory provisions pertaining thereto have been fulfilled, and then only if said town or private way is laid out and constructed to the Subdivision Standards or as approved by the Director of Public Works.

13.02: Recording

- (1) Whenever a town way is laid out or altered, a plan thereof shall be filed with the Town Clerk. It shall be the duty of the Town Clerk to keep an index of such plans for the purpose of recording the location of all highways and town ways. These plans shall be drawn to a scale of forty (40) feet equals one (1) inch, and shall bear in the upper right hand corner an appropriate title as designated by the Town Clerk. The Plan which is recorded with the Town Clerk may be a copy of the original signed Mylar plan. The original Mylar shall be recorded with the Worcester Registry of Deeds by the proponent at no cost to the Town.

13.03: Excavating in Public Streets

- (1) No person, except the Director of the Department of Public Works in the lawful performance of his or her duties or those acting under his or her orders, shall make or cause to be made an excavation or fill in a public street or public right of way for any purpose whatsoever, without first having obtained written permission from the Director. When excavation or fill is made in a street or public right of way for any purpose, the person or persons by or for whom such excavation has been made shall perform all work in accordance with all OSHA requirements and in accordance with Massachusetts General Laws, Chapter 82A and 540 CMR

14.00 et seq., as amended. Proper and sufficient warning lights shall be provided from the beginning of twilight through the whole of every night during all the time for which such excavation or construction exists. A five (5) year moratorium shall be imposed on excavation of a recently paved or reconstructed public street, except for emergency purposes, as determined by the Director of Public Works.

13.04: Snow and Ice Onto or Across Public Property

- (1) No person, other than an employee or other person in the service of the Commonwealth of Massachusetts or the Town of Auburn, shall direct, discharge, dump, shovel, pile, push, blow, plow, or deposit snow, ice, or water under conditions where water would be subject to freezing onto, into, or across any public way, including sidewalks, public property, or fire hydrants or cause, direct, sanction, or authorize any such activity involving snow, ice, or water on a public way or public property.
- (2) No person shall allow water from sump pumps and/or drains to flow on any public roadway, sidewalk, or Town owned-property.
- (3) Law enforcement officers and the Director of the Department of Public Works, or his or her Designee are the enforcing authority for this section.

13.05: Temporary Repair of Private Ways

- (1) Subject to the provisions of this By-law, the Director of the Department of Public Works shall have authority to employ Town personnel and equipment under his/her control to make temporary repairs to private ways which have been open to public use for six (6) years or more.
- (2) Such temporary repairs shall not be made to a private way unless two-thirds (2/3) of abutting landowners petition the Board of Selectmen for such repairs to be made, and a majority of the Board of Selectmen approve such petition. This requirement of petition shall not pertain to those private ways which heretofore have been repaired on a regular basis by the Town under authority of the Massachusetts General Laws.
- (3) Said temporary repairs shall include only the filling in of holes or depressions with sand, gravel, grindings, asphalt patch material, or other suitable materials in order to make said way passable, and shall not include construction, reconstruction, or resurfacing of said ways. Drainage shall not be included.

- (4) The Director of the Department of Public Works shall in making its determination as to the advisability of making temporary repairs take into consideration the following factors:
 - (A) The accessibility of the properties on the private ways to emergency vehicles such as police, fire and rescue;
 - (B) The volume of traffic that utilizes the private way (i.e. dead end as opposed to feeder or connecting streets);
 - (C) The percentage of abutters on the particular private way petitioning the Board for the repairs;
 - (D) The number of years that the way shall have been open to public use; and
 - (E) Such other considerations that the Director deems appropriate.
- (5) This authority to make temporary repairs to private ways may be exercised by the Director of the Department of Public Works only when the necessary funds therefore are available in the Director of the Department of Public Works' budget and only when he/she has available for such use Highway Division equipment and personnel not then needed for the care and maintenance of the Town's public ways.
- (6) Betterment charges shall not be assessed to abutters and cash deposits shall not be required from abutters in connection with the making of such temporary repairs.
- (7) This By-law is enacted only for the purpose of authorizing the expenditure of public funds to make temporary repairs to private ways, and no duty or obligation is either hereby placed on the Director of the Department of Public Works or hereby assumed by the Town to either initially place or thereafter maintain and repair said private ways so that they are reasonably safe and convenient for travel by being free from defects or a want of repair.
- (8) The making of such temporary repairs to private ways, no matter how often or to what extent, shall not constitute an acceptance by the Town of such private ways as public ways. In any legal action brought against the Town for damages for injury to person or property suffered by reason of a defect or want of repair in a private way which has been so repaired, the Town reserves the right to deny, and shall deny in any such legal action, that the said repaired way is a public way.
- (9) The Town shall not be liable on account of any damage caused by such repairs made under this By-law.
- (10) In no event shall temporary repairs be made to any private way where the cost of said repairs shall exceed the sum of Five Dollars (\$5.00) per linear foot as determined by the Director of the Department of Public Works.

13.06 Closing and Restrictions of Town Streets and Public Right of Ways

- (1) The Department of Public Works Director, or his or her Designee, is hereby authorized to close and/or prohibit parking on any street, or highway, or public right of way, or any part thereof, in an impending or existing emergency, or for any weather related event, or any assemblage, demonstration or procession, or construction or maintenance work, provided there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited may be moved under the direction of the DPW Director or his or her Designee.
- (2) Any street having restrictions as to parking or traffic flow shall be so posted with official signs easily visible to approaching drivers. The Department of Public Works Director, or his or her Designee, is hereby authorized to place and maintain, or cause to be placed and maintained all official traffic signs, signals, markings, and safety zones on public ways. All signs, signals, markings, and safety zones shall conform to the standards prescribed by the Massachusetts Department of Transportation.

13.07: Damage to Article, Device, or Thing - Town Right of Way

- (1) Any article, device, or object placed within the Town's right of way shall be the sole responsibility of the property owner whether commercial or residential. That shall include, but not be limited to, mailboxes and posts, fences, landscaping, signs, irrigation sprinkler heads, etc.
- (2) In the event a Town or privately-owned vehicle or plow contracted by the Town makes direct contact with the article, device, or object placed within the Town's right of way with previous approval by the Director of Public Works, the Town will replace and/or repair the same. In the event of direct contact, mailboxes and poles shall be valued at Thirty Dollars (\$30.00) in combination, regardless of original costs. If the article, device, or thing is broken, crushed or otherwise damaged from indirect contact with snow, ice, or slush, the Town shall not reimburse or repair the article, device, or thing.

13.08: Sewer System

- (1) Plans and descriptions of the sanitary sewer system belonging to the Town of Auburn and within the Town limits, with a true record of the charges of making and repairing said sewer systems, and of all assessment therefore, shall be kept at the offices of the Sewer Division of the Department of Public Works.

13.09: Sewer Regulations

- (1) Section 10 of Chapter 708 of the Acts of 1963 states that the Board of Sewer Commissioners may from time to time prescribe rules and regulations for the connection of estates and buildings with sewers, and for the inspection of the

materials, the construction, alteration, and use of all connections entering such sewers, and any person violating any such rule or regulation shall be punished by a fine set forth within the regulations established by the Board of Sewer Commissioners.

Chapter XIV: Stormwater Management

14.01: General

- (1) Purpose
 - (A) Regulation of activities that result in the disturbance of land and the creation of stormwater runoff is necessary to protect the Town of Auburn's water bodies and groundwater resources, to safeguard the health, safety, and welfare of the general public, and to protect the natural resources of the Town.
- (2) Increased volumes of stormwater, contaminated stormwater runoff from impervious surfaces, and soil erosion and sedimentation are major causes of:
 - (A) Impairment of water quality and decreased flow in lakes, ponds, streams, rivers, wetlands and groundwater;
 - (B) Contamination of drinking water supplies;
 - (C) Erosion of stream channels;
 - (D) Alteration or destruction of aquatic and wildlife habitat;
 - (E) Flooding; and,
 - (F) Overloading or clogging of municipal catch basins and storm drainage systems.
- (3) The United States Environmental Protection Agency has identified sedimentation from land disturbance activities and polluted stormwater runoff from land development and redevelopment as major sources of water pollution, impacting drinking water supplies, natural habitats, and recreational resources.
- (4) The objectives of this By-law are to:
 - (A) Protect water resources;
 - (B) Require practices that mitigate soil erosion and sedimentation;

- (C) Prohibit illicit connections and unauthorized discharges to the municipal storm drain system;
- (D) Require the removal of all such illicit connections;
- (E) Control the volume and rate of stormwater runoff resulting from land disturbance activities in order to minimize potential impacts of flooding;
- (F) Require practices to manage and treat stormwater runoff generated from new development and redevelopment,
- (G) Protect groundwater and surface water from degradation or depletion;
- (H) Promote infiltration and the recharge of groundwater;
- (I) Prevent pollutants from entering the municipal storm drain system;
- (J) Ensure that soil erosion and sedimentation control measures and stormwater runoff management practices are incorporated into the site planning and design process and are implemented and maintained;
- (K) Ensure adequate long-term operation and maintenance of stormwater best management practices;
- (L) Require practices to control waste such as, but not limited to, the following: discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at construction sites that may cause adverse impacts to water quality;
- (M) Comply with state and federal statutes and regulations relating to stormwater discharges; and
- (N) Establish the Town of Auburn's legal authority to ensure compliance with the provisions of this By-law through inspection, monitoring, and enforcement.

(4) Authority

- (A) This By-law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and in accordance with the regulations of the Federal Clean Water Act found at 40 CFR 122.34 and the Phase II ruling from the Environmental Protection Agency found in the December 8, 1999 Federal Register.

(5) Responsibility

- (A) The Town Engineer or other Town Designee appointed by the Town Manager shall administer this By-law.
- (B) The Stormwater Committee and/or the Town Engineer or other Town Designee shall review all applications for a Land Disturbance permit, conduct inspections, issue a permit and conduct any necessary enforcement action.
- (C) The Stormwater Committee may adopt and periodically amend Stormwater Regulations relating to receipt and content of Land Disturbance applications; review time periods, permit terms, conditions, additional definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures, and administration of this By-law by majority vote of the Stormwater Committee, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) calendar days before the hearing date. After public notice and hearing, the Stormwater Committee may promulgate rules and regulations to effectuate the purposes of this By-law. Failure by the Committee to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law.
- (D) The Stormwater Committee shall refer to the policy, criteria, and information, including specifications and standards of the latest edition of the Massachusetts Stormwater Management Standards or the latest edition of Town of Auburn's Design Standards, whichever is more stringent in the protection of the Town's environmental and infrastructure resources, for execution of the provisions of this By-law.
- (E) The Applicant will publish a notice in the local newspaper that the Town Engineer or other Town Designee is accepting comments on a Major Land Disturbance Permit. The Major Land Disturbance Permit application shall be available for inspection by the public during normal business hours at the Town Hall for five (5) business days from the notice. A public hearing is not required. The public may submit their comments within the time that the Major Land Disturbance Permit is available for inspection. Comments may be submitted to the Town Engineer or other Town Designee during business hours.
- (F) Filing an application for a land disturbance permit grants the Stormwater Committee or its Agent permission to enter the site to verify the information in the application and to inspect for compliance with permit conditions.

- (G) The Town Engineer or other Town Designee may:
- (i) Approve the application and issue a permit if it finds that the proposed plan will protect water resources and meets the objectives and requirements of this By-law;
 - (ii) Approve the application and issue a permit with conditions, modifications, requirements for operation and maintenance, requirements of permanent structural BMPs, designation of responsible party, or restrictions that the Town Engineer or other Town Designee determines are required to ensure that the project will protect water resources and will meet the objectives and requirements of this By-law; or
 - (iii) Disapprove the application and deny a permit if it finds that the proposed plan will not protect water resources or fails to meet the objectives and requirements of this By-law. If the Town Engineer or other Town Designee finds that the applicant has submitted insufficient information to describe the site, the work, or the effect of the work on water quality and runoff volume, the Town Engineer or other Town Designee may disapprove the application, denying a permit.
- (H) No permit shall be issued by the Town Engineer or other Town Designee for projects that require approval from the Conservation Commission, Zoning Board or the Planning Board until those decisions have been rendered.
- (I) The Town Engineer or other Town Designee shall take final action on an application within thirty (30) days if review from Conservation Commission, Zoning Board or Planning Board is not required. Failure to take action shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Stormwater Committee's action, the Land Disturbance Permit shall be considered presumptively approved.
- (J) The Town Engineer or other Town Designee shall take final action on an application within thirty (30) days of final decision(s) from Conservation Commission, the Zoning Board, and/or the Planning Board. Failure to take action shall be deemed to be approval of said application. Upon certification by the Town Clerk that the allowed time has passed without the Town Engineer or other Town Designee's action, the Land Disturbance Permit shall be considered presumptively approved.
- (K) Appeals of Town Engineer's or other Town Designee's action shall be filed with the Stormwater Committee within twenty (20) days of a

decision. Any decision of the Stormwater Committee shall be final. Further relief from a decision by the Stormwater Committee made under this By-law shall be filed in the court ~~within twenty (20) days~~¹ thereof in a court of competent jurisdiction. The remedies listed in this By-law are not exclusive of any other remedies available under any applicable federal, state, or local law.

(6) Definitions

(A) For the purposes of this By-law, the following terms shall be defined as follows:

- (i) “ABUTTER”: The owner(s) of land within one hundred (100) feet of the land disturbance site.
- (ii) “AGRICULTURE”: The normal maintenance or improvement of land in agricultural or aquacultural use, as defined by the Massachusetts Wetlands Protection Act (Massachusetts General Laws, Chapter 131, Section 40) and its implementing regulations (310 CMR 10.00).
- (iii) “ALTERATION OF DRAINAGE CHARACTERISTICS”: Any activity on an area of land that changes the water quality, or the force, quantity, direction, timing or location of runoff flowing from the area. Such changes include: change from distributed runoff to confined, discrete discharge; change in the volume of runoff from the area; change in the peak rate of runoff from the area; and change in the recharge to groundwater on the area.
- (iv) “APPLICANT”: Any "person," as defined below requiring a permit for any activity in this By-law.
- (v) “AUTHORIZED ENFORCEMENT AGENCY”: Stormwater Committee or its agents will be in charge of enforcing the requirements of this By-law.
- (vi) “BEST MANAGEMENT PRACTICE” or “BMP”: An activity, procedure, restraint, or structural improvement that helps to reduce the quantity or improve the quality of stormwater runoff.
- (vii) “CLEAN WATER ACT”: The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), as hereafter amended
- (viii) “CONSTRUCTION AND WASTE MATERIALS”: Excess or discarded building or construction site materials that may

¹ The stricken language was disapproved and deleted by the Massachusetts Attorney General pursuant to her opinion letter of October 9, 2015.

adversely impact water quality, including but not limited to, concrete truck washout, chemicals, litter, and sanitary waste.

- (ix) “CLEARING”: Any activity that removes the vegetative surface cover. Clearing activities generally include grubbing activity, as defined below.
- (x) “DESIGN STANDARDS”: The Town of Auburn’s design standards for development and redevelopment including, but not limited to, the Zoning By-law and Subdivision Rules and Regulations.
- (xi) “DEVELOPMENT”: The modification of land to accommodate a new use or expansion of use, usually involving construction, including any increase in impervious area.
- (xii) “DISCHARGE OF POLLUTANTS”: The addition from any source of any pollutant or combination of pollutants into the municipal storm drain system or into the waters of the United States or Commonwealth from any source.
- (xiii) “DISTURBANCE OF LAND”: Any action, including clearing and grubbing, that causes a change in the position, location, or arrangement of soil, sand, rock, gravel, or similar earth material.
- (xiv) “ENVIRONMENTAL SITE MONITOR”: A Professional Engineer or other trained professional approved by the Stormwater Committee, or its Agent and retained by the holder of a Land Disturbance Permit to periodically inspect the work and report to the Stormwater Committee or its agent.
- (xv) “EROSION”: The wearing away of the land surface by natural or artificial forces such as wind, water, ice, gravity, or vehicle traffic and the subsequent detachment and transportation of soil particles.
- (xvi) “EROSION AND SEDIMENTATION CONTROL PLAN”: A document containing narrative, drawings, and details developed by a qualified professional engineer (PE), and which includes best management practices or equivalent measures designed to control surface runoff, erosion, and sedimentation during preconstruction and construction related land disturbance activities.
- (xvii) “ESTIMATED HABITAT OF RARE WILDLIFE AND CERTIFIED VERNAL POOLS”: Habitats delineated for state-protected rare wildlife and certified vernal pools for use with the Wetlands Protection Act Regulations (310 CMR 10.00) and the Forest Cutting Practices Act Regulations (304 CMR 11.00).

- (xviii) “GRADING”: Changing the level or shape of the ground surface.
- (xix) “GROUNDWATER”: Water beneath the surface of the ground, including confined or unconfined aquifers.
- (xx) “GRUBBING”: The act of clearing land surface by digging up roots and stumps.
- (xxi) “ILLICIT CONNECTION”: A surface or subsurface drain or conveyance which allows an illicit discharge into the municipal storm drain system, including without limitation, sewage, process wastewater, or wash water and any connections from indoor drains, sinks, or toilets, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this By-law.
- (xxii) “ILLICIT DISCHARGE”: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 14.03(2)(B). The term does not include a discharge in compliance with an NPDES Storm Water Discharge Permit or a Surface Water Discharge Permit.
- (xxiii) “IMPERVIOUS SURFACE”: Any material or structure on or above the ground that prevents water infiltrating the underlying soil. Impervious surface includes, without limitation, roads, paved parking lots, sidewalks, and roof tops. Impervious surface also includes soils, gravel driveways, and similar surfaces with a runoff coefficient (Rational Method) greater than 0.70.
- (xxiv) “LAND DISTURBING ACTIVITY or LAND DISTURBANCE”: Any activity, including clearing and grubbing, that causes a change in the position or location of soil, sand, rock, gravel, or similar earth material.
- (xxv) “LANDSCAPE DESIGN STANDARDS”: Section 11 of the Town of Auburn's Zoning By-laws.
- (xxvi) “LOT”: An area or parcel of land or any part thereof recorded with the Massachusetts Registry of Deeds or Land Court.
- (xxvii) “MASSACHUSETTS ENDANGERED SPECIES ACT”: Massachusetts General Laws, Chapter 131A and its implementing regulations at 321 CMR 10.00 which prohibit the "taking" of any rare plant or animal species listed as Endangered, Threatened, or of Special Concern.

- (xxviii) “MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS”: The Standards, defined under the Wetlands Protection Regulations, 310 CMR 10.05(k), and further described in the Massachusetts Stormwater Handbook, prepared and issued by the Massachusetts Department of Environmental Protection. The Standards address stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies, control the quantity of runoff from a site, and promote the recharge of groundwater by stormwater infiltration.
- (xxix) “MUNICIPAL STORM DRAIN SYSTEM or MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)”: The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or manmade or altered drainage channel, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Auburn.
- (xxx) “NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT”: A permit issued by the United States Environmental Protection Agency or jointly with the State that authorizes the discharge of pollutants to waters of the United States.
- (xxxi) “NON STORMWATER DISCHARGE”: Discharge to the municipal storm drain system not composed entirely of stormwater.
- (xxxii) “OPERATION AND MAINTENANCE PLAN”: A plan describing the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to ensure that it continues to function as designed.
- (xxxiii) “OUTFALL”: The point at which stormwater flows out from a discernible, confined point source or discrete conveyance into waters of the Commonwealth,
- (xxxiv) “OUTSTANDING RESOURCE WATERS (ORWs)”: Waters designated by the Massachusetts Department of Environmental Protection as ORWs. These waters have exceptional sociologic, recreational, ecological and/or aesthetic values and are subject to more stringent requirements under both the Massachusetts Water Quality Standards, 314 CMR 4.00, and the Massachusetts Stormwater Management Standards. ORWs include vernal pools

certified by the Natural Heritage Program of the Massachusetts Department of Fisheries and Wildlife and Environmental Law Enforcement, all Class A designated public water supplies with their bordering vegetated wetlands, and other waters specifically designated.

- (xxxv) “OWNER”: A person with a legal or equitable interest in property.
- (xxxvi) “PERMIT HOLDER”: The person who holds a land disturbance permit and bears the responsibilities of said permit.
- (xxxvii) “PERSON”: An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.
- (xxxviii) “POINT SOURCE”: Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container from which pollutants are or may be discharged.
- (xxxix) “POLLUTANT”: Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source that is considered toxic to humans or the environment and may be introduced into any sewage treatment works or waters of the Commonwealth. Pollutants shall include, but not be limited to:
- (a) Paints, varnishes, and solvents;
 - (b) Oil and other automotive fluids;
 - (c) Some non-hazardous liquids and solid wastes and yard wastes;
 - (d) Refuse, rubbish, garbage, litter, or other discarded or abandoned objects, accumulations, and floatables;
 - (e) Pesticides, herbicides, and fertilizers;
 - (f) Hazardous materials and wastes, sewage, fecal coliform, and pathogens;

- (g) Dissolved and particulate metals;
 - (h) Animal wastes;
 - (i) Rock, sand, salt, soils;
 - (j) Construction wastes and residues; and
 - (k) Noxious or offensive matter of any kind.
- (xl) “PRE-CONSTRUCTION”: All activity in preparation for construction.
- (xli) “PRIORITY HABITAT OF RARE SPECIES”: Habitats delineated for rare plant and animal populations protected pursuant to the Massachusetts Endangered Species Act and its regulations.
- (xlii) “PROCESS WASTEWATER”: Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any material, intermediate product, finished product, or waste product.
- (xliii) “RECHARGE”: The process by which groundwater is replenished by precipitation through the percolation of runoff and surface water through the soil.
- (xliv) “REDEVELOPMENT”: Development, rehabilitation, demolition, or phased projects that disturb the ground surface on previously developed sites.
- (xlv) “RESPONSIBLE PARTIES”: owner(s), persons with financial responsibility, and persons with operational responsibility.
- (xlvi) “RUNOFF”: Rainfall, snowmelt, or water flowing over the ground surface.
- (xlvii) “SEDIMENT”: Mineral or organic soil material that is transported by wind or water from its origin to another location; the product of erosion processes.
- (xlviii) “SEDIMENTATION”: The process or act of depositing of sediment.
- (xlix) “SITE”: Any lot or parcel of land or area of property where land-disturbing activities are, were, or will be performed.

- (l) “SLOPE”: The incline of a ground surface expressed as a ratio of horizontal distance to vertical distance.
- (li) “SOIL”: Earth materials including duff, humic materials, sand, rock, and gravel.
- (lii) “STABILIZATION”: The use, singly or in combination, of mechanical, structural, or vegetative methods, to prevent or retard erosion.
- (liii) “STORMWATER”: Runoff from precipitation or snow melt.
- (liv) “STORMWATER COMMITTEE”: A Committee of the Town of Auburn consisting of the following members: Department of Public Works Director, Town Engineer, Assistant Town Engineer, Civil Engineer, Highway Superintendent, Sewer Superintendent, Town Planner, Director of Public Health, Zoning Enforcement Officer, Agent of the Conservation Commission, and the Auburn Water District’s Superintendent or Designee. The representative of the Auburn Water District shall be non-voting.
- (lv) “STORMWATER MANAGEMENT PLAN”: A document, containing a narrative, drawings, and details, prepared by a qualified professional engineer (PE). It includes structural and non-structural best management practices to manage and treat stormwater runoff generated from regulated development activity. A stormwater management plan also includes an Operation and Maintenance Plan describing the maintenance requirements for structural best management practices.
- (lvi) “STORMWATER MANAGEMENT REGULATIONS”: A set of procedures and policies adopted and updated from time to time by the Stormwater Committee under the authority of this By-law.
- (lvii) “STRIP”: Any activity which removes the vegetative ground surface cover, including tree removal, clearing, grubbing, and storage or removal of topsoil.
- (lviii) “SURFACE WATER DISCHARGE PERMIT”: A permit issued by the Department of Environmental Protection pursuant to 314 CMR 3.00 that authorizes the discharge of pollutants to waters of the Commonwealth of Massachusetts.
- (lix) “TOXIC OR HAZARDOUS MATERIAL or WASTE”: Any material which, because of its quantity, concentration, chemical,

corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, and any substance defined as Toxic or Hazardous under Massachusetts General Laws, Chapter 21C and 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

- (lx) “TSS”: Total Suspended Solids. Material suspended in stormwater runoff including, but not limited to, trash, debris, soils, sediment, and sand.
- (lxi) “VERNAL POOLS”: Confined basin depression which, at least in most years, holds water for a minimum of two (2) continuous months during the spring and/or summer, and which is free of adult fish populations, as well as the area within one hundred (100) feet of the mean annual boundary of such a depression which has been certified by the Mass. Division of Fisheries and Wildlife.
- (lxii) “WASTEWATER”: Any sanitary waste, sludge, or septic tank or cesspool contents, and water, that during manufacturing, cleaning or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.
- (lxiii) “WATERCOURSE”: A natural or man-made channel through which water flows, including a river, brook, or stream.
- (lxiv) “WATERS OF THE COMMONWEALTH”: All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.
- (lxv) “WETLAND RESOURCE AREA”: Areas specified in the Massachusetts Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40 and in the Town of Auburn Wetland Protection By-law.

(7) Regulations

- (A) The Town may promulgate rules and regulations to effectuate the purposes of this By-law. Failure by the Town to promulgate such rules and regulations shall not have the effect of suspending or invalidating this By-law. Permit Procedures and Requirements shall be defined and included as part of any rules and regulations promulgated herein.

(8) Fees

- (A) The Stormwater Committee may adopt any regulations deemed necessary to accomplish the purposes of this By-law, including the adoption of a system of fees for services related to the Town's review of plans and the Town's issuance of permits. Any changes to the Committee's fee schedule shall require a duly noticed and advertised public hearing.

14.02: Illicit Discharge

(1) Applicability

- (A) This Section shall apply to flows entering the municipal storm drainage system.

(2) Prohibited and Exempt Activities:

(A) Prohibited Activities

- (i) Illicit Discharges. No person shall dump, discharge, cause, or allow to be discharged any pollutant or non-stormwater discharge into the municipal storm drain system, into a watercourse, or into the waters of the Commonwealth.
- (ii) Illicit Connections. No person shall construct, use, allow, maintain, or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation, or custom at the time of connection.
- (iii) Obstruction of Municipal Storm Drain System. No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Town Engineer.

(B) Exemptions

- (i) Discharge or flow resulting from fire-fighting activities;
- (ii) The following non-stormwater discharges or flows are exempt from this By-law, provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:
- (a) Waterline flushing;

- (b) Flow from potable water sources;
- (c) Springs;
- (d) Natural flow from riparian habitats and wetlands;
- (e) Diverted stream flow;
- (f) Rising groundwater;
- (g) Uncontaminated groundwater infiltration as defined in 40 CFR 35.2005(20), or uncontaminated pumped groundwater;
- (h) Discharge from landscape irrigation or lawn watering;
- (i) Water from exterior foundation drains, footing drains (not including active groundwater dewatering systems), or air conditioning condensation;
- (j) Water from individual residential car washing;
- (k) Discharge from dechlorinated swimming pool water (less than one (1) ppm chlorine), provided that data is submitted to the Town substantiating that the water meets the one (1) ppm standard, and that the pool is drained in such a way as not to cause a nuisance or public safety issue and complies with all applicable Town By-laws;
- (l) Discharge from street sweeping;
- (m) Dye testing, provided that verbal notification is given to the Town Engineer prior to the time of the test;
- (n) Non-stormwater discharge permitted under an NPDES permit or a Surface Water Discharge Permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency or the Department of Environmental Protection, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations; and
- (o) Discharge for which advance written approval is received and is necessary to protect public health, safety, welfare, or

the environment.

- (iii) Discharge or flow that results from exigent conditions and occurs during a State of Emergency declared by any agency of the federal or state government or by the Auburn Town Manager, Board of Selectmen, or Board of Health.

(3) Emergency Suspension of Storm Drainage System Access:

- (A) The Town may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare, or the environment. In the event any person fails to comply with an emergency suspension order, the Town may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare, or the environment.

(4) Notification of Spills:

- (A) Notwithstanding other requirements of local, state or federal law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of or suspects a release of materials at that facility or operation resulting in or which may result in discharge of pollutants to the municipal drainage system or waters of the Commonwealth, the person shall take all necessary steps to ensure containment and cleanup of the release. In the event of a release of oil or hazardous materials, the person shall immediately notify the Auburn Fire and Police Departments and the Town Engineer or other Town Designee and the Board of Health. In the event of a release of non-hazardous material, the reporting person shall notify the Town Engineer or other Town Designee no later than the next business day. The reporting person shall provide to the Town Engineer or other Town Designee written confirmation of all telephone, facsimile, or in-person notifications within three (3) business days thereafter. If the discharge of prohibited materials is from a commercial or industrial facility, the facility owner or facility operator shall also retain on-site a written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

14.03: Stormwater Management and Erosion Control

(1) Applicability:

- (A) This Section shall apply to all land disturbing activities within the jurisdiction of the Town of Auburn.

(2) Regulated and Exempt Activities:

(A) Regulated Activities. Regulated activities shall include, but not be limited to:

- (i) Land disturbance associated with a building permit for a new structure which exceeds five hundred (500) square feet, or an addition which in itself exceeds five hundred (500) square feet;
- (ii) Development or redevelopment involving multiple separate activities in discontinuous locations or on different schedules if the activities are part of a larger common plan of development that, all together, disturbs one thousand (1,000) square feet or more of land;
- (iii) Paving or other change in surface material (including structures) over an area of five hundred (500) square feet or more causing a significant reduction of permeability or increase in runoff;
- (iv) Construction of a new drainage system or alteration of an existing drainage system or conveyance;
- (v) Land disturbance where there is an existing or proposed slope of fifteen percent (15%) or greater and where the land disturbance is greater than or equal to five hundred (500) square feet within the sloped area.

(B) Exempt Activities. The following activities are exempt from the requirements of this By-law:

- (i) Normal maintenance and improvement of Town-owned public ways and appurtenances;
- (ii) Normal maintenance and improvement of land in agricultural use;
- (iii) Repair of septic systems in accordance with Title V (CMR 15.00);
- (iv) The construction of fencing that will not alter existing terrain or drainage patterns;
- (v) Construction of utilities other than drainage (gas, water, electric, telephone, etc.) that will not alter terrain or drainage patterns.

(3) Surety:

- (A) The Stormwater Committee may require the permit holder to post, before the start of land disturbance activity, a surety bond, irrevocable letter of credit, cash, or other acceptable security. The form of the bond shall be

approved by Town Counsel, and be in an amount deemed sufficient by the Town Engineer or other Town Designee to insure that the work will be completed in accordance with the permit. If the project is phased, the Town Engineer or other Town Designee may release part of the bond as each phase is completed in compliance with the permit, but the bond may not be fully released until the Town Engineer or other Town Designee has received the final report, as required in the Regulations, and issued a certificate of completion.

14.04: Administration

(1) Enforcement

(A) Authorized Agent

- (i) The Stormwater Committee, the Town Engineer or other Town Designee shall enforce this By-law, its regulations, orders, violation notices, and enforcement orders and may pursue all civil and criminal remedies for such violations.

(B) Orders

- (i) The Stormwater Committee, the Town Engineer or other Town Designee may issue a written order to enforce the provisions of this By-law or the regulations thereunder, which may include:
 - (a) A requirement to cease and desist from the land-disturbing activity until there is compliance with the By-law or provisions of the land-disturbance permit;
 - (b) Maintenance, installation or performance of additional erosion and sediment control measures;
 - (c) Monitoring, analyses, and reporting;
 - (d) Remediation of erosion and sedimentation resulting directly or indirectly from the land disturbing activity;
 - (e) Compliance with the Operation and Maintenance Plan;
 - (f) Elimination of illicit connections or discharges to the municipal storm drain system;
 - (g) Performance of monitoring, analyses, and reporting;
 - (h) That unlawful discharges, practices, or operations shall

cease and desist; and

- (i) Remediation of contamination in connection therewith.
- (ii) If the enforcing person determines that abatement or remediation of contamination or erosion and sedimentation is required, the order shall set forth a deadline by which such abatement or remediation must be completed: Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the Town of Auburn may, at its option, undertake such work, and all costs incurred by the Town shall be charged to the violator/property owner, to be recouped through all available means, including the placement of liens on the property.
- (iii) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator (if different than the property owner) and the property owner shall be notified of the costs incurred by the Town of Auburn, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Stormwater Committee within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Stormwater Committee affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in Massachusetts General Laws, Chapter 59, Section 57, after the thirty-first (31st) day following the day on which the costs were due.

(C) Criminal Penalty:

- (i) Any person who violates any provision of this By-law, regulation, order, or permit issued thereunder, may be punished by a fine of not more than Three Hundred Dollars (\$300.00). Each day or part thereunder that such violation occurs or continues shall constitute a separate offense.

(D) Non-Criminal Disposition:

- (i) As an alternative to criminal prosecution or civil action, the Town of Auburn may elect to utilize the non-criminal disposition procedure set forth in Massachusetts General Laws, Chapter 40,

Section 21D, in which case the Stormwater Committee or authorized agent shall be the enforcing person. ~~The penalty for each violation shall be punished by a fine of not more than Three Hundred Dollars (\$300.00).~~² Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

(E) Tax Liens:

- (i) The Town of Auburn, as put forth in the Operation and Maintenance Plan, shall require the repayment of services provided to the responsible party which the responsible party was obligated to perform. The Town will send the responsible party a bill for services provided. If the bill is not paid, the Town may impose a tax lien on the responsible party or parties' property.

(F) Entry to Perform Duties Under this By-law:

- (i) To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the Town, its agents, officers, and employees may enter upon privately-owned property for the purpose of performing their duties under this By-law and these regulations and may make or cause to be made examinations, surveys, or sampling the Town deems reasonably necessary.

(G) Appeals:

- (i) The decisions or orders of the Town shall be final. Further relief shall be to a court of competent jurisdiction.

(H) Remedies Not Exclusive:

- (i) The remedies listed in this By-law are not exclusive of any other remedies available under any applicable federal, state, or local law.

(2) Waivers

(A) The Stormwater Committee may waive strict compliance with any requirement of this By-law or the rules and regulations promulgated hereunder where such action:

- (i) is allowed by federal, state, and local statutes and/or regulations,
- (ii) is in the public interest, and

² The stricken language was disapproved and deleted by the Massachusetts Attorney General pursuant to her opinion letter of October 9, 2015.

- (iii) is not inconsistent with the purpose and intent of this By-law.
 - (B) Any applicant may submit a written request to be granted such a waiver. Such a request shall be accompanied by an explanation or documentation supporting the waiver request and demonstrating that strict application of the By-law does not further the purposes or objectives of this By-law.
 - (C) All waiver requests shall be discussed and a decision will be made by the Stormwater Committee within thirty (30) days of receiving the waiver request.
 - (D) If, in the Stormwater Committee's opinion, additional time or information is required for review of a waiver request, the Committee may continue a consideration of the waiver request to a date certain, announced at the meeting. In the event the applicant objects to a continuance or fails to provide requested information, the waiver request shall be denied.
- (3) Severability
- (A) The provisions of this By-law are hereby declared to be severable. If any provision, paragraph, sentence, or clause of this By-law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this By-law.
- (4) Transitional Provision
- (A) Residential property owners shall have one hundred eighty (180) days from the effective date of the By-law to comply with its provisions or petition the Town for an extension. Building permits and other approvals granted prior to the effective date of this By-law and the promulgation of Stormwater Regulations and Standards shall not be required to adhere to this Section.

Chapter XV: Police Department

15.01: Definitions

- (1) For the purposes of this By-law, the following terms shall be defined as follows:
 - (A) "Prima Facie": True, authentic, or adequate at first sight. Evidence that is sufficient to raise a presumption of fact or to establish the fact in question unless rebutted.

- (B) “Criminal Complaint”: Whoever violates any provision of these By-laws may be penalized by indictment or on complaint, brought in a court of competent jurisdiction. Except as may be otherwise provided by law and as the court may see fit to impose, the maximum penalty for each violation, or offense, brought in such a manner, shall be Three Hundred Dollars (\$300.00).
- (C) “Non-criminal Disposition”: Whoever violates any provision of these By-laws, the violation of which is subject to a specific penalty, may be subject to a noncriminal proceeding as provided in General Laws, Chapter 40, Sections 21 and 21D. The noncriminal method of disposition may also be used for violations of any rule or regulation of any municipal officer, board or department, which provides for a specific penalty.
- (D) “Enforcement Authorities”: Without intending to limit the generality of the foregoing, it is the intention of this provision that the following By-laws and sections of By-laws are to be included within the scope of this subsection. The specific penalties as listed herein shall apply in such cases. In addition to sworn law enforcement officers, who shall in all cases be considered enforcing persons for the purpose of this By-law, any municipal personnel specifically listed for each section of the By-laws shall also be the enforcing entity and personnel for such sections.
- (E) “Fines and Penalties – Subsequent Offenses”: Payment of a penalty or non-criminal adjudication of a violation is not required to cite a second, multiple, or subsequent offense. Each day on which any such violation exists shall constitute a separate violation of any such section. Any persons suspected of a violation of any rule, regulation, or order made hereunder, except as otherwise provided, shall be issued a non-criminal violation (Ticket) for the same.

- (F) “Motor Vehicle”: All vehicles constructed and designed for propulsion by power other than muscular power, including such vehicles when pulled or towed by another motor vehicle, except railroad and railway cars, vehicles operated by the system known as trolley motor or trackless trolley under chapter one hundred and sixty-three or section ten of chapter five hundred and forty-four of the acts of nineteen hundred and forty-seven, vehicles running only upon rails or tracks, vehicles used for other purposes than the transportation of property and incapable of being driven at a speed exceeding twelve miles per hour and which are used exclusively for the building, repair and maintenance of highways or designed especially for use elsewhere than on the travelled part of ways, wheelchairs owned and operated by invalids, and vehicles which are operated or guided by a person on foot; provided, however, that the exception for trackless trolleys provided herein shall not apply to sections seventeen, twenty-one, twenty-four, twenty-four I, twenty-five and twenty-six. The definition of “Motor vehicles” shall not include motorized bicycles. In doubtful cases, the registrar may determine whether or not any particular vehicle is a motor vehicle as herein defined. If he or she determines that it should be so classified, he or she may require that it be registered under this chapter, but such determination shall not be admissible as evidence in any action at law arising out of the use or operation of such vehicle previous to such determination.

15.02: Officers to Direct Traffic

- (1) It shall be the duty of officers designated by the Police Chief to enforce the provisions of these By-laws and the Traffic Rules and Orders, as amended. Such officers are hereby authorized to direct all traffic either in person or by means of visible or audible signals in conformance with the provisions in these By-laws or the “Traffic Rules and Orders,” provided that, in the event of a fire or other emergency, to expedite traffic or safeguard pedestrians, officers of the Police and Fire Rescue Departments may direct traffic as conditions may require notwithstanding the provisions of these By-laws.

15.03: Prudential Affairs and Police Traffic Details

- (1) The Police Chief or his or her Designee shall have the authority to require police traffic details where the passage of or flow of pedestrian or vehicular traffic may be impeded, delayed, disturbed, backed-up, or re-routed on any public way, alley, highway, walkway, lane, court, public square, public place, avenue, bridge, or sidewalk within the Town of Auburn and/or where the safety, health, and welfare of the general public is concerned.

- (2) Any establishment, entity, or individual operating under a license or otherwise, and any individual or private entity which produces and operates an event, within the Town of Auburn and whose event or operation may affect traffic flow in a manner described in paragraph A above shall procure at his or her expense police details furnished by the Auburn Police Department as the Police Chief or his or her Designee may require in his or her reasonable discretion, and shall pay such police officers at the prevailing extra-duty rate and including but not limited to such fees for use of a police cruiser for visibility and public safety reasons.

15.04: Police May Close Street Temporarily

- (1) The Police Chief or his or her Designee is hereby authorized to close temporarily any street or highway in an impending or existing emergency or for any lawful assemblage, demonstration, or procession, provided that there is reasonable justification for the closing of such street.

15.05: Police May Prohibit Parking Temporarily

- (1) The Police Chief or his or her Designee is hereby authorized to prohibit temporary parking on any street or highway or part thereof, in an impending or existing emergency or for any assemblage, demonstration, procession, construction and/or maintenance work, or impending or existing weather related event, provided there is reasonable justification for such prohibition. Vehicles parked in places where parking is prohibited temporarily may be moved by or under the direction of an officer.

15.06: Police May Remove Vehicles

- (1) The Police Chief or his or her Designee is hereby authorized to remove to a convenient place any vehicle parked or standing on any part of any way and impeding the removal or plowing of snow or ice, or in violation of any By-law, order, rule or regulation which prohibits the parking or standing of all vehicles on such ways or portions thereof at such time. Neither the removal nor storage of a vehicle under the provisions of this section shall be deemed to be services rendered or work performed by the Town or the Police Department.

15.07: Exemptions

- (1) The provisions of these By-laws shall not apply to operators actually engaged in work upon a street or highway closed to travel or under construction or repair, to police officers when engaged in the performance of public duties, nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties when the nature of the work of any of these necessitates a departure from any part of these rules or orders. These exemptions shall not, however, protect the driver of any vehicle from the consequences of a reckless disregard of the safety of others.

15.08: Display of Unauthorized Signs, Signals and Markings Prohibited

- (1) It shall be unlawful for any person to place, maintain, or display upon or in view of any street any sign, signal, marking, or device, which is an imitation or resembles an official sign or signal. The Police Chief or his or her Designee is hereby empowered to remove every such prohibited sign, signal, marking, or device or cause it to be removed without notice.

15.09: Interference with Sign, Signals and Markings Prohibited

- (1) No person shall willfully deface, injure, move, obstruct, or interfere with any official traffic signal, sign, or marking.

15.10: Zones of Quiet

- (1) The Police Chief or his or her Designee may temporarily establish a zone of quiet upon any street where a person is seriously ill, if requested to do so by the written statement of a registered physician certifying to its necessity. Said temporary zone of quiet shall embrace all territory within a radius of two hundred (200) feet of the building occupied by the person named in the request of said physician. Said temporary zones of quiet shall be designated by the police, or by their agents, by placing at a conspicuous place in the street a sign or marker bearing the words "ZONE OF QUIET". No person operating a motor vehicle within any designated zone of quiet shall sound the horn or any other warning device of said vehicle except in an emergency.

15.11: No All Night Parking

- (1) No person shall allow, permit, or cause a vehicle registered in his or her name, and under his or her control, to be parked on any traveled way or sidewalk between the hours of 1:00 A.M. and 6:00 A.M. from November 1st to March 31st.

15.12: Handicapped Parking

- (1) Any person or body that has lawful control of a public or private way or of improved or enclosed property used as off-street parking areas for business, shopping malls, theaters, auditoriums, sporting or recreational facilities, cultural centers, residential dwellings, or for any other place where the public has a right of access as invitees or licensees shall be required to reserve parking spaces in said off-street parking areas for any vehicle owned and operated by a disabled veteran or handicapped person whose vehicle bears the distinguishing license plate authorized by the Massachusetts General Laws, Chapter 90, Section 2, according to the following formula:

Total Parking in Lot:

Required Minimum Number of
Accessible Spaces:

15 – 25	1
26 – 50	2
51 – 75	3
76 – 100	4
101 – 150	5
151 – 200	6
201 – 300	7
301 – 400	8
401 – 500	9
501 – 1000	2% of total
1001 and over	20 plus 1 for each 100 Over 1000

(2) Parking spaces designated as reserved under the provisions of paragraph (a) shall be identified by the use of above grade signs with white lettering against blue background and shall bear the words “Handicapped Parking: Special Plates 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 to a handicapped person; and shall be twelve (12) feet wide or two (2) eight (8) foot wide areas with four (4) feet or a cross hatch between them.

(3) The leaving of unauthorized vehicles within parking spaces designated for use by disabled veterans or handicapped persons as authorized by paragraphs (a) and (b) or in such a manner as to obstruct a curb ramp designed for use by handicapped persons as a means of egress to a street or public way shall be prohibited. The penalty for violation of this By-law shall be established by the Board of Selectmen.

15.13: Display of advertising signs

(1) No person shall operate or park a vehicle on any street or highway for the sole purpose of displaying advertising signs.

15.14: Placing of Structures or Property in Streets Prohibited

(1) In the case of Town ways, no person shall place, erect, or cause to be placed or erected within any sidewalk, street, or highway any fixture or structure unless a license, is issued by the Department of Public Works; in the case of state highways, The Massachusetts Department of Transportation shall authorize such placement.

- (2) No person, other than one employed directly or indirectly by the Town or by the Commonwealth of Massachusetts and while in the performance of necessary public duties, shall at any time place or leave in any sidewalk, street, or highway any article, material, or merchandise, or park a vehicle or cart in any sidewalk, street or highway for the purpose of displaying merchandise unless a license therefore has been issued by the Board of Selectmen in the case of Town ways or by the Massachusetts Department of Transportation, in the case of state highways authorizing the use of the sidewalk, street, or highway.
- (3) Any fixture, structure, or property referred to in this section which has been erected, placed, or left illegally in any street, highway or sidewalk may be moved by or under the direction of a police officer and at the owner's expense.
- (4) The Board of Selectmen, when issuing licenses for use of sidewalks, streets, or highways as described in the previous section, may in its discretion, when occasion justifies, demand a suitable cash deposit, surety bond, or insurance indemnity policy to render the Town harmless from all liability of any nature whatsoever caused directly or indirectly by such use of the sidewalk, street, or highway.

15.15: Improper Conduct

- (1) No person shall behave himself in a rude or disorderly manner, or use any indecent, profane, or insulting language, or do any indecent act in any street or way or on any sidewalk or near any dwelling house or other building, or be or remain upon a wall or fence or upon any doorstep or other projection from a house or other building, or in any public building or entrance thereto to the annoyance or disturbance of any person.

15.16: Obstruction of Streets or Sidewalks

- (1) No person shall, without first having obtained written permission from the Director of the Department of Public Works, intentionally obstruct a public street or sidewalk by placing or causing to be placed therein any article or thing whatsoever.
- (2) The Police Chief or his or her Designee shall enforce this provision.

15.17: Possession and Consumption of Alcoholic Beverages

- (1) No person shall drink or consume in a public place any alcoholic beverage as defined in Massachusetts General Laws, Chapter 138, Section 1, nor shall have in his or her possession any open container or containers whose seal has been broken and/or recapped.
- (2) No person shall drink, consume, or possess, any alcoholic beverage as defined in Massachusetts General Laws, Chapter 138, Section 1, in, on, or upon any public

street, way, sidewalk, any way to which the public has a right or access, any place to which the members of the public or invitees or licensees, have access, any public parking lot, any other public property, or in any public conveyance without having first obtained a license from the Board of Selectmen.

- (3) No person shall discard any alcoholic beverage container upon any public street, way, sidewalk, public parking lot, or any other public property or upon any private property not his or her own without the express written permission of the owner.
- (4) A police officer witnessing a violation of this section shall have the right to arrest such person without a warrant and shall bring the person so arrested before the Court within twenty-four (24) hours, Sundays and Holidays excepted. Alcoholic beverages being used in violation of this section may be seized and safely held until final adjudication of the charge against the person so arrested or summoned before the Court, at which time the beverages shall be disposed of as directed by the Court.

15.18: Marijuana or Tetrahydrocannabinol

- (1) No person shall possess, smoke, ingest, or otherwise consume marijuana or Tetrahydrocannabinol (as defined in Massachusetts General Laws, Chapter 94C, as amended) while in or upon any street, sidewalk, public way, footway, passageway, stairs, bridge, park, playground, beach, recreation area, boat landing, public building, schoolhouse, school grounds, cemetery, parking lot, or any area owned by or under the control of the Town; or in or upon any bus or other passenger conveyance operated by a common carrier; or in any place accessible to the public.

15.19: Trespass on Posted Public Land by Motorized Vehicles

- (1) No unauthorized person shall cause a motorized vehicle to enter or remain upon public land under the control of any Town of Auburn Board, Officer, or Department where such trespass is expressly punishable.

15.20: Littering

- (1) It shall be unlawful for any person, firm, or corporation, in person or by his/her agent, employee or servant to cast, throw, sweep, sift or deposit any kind of dirt, rubbish, waste article, thing or substance whatsoever, whether liquid or solid including, but not limited to, food, food containers, cigarettes lit or unlit, cigars, or the like in any manner in or upon any public way or other place in the Town, or in any river, brook, stream, or wetlands (as classified by the Wetlands Protection Act), public water, drain, sewer, or receiving basin within the jurisdiction of the

Town. Nor shall any person, firm or corporation cast, throw, sweep, sift, or deposit any of the aforementioned items anywhere within the jurisdiction of the Town in such a manner that it may be carried or deposited in whole or in part by the action of the sun, wind, rain or snow into any of the aforementioned places.

- (2) If the litter as described in the preceding paragraph was deposited, placed, dropped or thrown from a motor vehicle, it shall be deemed that the registered owner is prima facie responsible for the violation of this section.
- (3) This section shall not apply to the deposit of material under a license authorized by any By-law of the Town or to goods, wares or merchandise deposited upon any public way or other public place temporarily, in the necessary course of trade, or to articles or things deposited in or conducted into the Town sewer system through lawful drains in accordance with the By-laws of the Town relating thereto.

15.21: Illegal Dumping

- (1) It shall be unlawful for any person, firm, or corporation, or their agent, employee, or servant to deposit, dump, or store any kind of dirt, rubbish, waste article, thing or substance whatsoever, whether liquid or solid, garbage, trash, hazardous or non-hazardous waste, toxic or non-toxic chemicals, parts of motor vehicles, tires, building materials of any type, household or industrial furnishings, or appliances in or upon any public or private way or in or upon any town-owned property or other place in the Town or any river, brook, stream or wetlands (as classified by the Wetlands Protection Act), or in any public water, drain, sewer or receiving basin within the jurisdiction of the Town.
- (2) This section shall not apply to the deposit of material under a license authorized by any By-law of the Town or to goods, wares, or merchandise deposited upon any public way or other public place temporarily, in the necessary course of trade, or to articles or things deposited in or conducted into the Town sewer system through lawful drains in accordance with the By-laws of the Town relating thereto.

15.22: Abatement of Graffiti

- (1) Description
 - (A) For the purposes of this By-law, Graffiti means any inscription, symbol, design, or configuration of letters or numbers written, drawn, carved, etched, marked, painted, stained, marred, stuck on, or adhered to any surface on public or private property without the express permission of the owner of such property, including, but not limited to, trees, signs, poles, fixtures, utility boxes, walls, paths, walks, streets, underpasses, overpasses, bridges, trestles, buildings, or any other structures or surfaces.

(2) Property Owner Responsibilities

- (A) The existence of graffiti on any real property or structure within the Town is expressly declared a public and private nuisance affecting public health and community security. Vandalism and graffiti affects the quality of life of residents, and the rights and values of property owners, both public and private; therefore, this By-law shall be strictly enforced. No owner of any real property within the Town shall allow any graffiti to remain upon any structure located on the owner's property when the graffiti is visible from the street or from other public or private property.
- (B) It shall be unlawful for the owner and/or occupant of the property, which is in the public view, to place or give permission to place any graffiti on such property.

(3) Removal Requirements

- (A) Upon determining that graffiti exists on any private or other non-town owned property the Police Chief or his or her Designee shall mail or deliver a notice to the owner of the property on which the graffiti exists advising the owner that the graffiti must be removed within ten (10) days. In the case of graffiti on private property, the property owner shall, within ten (10) days of receipt or delivery of the notice, remove the graffiti.
- (B) A property owner shall be deemed to have complied with an order to abate graffiti if it is obliterated by paint or by such other means as shall completely obliterate the graffiti and remove the nuisance.

(4) Enforcement

- (A) Nothing in this By-law shall be construed to limit in any way the Town's authority to order the abatement of a nuisance as set forth in Massachusetts General Laws, Chapter 111, Section 123, or any other general laws.

~~15.23: Sex Offender Residency~~

~~(1) Definitions~~

- ~~(A) "Park": Public land located within the Town and designated for active or passive recreational or athletic use by the Town, the Commonwealth of Massachusetts or other governmental subdivision.~~
- ~~(B) "School": Any public or private educational facility that provides services to children in grades kindergarten through twelve (12).~~

- (C) ~~“Day care center”: An establishment, whether public or private, which provides care for children and is registered with and licensed pursuant to the laws of the Commonwealth of Massachusetts by the Office of Child Care Services.~~
- (D) ~~“Elderly housing facility”: A building or buildings on the same lot containing four (4) or more dwelling units restricted to occupancy by households having one (1) or more members fifty five (55) years of age or older.~~
- (E) ~~“Place of worship”: A structure used for religious worship or religious education purposes on land owned by, or held in trust for the use of, any religious organization.~~
- (F) ~~“Sex offender”: A person who resides, works or attends an institution of higher learning in the Commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the Department of Youth Services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under Massachusetts General Laws, Chapter 123A, Section 14, in force at the time of adjudication, or a person released from civil commitment pursuant to Massachusetts General Laws, Chapter 123, Section 9, on or after August 1, 1981.~~
- (G) ~~“Sex Offender Registry”: The collected information and data that is received by the criminal history systems board pursuant to Massachusetts General Laws, Chapter 6, Sections 178C to 178P, inclusive, as such information and data is modified or amended by the Sex Offender Registry Board or a court of competent jurisdiction pursuant to said Massachusetts General Laws, Chapter 6, Sections 178C to 178P, inclusive.~~
- (H) ~~“Permanent residence”: A place where a person lives, abides, lodges, or resides for five (5) or more consecutive days or fourteen (14) or more days in the aggregate during any calendar year.~~
- (I) ~~“Temporary residence”: A place where a person lives, abides, lodges, or resides for a period of less than five (5) consecutive days or fourteen (14) days in the aggregate during any calendar year, which is not the person’s permanent address or the place where the person routinely lives, abides, lodges, or resides.~~

(J) ~~“Establishing a residence”~~: To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one (1) location, and may be mobile or transitory. This may include purchasing real property or entering into a lease or rental agreement for real property (including a renewal or extension of a prior agreement whether through written execution or automatic renewal).

(2) ~~Sexual Offender Residence Prohibition; Penalties; Exceptions~~

(A) ~~It is unlawful for any sex offender who is finally classified as a Level Two (2) or Three (3) offender, pursuant to the guidelines of the Sex Offender Registry Board, to establish a permanent residence within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship.~~

(B) ~~For purposes of determining the minimum distance of separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence to the nearest outer property line of a school, day care center, or park, playground, elderly housing facility, or place of worship.~~

(C) ~~Any registered Level Two (2) or Level Three (3) sex offender who establishes a permanent residence within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship shall be in violation of this Section and shall, within thirty (30) days of receipt of written notice of the sex offender’s noncompliance with this chapter, move from said location to a new location, but said new location may not be within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship. It shall constitute a separate violation for each day beyond the thirty (30) days the sex offender continues to reside within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship. Furthermore, it shall be a separate violation each day that a sex offender shall move from one location in the Town to another that is within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship.~~

(D) ~~Violation of this By-law, or of any regulations adopted hereunder, may be enforced through any lawful means in law or in equity by the Board of Selectmen, or their duly authorized agents, or any police officer of the Town, including, but not limited to, enforcement by non-criminal disposition pursuant to Massachusetts General Laws, Chapter 40, Section 21D. Each day a violation exists shall constitute a separate violation. The penalties shall be as follows:~~

(i) ~~First Offense: Notification to offender that he or she has thirty (30) days to move.~~

- (ii) ~~Subsequent Offense: Non-criminal fine of Three Hundred Dollars (\$300.00) each day the violation occurs or continues and notification to the offender's landlord, parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board that the person has violated a Town By-law. Such a subsequent offence constitutes a breach of the peace for which the offender is also subject to immediate arrest.~~
- (E) ~~A person residing within one thousand (1,000) feet of any school, day care center, park, playground, elderly housing facility, or place of worship does not commit a violation of this section if any of the following apply:~~
- (i) ~~The person established the permanent residence and reported and registered the residence prior to the effective date of this By-law;~~
 - (ii) ~~The person was a minor when he or she committed the offense and was not convicted as an adult;~~
 - (iii) ~~The person is a minor;~~
 - (iv) ~~The school, day care center, park, playground, elderly housing facility, or place of worship within one thousand (1,000) feet of the personal permanent residence was established after the person established the permanent residence and reported and registered the residence pursuant to the Sex Offender Registry Law;~~
 - (v) ~~The person is required to serve a sentence at a jail, prison, juvenile facility, or other correctional institution or facility;~~
 - (vi) ~~The person is admitted to and/or subject to an order of commitment at a public or private facility for the care and treatment of incapacitated person or mentally ill person pursuant to Massachusetts General Laws, Chapter 123; and/or~~
 - (vii) ~~The person is a mentally ill and subject to guardianship pursuant to Massachusetts General Laws, or is a incapacitated person and subject to guardianship pursuant to Massachusetts General Laws, and who resides with his or her guardian, or residing within a group residence that is professionally staffed and supervised twenty four (24) hours a day.³~~

³ Section 15.23 was disapproved and deleted in its entirety by the Massachusetts Attorney General pursuant to her opinion letter of October 9, 2015. The Massachusetts Supreme Judicial Court determined in *Doe v. City of Lynn*, 36 N.E. 3d 18 (August 28, 2015) that municipalities are preempted from regulating where sex offenders may live or be.

15.24: Special Police Officers

(1) Appointments

- (A) The Police Chief of the Town may appoint, as he or she determines, persons as special police officers to perform any duties that the Police Chief shall direct.
- (B) Special police officers shall be sworn before the Town Clerk who shall keep a record of all such appointments.

(2) Authority

- (A) Duly appointed and sworn special police officers shall have the same jurisdiction and all lawful authority, including mutual aid and powers of arrest, as sworn full time officers.
- (B) Special police officers, so appointed, shall not be subject to Massachusetts General Laws, Chapter 31; Massachusetts General Laws, Chapter 41, Section 99A; or Massachusetts General Laws, Chapter 150E.

(3) Term

- (A) A special police officer shall be appointed for a term of one (1) year, unless sooner removed by the Police Chief.

15.25: Soliciting and Canvassing

(1) Statement of purpose

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

(2) Definitions

- (A) “Soliciting”: It shall include any one (1) or more of the following door-to-door activities: Selling, or seeking to obtain orders for the purchase of goods or services, including advertising in any type of publication for any kind of consideration whatsoever.
 - (B) “Selling”: Selling, leasing, or taking orders for the sale of any goods, wares, merchandise, or services whatsoever, including, without limitation, books, periodicals, food, and home improvement services, or attempting to so sell, lease, or take orders, whether or not advance payment on such sales is collected.
 - (C) “Canvassing”: Person-to-person distribution of literature, periodicals, or other printed materials for commercial purposes. It shall not include placing or dropping off printed materials on the premises:
 - (i) Seeking to enlist membership in any organization for commercial purposes; and/or
 - (ii) Seeking to present, in person, organizational information for commercial purposes.
 - (D) “Residence”: Every separate living unit, occupied for residential purposes by one (1) or more persons contained therein, within any type of building or structure.
 - (E) “Local”: Based or operated within the Town.
- (3) Authority
- (A) The Police Chief or his or her Designee shall be the licensing authority for canvassing and soliciting.
- (4) Exemptions
- (A) The provisions of this section shall not apply to officers or employees of the town, county, state, or federal government, or any subdivision thereof when on official business, nor shall it be construed to prevent route salespersons or other persons having established customers to whom they make periodic deliveries from calling upon such customers.
 - (B) Local charitable, benevolent, fraternal, religious, or political candidates and community organizations are exempt from the provisions of this By-law.
- (5) Registration Requirements

- (A) Every person and organization intending to engage in soliciting or canvassing door-to-door in the Town shall apply for a license from the Police Chief by filing a registration application form with the Auburn Police Department. Applications for both individual and organizational registrations shall be filed at least seven (7) business days in advance.
- (6) Organizational application for certificate of registration and fee
- (A) Application for a certificate of registration for the organization shall be made upon a form provided by the Police Department at no cost to the organization.
 - (B) Organization application forms shall include the following information: The name and address of the organization making application for registration and the names, and addresses of the organizations' principal officers. If the organization is a charitable organization, a certification that the most recent Annual Registration Statement required to be filed with the Attorney General's Division of Public Charities has been so filed. If the organization is a professional solicitor or a commercial co-venturer for a charitable organization, a copy of the contract with the charitable organization must be provided with this application. Failure to include a copy of the contract or current Annual Registration Statement from the charitable organization under such circumstances will render the application incomplete and no action will be taken thereon.
 - (C) Organizational Registrations shall further include:
 - (i) The name, title, and telephone number, date of birth, and a copy of a valid driver's license or other government-issued photo identification of the person(s) filing the application form;
 - (ii) The names, addresses, and telephone numbers of the person(s) who shall be directly supervising the solicitation or canvassing operation in the Town;
 - (iii) A list of the names, addresses, and dates of birth of all individuals who will be employed in solicitation or canvassing in the Town;
 - (iv) The period of time for which the certificate of registration is needed provided, however, that no certificate of registration shall be granted for longer than a one hundred twenty (120) day period;
 - (v) A brief description of the nature of the business and the goods to be sold;

- (vi) The names of the last three (3) communities, if any, in which the organization has conducted a solicitation or canvassing operation, complete with the date of the issuance and the date of the expiration of the license, copies of any licenses issued by those communities to the organization, and proof of insurance or bond information.
- (7) Individual applicant registration requirements and fee
- (A) Applicants for an individual registration certificate shall file with the Police Chief, on a form issued by him or her, a written application signed under the penalties of perjury containing the following information:
 - (i) Name of applicant;
 - (ii) Date of birth of applicant;
 - (iii) Place of birth of applicant;
 - (iv) Address of applicant (local and permanent address);
 - (v) Applicant's height, weight, eye, and hair color;
 - (vi) Applicant's Social Security Number;
 - (viii) The name and home office address of the applicant's employer. If self-employed, it shall so state;
 - (ix) State of registration of the vehicle's owner and address;
 - (x) Two (2) photographs of the applicant, which photographs shall be two (2) inches by two (2) inches in size, shall be submitted and shall show the head and shoulders of the applicant in a clear and distinguishing manner, and;
 - (xi) If operating a motor vehicle, the year, make, color, model, motor number, and registration number.
 - (B) Upon approval, each solicitor or canvasser shall be issued an individual certificate of registration/license and shall carry it upon his or her person at all times while soliciting or canvassing in the town.
- (8) Individual application fee

- (A) The CORI fee for each individual applicant shall be One Hundred Dollars (\$100.00) payable to the Auburn Police Department in advance of processing.
 - (B) The CORI criminal history check fee is non-refundable.
- (9) Application registration processing
- (A) Upon receipt of the applications, the Police Chief or his or her Designee shall investigate the applicant's reputation as to morals and integrity, and shall approve or disapprove the application, and shall notify the applicant of his or her decision. In the event that the application is approved, a certificate shall be issued. If the applicant is disapproved the applicant shall have the right to appeal to the Town Manager.
 - (B) Fully completed applications for certificates shall be acted upon within ten (10) business days of receipt. The Police Chief shall cause to be kept accurate records of every application received, together with all other information and data pertinent thereto, and of all certificates of registration issued under this section and of all denials and revocations.
 - (C) After receiving preliminary approval, each applicant must make an appointment to have his or her fingerprints taken by an officer of the Police Department.
- (10) Application denial: Incomplete
- (A) Organizational and/or individual applications which are submitted but incomplete shall not be processed and no license shall be issue until they are properly completed.
- (11) Application denial: Suitability

(A) The Police Chief shall routinely grant licenses without further inquiry, but shall refuse registration to an organization or a person whose license or certificate has been revoked for violation of this regulation within the previous five (5) year period or who is a fugitive from justice, has a pending felony case, has been convicted of murder, manslaughter, rape or any other sex crime, kidnapping, robbery, arson, burglary, breaking and entering, felony assault, illegal possession of a firearm or dangerous weapon, distribution of any illegal narcotic drugs, felony larceny, three (3) or more misdemeanor assaults, or three (3) or more misdemeanor larcenies, because such persons pose a substantial degree of dangerousness to minors and other persons vulnerable to becoming victims of the violent crimes so listed. The Police Chief shall also refuse to register a person who has an active arrest warrant in another state whether or not there is rendition. The Police Chief shall also refuse to register or issue a license to a person who is a sex offender required to register with the Massachusetts Sex Offender Registry Board, or any other similar government entity, and who is classified or considered to be a moderate to high risk of re-offending. Such individuals pose a substantial degree of dangerousness to minors or to other vulnerable persons who may become victims of sex crimes.

(12) Period of Validity

(A) Each organizational and individual certificate of registration, issued pursuant to this By-law shall expire one hundred twenty (120) calendar days from date of issue.

(13) License transfer

(A) No organizational or individual registration or certificate shall be transferable to any other person or entity.

(14) Notice to be posted by owners or occupants.

(A) Every resident or business, desiring to secure the protection provided by the provisions pertaining to soliciting and canvassing contained in this Section, shall comply with the following directions: Notice of the determination by the occupant to give invitation to solicitors or to refuse invitation to solicitors or canvassers to any residence shall be given in the following manner: A clearly legible weatherproof card or plaque approximately three (3) inches by four (4) inches in size shall be exhibited on or near the main entrance door to the residence, indicating the determination by the occupant, and containing the applicable words as follows:

- (i) “Only solicitors registered in Auburn invited,” or
- (ii) “No solicitors.”

(B) The letters shall be at least one third (1/3) inch in height. Such notice so exhibited shall constitute sufficient warning to any solicitor of the determination by the occupant of the residence or business of the information contained thereon.

(15) Duty of Solicitors and Canvassers: Generally

(A) It shall be the responsibility of solicitors upon going into any premises in the Town upon which a residence or business is located, to first examine the notice provided for in Section 14, if any is attached, and to be governed by the statement contained on any notice. If the notice states "Only solicitors registered in Auburn invited," the solicitor who does not possess a valid certificate of registration as provided in this Section shall immediately and peacefully depart from the premises, and if the notice states, "No solicitors," the solicitor, even though registered in the Town, shall immediately and peacefully depart the premises.

(B) Any solicitor who has gained entrance to any residence, whether invited or not, shall immediately and peacefully depart from the premises when requested to do so by the occupant.

(16) Methods of Solicitation, Canvassing, or other Door-to Door: Prohibited Activities

(A) No solicitor or canvasser may use any plan, scheme, or ruse to misrepresent the true status or mission of any person conducting the solicitation or canvas in order to gain admission to the home, office, or other establishment of any person in the Town.

(B) No solicitor or canvasser may falsely represent, directly or by implication, that the solicitation, canvassing, or other activity is being done on behalf of a governmental organization, or on behalf of any municipal employee, department head, elected official, or public official currently employed or serving the Town.

(C) No solicitor or canvasser may solicit or continue to solicit, canvass or conduct activities after being advised by the Police Department of the registration requirements or after a registration certificate has been revoked or denied.

- (17) Duties of Solicitors and Canvassers: Certificate
- (A) Each person shall at all times, while soliciting or canvassing in the Town, carry upon his or her person an approved registration certificate; this certificate shall be exhibited by such the registrant whenever he or she is required to do so by any police officer or by any person solicited.
- (18) Lawful Hours to Solicit or Canvass
- (A) All canvassing or soliciting under this section shall be confined to the hours between 10:00 A.M. and 8:00 P.M. throughout the year.
- (19) License revocation
- (A) The Police Chief is hereby vested with jurisdiction over the revocation of licenses or registrations, and he or she may exercise it for just cause. Just cause shall be:
- (i) Fraud or misrepresentation in the application for the license;
 - (ii) Fraud or misrepresentation in the course of soliciting;
 - (iii) Conducting the business of soliciting contrary to any conditions specified in this By-law;
 - (iv) Determination of unsuitability;
 - (v) Rudeness or discourtesy to residents;
 - (vi) Conducting the business of soliciting in such manner as to violate any laws of the Commonwealth of Massachusetts, or these By-laws.
- (B) Immediately upon such revocation, the Police Chief or his or her Designee shall give written notice to the holder of the license in person or by certified mail addressed to his or her residence address set forth in the application. Immediately upon the giving of such notice, the organizational registration and individual certificates or licenses shall become null and void.
- (20) Appeals

- (A) Any person or organization that is denied registration or whose registration has been revoked may appeal by filing a written notice of appeal with the Town Manager. Such appeal must be filed within five (5) days after the receipt of the notice of denial or revocation. The Town Manager shall hear the appeal within ten (10) business days after receiving the written notice of appeal.

15.26: Criminal Offender Record Information Checks (10/18/2016)

(1) Purpose, Scope and Authorization

- (A) This By-law shall govern criminal offender record information (“CORI”) checks that the Town of Auburn conducts.
- (B) This CORI Bylaw applies to all boards, commissions, and employees serving as the licensing authority for the Town of Auburn with regard to occupational licenses, and all Town employees who assist with occupational license applications.
- (C) Generally, CORI checks shall be conducted for the sole purpose of making suitability determinations and only by persons authorized to do so under this By-law and applicable law. CORI checks shall be conducted in a manner that conforms with this By-law and with all applicable federal, state, and local laws, regulations, and By-laws.
- (D) Named-based CORI checks may be conducted to the extent permitted by law.

(2) Definitions

- (A) As used in this By-law, “CORI” refers to records obtained as the result of criminal offender record information checks conducted by the Federal Bureau of Investigation (“FBI”) and any information that is recorded as the result of the initiation of criminal proceedings or any consequent related proceedings, including, but not limited to, Massachusetts Board of Probation (“BOP”) records and other information available from the Department of Criminal Justice Information Systems (“DCJIS”), fingerprints, photographs, and other identifying data that is recorded as the result of the initiation of criminal proceedings.

(3) Use of Criminal Offender Record Information Checks

- (A) All CORI results shall be kept confidential, and can be disseminated only as authorized by law or regulation. Access to CORI results within the Town shall be limited to those individuals who have a “need to know.” This may include, but not be limited to, staff submitting the CORI requests

and staff charged with processing licensing applications. The Town shall keep a current list of each individual authorized to have access to, or view, CORI. This list shall be updated every six (6) months and is subject to inspection upon request by the DCJIS at any time.

- (B) All personnel authorized to conduct CORI checks and/or to review CORI will review and be thoroughly familiar with, the educational and relevant training materials regarding CORI laws and regulations made available by the DCJIS.
- (C) No CORI check may be conducted until the subject has:
 - 1. Received a copy of this Policy; and
 - 2. Signed and otherwise completed a CORI Acknowledgment Form.
- (D) If a new CORI check is to be made on a subject within a year of his or her signing of the CORI Acknowledgment Form, the subject shall be given seventy-two (72) hours' notice that a new CORI check will be conducted.
- (E) If a subject objects to the new request for CORI, the CORI Acknowledgment Form shall become invalid.
- (F) If a subject's occupational license expires or is revoked, the CORI Acknowledgement Form shall become invalid.
- (G) CORI used for licensing purposes shall be accessed only for applicants who meet all other requirements for the license for which the individual is being screened.
- (H) Prior to conducting a CORI check, the Town shall verify the identity of the subject against at least one (1) of the following forms of government-issued identification:
 - 1. A state-issued driver's license;
 - 2. A state-issued identification card with a photograph;
 - 3. A passport; or
 - 4. A military identification.
- (I) If the subject does not have at least one (1) of the foregoing forms of government-issued identifications, the Town shall verify the subject's identity by other forms of documentation as determined by the DCJIS.
- (J) If the Town is unable to verify a subject's identity and signature in person, the subject may submit a completed CORI Acknowledgment Form acknowledged by the subject before a Notary Public.

- (K) The Town shall not request CORI until it has a signed and dated CORI Acknowledgment Form certifying that the subject was properly identified.
- (L) If the criminal record is received from the DCJIS, the information shall be closely compared with the information on the CORI Acknowledgement Form and any other identifying information provided by the applicant to ensure the record belongs to the applicant.
- (M) If the information in the CORI record does not exactly match the identification information provided by the applicant, a determination shall be made by an individual authorized to make such determinations based on a comparison of the CORI record and documents provided by the applicant.
- (N) In no event, shall the Town request or require a person to supply it with a copy of his or her own CORI.
- (O) The Town shall provide a subject with a copy of his or her CORI upon the subject's request. In all events, the Town shall provide the subject with a copy of his or her CORI prior to:
 - 1. Questioning the subject about the subject's criminal history; or
 - 2. Making an adverse determination on the basis of the subject's CORI.
- (P) The Town shall not make an adverse determination on the basis of the subject's CORI without first:
 - 1. Providing the subject with a copy of this By-law;
 - 2. Notifying the subject in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse determination;
 - 3. Providing the subject with a copy of his or her CORI and with information concerning the source of the criminal history record;
 - 4. Identifying for the subject the part of his or her CORI that appears to make him or her unsuitable; and
 - 5. Providing the subject with information regarding the process for correcting CORI through DCJIS and for establishing one's self as the victim of identity theft.
- (Q) The Town shall review any information the subject supplies disputing the accuracy of the CORI. The Town shall not deny a license based on CORI unless the subject has been afforded an opportunity to dispute the accuracy

of the CORI. The Town shall inform the subject of its decision in a timely manner.

- (R) The Town shall document all steps it takes to comply with this Bylaw.
- (S) If the Town reasonably believes that CORI belongs to the subject and is accurate, it shall make a determination of suitability based on the CORI.
- (T) Unless otherwise provided by applicable law or regulation, a criminal record shall not automatically disqualify a subject. Rather, determinations of suitability based on CORI shall be made consistent with this By-law and applicable laws and regulations. Factors the Town shall consider in making suitability determinations include, but are not limited to:
 - 1. Relevance of the record to the application;
 - 2. The nature of the work to be performed;
 - 3. Time since the conviction;
 - 4. Age of the subject at the time of the offense(s);
 - 5. Nature, gravity, and specific circumstances of the offense(s);
 - 6. The number of offenses;
 - 7. Whether the subject has pending charges;
 - 8. Any relevant evidence of rehabilitation efforts or lack thereof;
 - 9. Applicable laws and regulations setting forth criminal history disqualifiers; and
 - 10. Any other relevant information, including information submitted by the subject.
- (U) CORI may be shared with staff authorized to request, receive, or review CORI for the purposes of evaluating an application for an occupational license. The Town shall, upon request, share CORI with government entities charged with overseeing, supervising, or regulating the Town.
- (V) The Town shall maintain an electronic or paper Secondary Dissemination Log reflecting dissemination outside of the licensing authority's organization, and stating the following:
 - 1. The subject's name;
 - 2. The subject's date of birth;

3. The date and time of the dissemination;
 4. The name of the person to whom the CORI was disseminated and the name of the organization for which the person works, if applicable; and
 5. The specific reason for the dissemination.
- (W) Hard copies of CORI shall be stored in a separate locked and secure location such as a file cabinet. The Town shall limit access to the locked and secure location to persons who have been approved to access CORI. Hard copies of CORI shall be destroyed by shredding or otherwise before disposal.
- (X) The Town shall limit password access to only those persons who have been approved to access CORI. CORI shall not be stored using public Cloud storage methods. Electronic copies of CORI shall be destroyed by deleting them from the hard drive on which they are stored and from any system used to back up the information before disposing of it. The Town shall appropriately clean all CORI by electronic or mechanical means before disposing of or repurposing a computer used to store CORI.
- (Y) CORI Acknowledgment Forms and Secondary Dissemination Logs shall be maintained for a minimum of one (1) year. CORI shall not be maintained for more than seven (7) years from the date of the final determination.
- (Z) A non-refundable fee as established by law, shall be charged by the Police Department for conducting CORI checks, shall be set annually by the Board of Selectmen, and shall be placed on the Fee Schedule.

Chapter XVI: Fire Rescue Department

16.01: False Alarms: Police and Fire

- (1) Preamble
 - (A) The purpose of this By-law is to reduce the number of false alarms and to promote the responsible use of alarm devices in the Town.
- (2) Definitions

- (A) “Alarm Device”: Any device which, when activated, calls for a police or fire response and (i) transmits a signal to police or fire headquarters, (ii) transmits a signal to a person who relays information to the Police, or Fire Rescue Department or (iii) produces an audible or visible signal to which the Police or Fire Rescue department are expected to respond. Excluded from this definition and the scope of this By-law are devices which are designated to alert or signal only persons within the premises in which the device is installed and devices which are activated by the release of water from a sprinkler system.

- (B) “Alarm User”: The owner of any premises on which an alarm device is used, provided that an occupant who expressly accepts responsibility for an alarm device by registration, pursuant to this By-law, shall be deemed the alarm user.

- (C) “Automatic Dial Alarm”: A telephone device or attachment that mechanically or electronically selects a telephone line to the Police or the Fire Rescue Department and produces at the Police or Fire station a prerecorded voice message reporting a criminal act, fire, or other emergency calling for police or fire response.

- (D) “Contractor”: Any individual, firm, or corporation in the business of supplying and installing alarm devices or servicing the same.

- (E) “False Alarm”: Any activation of an alarm device to which the Police or Fire Rescue Department responds and which is not caused by a criminal act, fire, or other emergency, except an activation caused by:
 - (i) Malfunction of telephone company equipment or lines as verified by monitoring facilities at police or fire headquarters, or as verified by the Administrator, or
 - (ii) Power failure as verified by the Administrator.

- (3) Administrator
 - (A) There shall be Administrators for alarm devices who shall have the powers and duties granted under this By-law. The Police Chief or his or her Designee and the Fire Chief or his or her Designee shall be the Administrators.

- (4) Registration Required

- (A) Each alarm user shall register his or her alarm device with the Administrator prior to use, provided that alarm devices in use as of the effective date of this By-law may be registered no later than sixty (60) days from such date.
- (5) Registration Procedure
- (A) Alarm device registration shall be accomplished by filling out a form provided by the appropriate Administrator. It shall include information concerning the identity of the prospective alarm user, the identity of the alarm user's contractor, if any, and the nature of the proposed alarm device. The Administrator shall issue the alarm user written acknowledgment of proper registration. Every alarm user shall submit to the appropriate Administrator the names and telephone numbers of a sufficient number of persons who can be reached at any time, day or night, and who are authorized to reset, repair, or otherwise respond to an emergency signal transmitted by an alarm device. It shall be the user's responsibility to keep this list current at all times.
- (6) Confidential Information
- (A) All information in the possession of the Administrators and the Police or Fire Rescue Department concerning particular alarm users and particular alarm devices shall, to the extent permissible under State law, be confidential and shall not be divulged without the written consent of the alarm user or users concerned.
- (7) Automatic Dialer Alarms
- (A) An automatic dial alarm system shall not be allowed to be connected to the Police Department or Fire Rescue Department.
- (8) Exterior Audible Devices
- (A) Unless required by law, no alarm device, which produces an exterior audible signal, shall be installed unless its operation is automatically restricted to a maximum of fifteen (15) minutes. Any alarm device in use as of the effective date of this By-law must comply with this section within one hundred twenty (120) days of such date.
- (9) False Alarm Fine
- (A) When the Police Department or Fire Rescue Department has responded to a false alarm, the appropriate Administrator shall impose a fine on the responsible alarm user. In instances where both the Police and Fire Rescue Departments respond to a false alarm, the Administrator shall be the Fire Chief or his or her Designee.

- (B) There shall be no fine for the first false alarm if it occurs within one (1) month after installation of an alarm device.

(10) Notification and Appeal

- (A) The Administrator shall notify the responsible alarm user of any false alarm fee by mail within thirty (30) days. After the mailing of such notice, the alarm user may file with the Administrator information to show that the alarm was not a false alarm. The Administrator shall, within thirty (30) days, consider such information, reaffirm or rescind the false alarm fee, and notify the alarm user of his or her decision by mail. Within thirty (30) days after mailing of such notice, the alarm user may file a written appeal with the Town's Hearing Officer as appointed by the Town Manager.

(11) Appeal to the Town Hearing Officer

- (A) Upon receipt of a timely appeal from a false alarm fee, the Town Hearing Officer shall hold a hearing. At least fifteen (15) days before the hearing, he or she shall mail notice of the time and place of said hearing to the alarm user making the appeal at his or her last known address. On the basis of information provided by the alarm user and other information introduced at the hearing, the Town Hearing Officer shall affirm the fee if he or she finds that the fee was properly imposed, or rescind the fee if the fee was not properly imposed.

(12) Refusal or Failure to Pay Fee

- (A) Refusal or failure to pay a fee properly levied shall result in an additional penalty not to exceed Three Hundred Dollars (\$300.00).

(13) Exceptions

- (A) The provisions of this By-law shall not apply to alarm devices on premises owned or controlled by the Town nor to alarm devices installed in a motor vehicle or trailer.

16.02: Display of Street Address Number on Buildings

(1) Numbering

- (A) Every building in the Town, including, but not limited to, dwellings, apartment buildings, condominiums, and business establishments shall have affixed thereto a number representing the address of such building.
- (B) All residential houses and commercial buildings fronting on any public or private street, avenue, drive, trail, lane, road, court, terrace, way, circle,

place, or parkway shall be numbered.

(2) Placement of Numbers

- (A) The figures used in numbering the residential house or commercial building shall be in Arabic numerals made of durable material. Such number shall be colored to contrast sharply with the background and shall be in Arabic numerals at least four (4) inches in height for residential buildings, and in Arabic numerals no less than ten (10) inches nor more than eighteen (18) inches in height for commercial buildings. The size for commercial buildings shall be determined upon a visual inspection of

the property. Such numbers shall be placed in a conspicuous place near the door which faces the public or private street, avenue, drive, trail, lane, road, court, terrace, way, circle, place, or parkway. If the figures cannot be seen from the public or private street, avenue, drive, trail, lane, road, court, terrace, way, circle, place, or parkway, a second set of figures shall be placed on not less than three (3) sides of a four (4) inch by four (4) inch post or mailbox, thirty-six (36) inches above grade, at the property line adjacent to the main entrance on the public or private street, avenue, drive, trail, lane, road, court, terrace, way, circle, place or parkway. The second set of figures shall be no less than four (4) inches in height.

(3) Owner to Number at Own Expense

- (A) It shall be the duty of every person owning a building(s) located within the limits of the Town to number the same at his or her expense with the number assigned to the property by the Town's Assessor's Office. The owner or owners who fail to conform to this By-law shall be subject to a fine for every seventy-two (72) hours that the violation still exists.

16.03: Rapid Entry System Key Lock Box on Certain Commercial Buildings

(1) Placement Requirements

- (A) Every building which has an alarm system, fire alarm system, fire protection system, or medical alarm system, which transmits an alarm off premise, shall be required to have a rapid entry key box installed.
- (B) Any structure where access to or within a structure or an area is unduly difficult because of secured openings, or where immediate access is necessary for lifesaving or firefighting purposes shall be required to have a rapid entry key box installed.

(2) Installation Location

- (A) The secure key box is to be installed in a location accessible to the Fire

Rescue Department in case of an emergency. The key box shall contain keys to the door(s), fire alarm control panel, and any other keys necessary to operate or service the fire alarm, fire protection, or medical alarm systems.

(3) Change of Keys to the Building

- (A) The operator of the premises shall immediately notify the Fire Chief or his or her Designee and provide the new key(s), any time a lock is changed and a key(s) to that lock is contained in the key box. The key box shall be a type approved by the Fire Chief or his or her Designee and shall be located and installed as approved by the Fire Chief or his or her Designee.

(4) Failure to Conform to the By-law

- (A) The owner or owners who fail to conform to this By-law shall be subject to a fine for every seventy-two (72) hours that the violation still exists.

16.04: Adequate Public Safety (Police and Fire) Radio Coverage in Buildings or Structures

(1) In-Building Radio Systems

- (A) New buildings, structures or portions of existing buildings or structures undergoing renovations or rehabilitation constituting new construction shall be equipped with in-building radio systems as an integral component of the life safety equipment of the building or structure. The primary function of such systems is to provide reliable firefighter and police communications within at least ninety five percent (95%) of a building or structure's floor area and one hundred percent (100%) communications in any stairwells and at fire alarm control panels.

(2) Exemptions

- (A) The following shall be exempt from the provisions of this Section:
- (i) One (1) and Two (2) Family dwellings as defined in the Massachusetts State Building Code, 780 CMR;
 - (ii) Buildings constructed of wood frame with no metal construction nor any underground storage or underground parking areas; and,
 - (iii) Buildings or structures or portions of buildings or structures where the Fire Rescue & Police Department have performed radio tests for signal reception and determined radio coverage is adequate.

- (3) Adequate Radio Coverage
 - (A) For purposes of this code, adequate radio coverage shall include a minimum signal level of DAQ 4 (Delivered Audio Quality 4 [speech easily understood. occasional noise/distortion]). This standard shall be assessed utilizing hand held radio units used by the Fire Rescue or Police Departments.

- (4) Signal Strength
 - (A) The in-building radio system shall provide a signal strength as follows:
 - (i) A minimum of -95 dBm available in ninety five percent (95%) of the floor area of each floor of the building and one hundred percent (100%) communications in any stairwells and at fire alarm control panels when transmitted from the Public Safety Dispatch Center.
 - (ii) A minimum of -95 dBm received at the Public Safety Dispatch Center from ninety five percent (95%) of the area of each floor of the building and one hundred percent (100%) communications from any stairwells and fire alarm control panels. Required in-building radio systems shall be FCC certified Bi-Directional VHF Amplifier(s), as needed.

- (5) Bi-Directional Amplification System
 - (A) Assembly and installation of the Bi-Directional Amplification System shall be in accordance with the Massachusetts Electrical Code, as applicable.

- (6) System Requirements
 - (A) The radio system may utilize a radiating cable system or an internal multiple antenna system.
 - (B) Radiating coaxial cables shall be run without conduit. Where installed in a plenum type ceiling, the cable insulation shall be a fire-resistant, low-smoke producing type, with a minimum rating of CATVR.
 - (C) Cables other than radiating coaxial cables shall be run in Electrical Metallic Tubing (EMT) or as otherwise approved by the Fire Chief, Police Chief or their Designee.

(7) Public Safety Frequencies

- (A) The Fire Rescue and Police Departments shall transmit and receive on frequencies as determined by the Fire Chief and Police Chief or their Designee.

(8) Connectivity

There shall be connectivity between the in-building radio system and the fire alarm system as determined by the Fire Chief or their designee.
(5/2/2017)

(9) System Independence

- (A) The system shall be capable of operating on an independent battery and/or generator system for a period of at least twelve (12) hours without external power input. The battery system shall automatically charge in the presence of external power input.

(10) Amplifiers

- (A) Each amplifier shall be monitored for operation, primary, and low battery voltage. Failure of the amplifier, loss of primary power, or low battery voltage shall cause an audible alarm or other indication as approved by the Fire Chief, Police Chief or their Designee. The audible alarm or other indication shall not be silenced or disabled until the fault has been corrected.
- (B) Amplifiers shall be installed in secured areas in watertight NEMA 4 steel cabinets. The words "Auburn Public Safety Radios" shall be marked on the cabinet as well as the name of the maintenance vendor and the vendor's phone number.

(11) Owner Responsibilities

- (A) The building owner shall be responsible for testing all active components of the system, including, but not limited to, amplifier, power supplies, and back up batteries a minimum of once every twelve (12) months. Documentation of the test shall be maintained on site and a copy forwarded to the Auburn Fire Rescue and Police Departments.
- (B) All tests shall be conducted, documented, and signed by a person with a current FCC General Radiophone Operator License or its equivalent.
- (C) The building owner shall provide reasonable access to Fire Rescue and Police Department personnel or their representatives to conduct field-

testing of the radio systems, inspection of the working order and condition of the system, and note any required upkeep and review documentation relative to the system.

(12) Failure to Conform to the By-law

- (A) The owner or owners who fail to conform to this By-law shall be subject to a fine for every seventy-two (72) hours that the violation still exists.

16.05: Carbon Dioxide Permitting and Detection

(1) Installation Requirements

- (A) Carbon Dioxide gas protection shall be provided near the cylinder of a liquefied carbon dioxide system when it is located inside a building or an enclosed outdoor location. Additional carbon dioxide gas detection shall be provided near any regulators that reduce the operating pressure.
- (B) One (1) DOT 3AA cylinder of carbon dioxide, with an operational pressure of one thousand eight hundred (1,800) psi, that is connected to a piece of equipment does not require a Fire Rescue Department permit for installation, storage, use, or handling. One (1) additional DOT 3AA cylinder of carbon dioxide, with an operational pressure of one thousand eight hundred (1,800) psi, may be connected to the same system, provided that an isolation valve is in place, and that one (1) cylinder can be used at a time.
- (C) Any carbon dioxide system that uses a liquefied cylinder to store, use, or handle carbon dioxide shall require a Fire Rescue Department permit for the installation and inspection of such system.
- (D) The carbon dioxide gas detection alarm threshold shall be set as follows:
- (i) Pre-alarm (fifteen thousand (15,000) ppm): Pre-alarm notification may include, but is not limited to, the building owner, working supervisor, or maintenance company; and
 - (ii) Alarm (thirty thousand (30,000) ppm): Alarm notification shall include the complete area of the building, including building evacuation and activation of the 911 system, through an approved central, proprietary, or remote station to notify the Fire Rescue Department. If the building does not have a control panel to send a signal to an approved central, proprietary, or remote station an appeal to the Fire Chief may be submitted for review.

(2) Supervised Interior Audible & Visual Devices

- (A) The carbon dioxide gas detection system notification device shall alert employees and the public of hazardous conditions. A minimum of two (2) notification devices (audible and visible) shall be provided near the area/room where carbon dioxide cylinders are located, as well as in the common area where the public gathers. The notification devices shall be rated a minimum of one hundred (100) cd for a visible effect and seventy-five (75) dBA for an audible effect.
 - (B) Carbon dioxide gas detection systems shall be installed per the manufacturer's recommendation and shall be monitored pursuant to Section 16.05(1)(D).
- (3) Temporary Installations
- (A) If a business intends to install a liquefied carbon dioxide system but finds it necessary to install a temporary high pressure carbon dioxide system, a plan submittal is required and fees shall be assessed for the review and inspection.
 - (B) When the business is ready to submit plans for the liquefied carbon dioxide system, no plan review or fees will incur. The fee paid on the plan review for the temporary high pressure system shall be credited. The fee for the inspection of the liquefied carbon dioxide system shall still be assessed.
- (4) Failure to Conform to the By-law
- (A) The owner or owners who fail to conform to this By-law shall be subject to a fine for every seventy-two (72) hours that the violation still exists.

16.06: General Hazardous Materials

- (1) Authority
- (A) This By-law is adopted by the Town of Auburn under its home-rule powers, its police powers to protect the public health and welfare, and its authorization under Massachusetts General Laws, Chapter 40, Section 21. The Fire Chief or his/her designee and the Department of Development & Inspectional Services shall be the Administrators of this bylaw.
- (2) Purpose
- (A) The purpose of this By-law is to protect, preserve, and maintain the existing and potential groundwater supply, groundwater recharge areas, and surface water within the Town from contamination with hazardous materials.

(B) This regulation shall apply to all premises located in whole or in part within the Town of Auburn.

(3) Definitions

(A) The following definitions shall apply in the interpretation and implementation of this By-law:

- (i) “Toxic or Hazardous Materials”: Toxic or hazardous materials shall mean material including, but not limited to, any material or substances defined as being toxic or hazardous under Massachusetts General Laws, Chapters 21C and 21E using the Massachusetts Oil and Hazardous Substance List found in 310 CMR 40.000. The definition shall also include acids and alkalis, solvents, thinners, and pesticides when stored at or above the Reportable Quantity established in 310 CMR 40.000, the Massachusetts Contingency Plan, and any material in whatever form from which, because of its quantity, concentration, chemical corrosive, flammable, reactive, toxic, infectious, or radioactive characteristics, either separately or in combination with any other substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment, when improperly stored, treated, transported, disposed of, used, or otherwise managed.
- (ii) “Discharge”: The term discharge means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of toxic or hazardous material upon or into any land or waters of the Town. Discharge includes, without limitation, leakage of such materials from failed or discarded containers or storage systems, and disposal of such materials into any on-site sewage disposal system, drywell, catch basin, or unapproved landfill. The term discharge, as used and applied in this By-law, does not include the following:
 - (a) Proper disposal of any material in a sanitary or industrial landfill that has received and maintained all necessary legal approvals for that purpose;
 - (b) Applications of road salts in conformance with the Snow and Ice Control Program of the Massachusetts Department of Public Works and the Town of Auburn Department of Public Works; and
 - (c) Disposal of “sanitary sewage” to subsurface sewage disposal systems as defined and permitted by Title 5 of the Massachusetts Environmental Code.

- (iii) “Owner”: Every person who alone or severally with others:
 - (a) Has legal title to any property on which is located a hazardous or toxic material subject to this By-law;
 - (b) Has care, charge, or control of any such property in any capacity, including, without limitation, agent, executor, administrator, trustee, or guardian of the estate of the holder of legal title, or agent, trustee, or a person appointed by a court of competent jurisdiction; or
 - (c) Is a mortgagee in possession of such property.
- (iv) “Person”: Every individual, partnership, firm, corporation, association, group, or entity owning property or carrying on an activity regulated by the By-law.

(4) Storage of Flammable Fluids

- (A) A fee, set by the Board of Selectmen, shall be charged for the initial license for the storage of gasoline, fuel oil, and flammable fluids in accordance with Massachusetts General Laws, Chapter 148. This fee shall be paid with the application and is refundable if the application is denied.
- (B) An annual fee shall be charged for the renewal of storage licenses.

(5) Registration Requirements

- (A) Every owner or operator of a residential, commercial, or industrial establishment (including home occupations and agricultural and horticultural operations) storing hazardous materials in quantities totaling more than fifty (50) gallons liquid volume or twenty-five (25) pounds dry weight shall register with the Fire Rescue Department the types, quantities, location, and method of storage of said hazardous materials. Registration required by this provision shall be submitted annually within thirty days of April 1st each year.
- (B) Owners or operators of residential, commercial, or industrial establishments, who have not previously registered in accordance with Section (5)(A) hereof, shall, if they meet registration requirements, register initially within thirty (30) days of meeting such requirements and thereafter within thirty (30) days of April 1st each year.

- (C) In addition to registration, owners or operators of residential, commercial, or industrial establishments, who have registered in accordance with Section (5)(A) hereof, shall maintain on the premises an inventory, reconciled on a monthly basis, of purchase, use, sale, and disposal of hazardous materials. The purpose of this account is to detect any product loss and to provide an ongoing record of all quantities of hazardous materials within the Town over the registration threshold.
 - (D) Upon the request of the Fire Rescue Department and/or the Department of Development and Inspectional Services, owners or operators shall produce within twenty-four (24) hours the latest reconciled inventory.
 - (E) Any industrial, commercial, or institutional facility that manufactures, uses, processes, or stores hazardous materials in an amount greater than or equal to fifty (50) gallons liquid volume or twenty-five (25) pounds dry weight shall comply with the provisions of NFPA 704 – Standard System for the Identification of Fire Hazards of Materials, 2013 Edition.
- (6) Exemptions
- (A) Requirements of Section 16.06 of this By-law shall not apply to fuel oil or propane fuel for the sole purpose of heating buildings located on this site within cellars or structures and stored in quantities below five hundred (500) gallons in conformance with Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00.
 - (B) Requirements of Section (5)(A) shall not apply to the fuel stored in automotive vehicle tanks for the sole purpose of propulsion of that vehicle.
 - (C) Facilities that are required to file Tier II chemical inventory forms in accordance with the Emergency Planning and Community Right to Know Law of 1986 (SARA Title III) shall be exempt from the registration requirements outlined in Section (5) hereof. They shall however comply with all other requirements of Section 16.06 hereof.
- (7) Prohibitions
- (A) The discharge of toxic or hazardous materials within the Town of Auburn is prohibited.
 - (B) Outdoor storage of toxic or hazardous materials is prohibited except in product-tight containers which are protected from the elements, leakage, accidental damage, and vandalism, and which are stored in accordance with all applicable requirements of this By-law.
 - (C) Use of any solid, liquid, or gaseous material for the purpose of cleaning, treating, unclogging, disinfecting, or deodorizing an on-site sewage

disposal system is prohibited unless specifically approved in writing by the Department of Development and Inspectional Services.

(8) General Handling of Hazardous Materials

- (A) Wastes containing toxic or hazardous materials shall not be disposed of on-site, but shall be held on the premises in product-tight containers for removal by a licensed carrier and for disposal in accordance with the Massachusetts Hazardous Waste Management Act, Chapter 21C, and the relevant Massachusetts General Laws.

(9) Aboveground Storage of Hazardous Materials

- (A) Aboveground storage of hazardous materials is prohibited, except in product-tight containers in an orderly manner with wastes being stored separately from virgin materials, and on a solid surface which shall be impervious to the material(s) being stored. Outdoor storage must be designed to contain spills of not less than one hundred ten percent (110%) of the maximum volume stored, and must be protected from the elements, accidental damage, and vandalism. Where more than one (1) material or type of material is stored, consideration shall be given to the compatibility and/or reactivity with the other materials being stored.

(10) Ice-Control Chemicals

- (A) Where allowed, storage of ice-control chemicals in quantities requiring state reporting shall be authorized only within a weatherproof shelter having an impervious floor and with provisions made for safe cleanup.
- (B) No salt or de-icing chemicals may be applied to parking lots of multi-family residential uses (over three (3) dwelling units) or of commercial or industrial uses within the portions of the Town designated as an Aquifer and Watershed Protection Overlay District Area "A".
- (C) Each commercial or industrial use with a parking lot larger than twenty thousand (20,000) square feet must register with the Department of Development and Inspectional Services the name, address, and phone number of the organization responsible for snow removal and ice control on their premises, and must provide the department with a certification specifying that said person or organization shall carry out his duties in compliance with this ordinance.

(11) Underground Storage of Hazardous Materials and Fuel - Restrictions

- (A) Except as provided herein, no new installation of underground fuel or chemical storage tanks and systems shall be allowed within two thousand (2,000) feet of a public water supply well or within an Aquifer and Watershed Protection Overlay District Area "A."
- (B) All new or replacement tanks installed within two thousand (2,000) feet of a public water supply or within an Aquifer and Watershed Protection Overlay District Area "A" (after being granted a variance in accordance with this By-law) shall be of fiberglass construction, located inside a water tight vault or liner system, monitored by an approved leak detection system, and otherwise be subject to the design standards contained in this By-law.
- (C) The Board of Health may require the installation of one (1) or more groundwater observation well(s) at any site where fuel, gasoline, or other chemical is stored underground within two thousand (2,000) feet of a public or private water supply well or within an Aquifer and Watershed Protection Overlay District Area "A." Water samples from such observation wells may be required by the Board of Health at any reasonable time, and shall be analyzed at the expense of the owner at the order of the Board of Health.

(12) New or Replacement Tank Selection and Installation

- (A) All underground storage of hazardous materials and fuel shall be contained in tanks approved by the agents of the Fire Rescue Department and the Board of Health, as applicable.
- (B) Under the direction of the agent of the Fire Rescue Department and the Board of Health, all tanks shall be properly installed as per the regulations contained herein, the Massachusetts Fire Prevention Regulations, and manufacturer's specification.
- (C) All new and replacement tanks shall be designed, constructed, and installed in accordance with Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00 et seq., as amended.
- (D) No new or replacement tank or components shall be installed, whether it is part of a new or existing storage facility, unless the owner has given at least one (1) week notice of its installation to the Fire Rescue Department; and no new or replacement tank or component shall be buried or concealed until it has been inspected for damage and external defects, tested for tightness, and approved by the Fire Chief or his or her Designee.

- (E) No new or replacement tank or component shall be installed except by a contractor who has been either licensed by the state authorities for that purpose, or certified in writing as qualified for that purpose by the manufacturer or a petroleum equipment association. The contractor shall, prior to installation, submit to the Fire Rescue Department a copy of such license or certificate.
- (F) The installation of a new or replacement tank or component, including anchoring of the tank whenever water saturation of any part of the excavation can reasonably be anticipated, shall be carried out in accordance with the manufacturer's recommendations, accepted engineering practices, and the provisions of Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00, et seq., as amended. Back fill material for FRP tanks shall be pea gravel or crushed stone and the backfill material under all other tanks shall be either pea gravel or clean, non-corrosive sand free of cinders, stones and any other foreign material. The material under the tank shall be compacted and contoured to the shape of the tank before the tank is installed, and the balance to be thoroughly compacted.
- (G) Any damage to the exterior of a tank or its coating shall be repaired before the tank is covered. The Fire Chief or his or her Designee shall notify the Division of Inspectional Services of such repaired damage, and such Division shall make note of same in its records for that tank.
- (H) Prior to being buried, every new or replacement tank and its piping shall be tested, separately, at the owner's expense. The tank shall be tested in accordance with Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00, et seq.
- (I) Steel tanks completely underground shall be covered with a minimum of two (2) feet of earth or shall be covered with not less than one (1) foot of earth, on top of which shall be placed a slab of reinforced concrete not less than four (4) inches thick. When they are or are likely to be subjected to traffic, they shall be protected against damage from vehicles passing over them by at least three (3) feet of earth cover or eighteen (18) inches of well-tamped earth plus six (6) inches of reinforced concrete or eight (8) inches of asphaltic concrete. When asphaltic or reinforced concrete paving is used as part of the protection, it shall be extended at least one (1) foot horizontally beyond the outline of the tank in all directions.
- (J) The owner shall furnish the Fire Rescue Department with a certified copy of the results of all testing required by this Section.

(13) Maintenance for All Tanks

- (A) The following regulations shall apply to all new and existing underground liquid toxic or hazardous material storage systems.
- (i) On or before January 1st, owners shall file with the Fire Rescue Department the size, type, age and location of each tank, the type of fuel or chemical stored in each, and evidence of the date of purchase and installation. The permit/notification shall be on State Form FP 290, Parts 1, 2, 3 and 4.
 - (ii) Owners of tanks for which evidence of the installation date is not available shall, at the order of the Board of Health, have such tank's systems tested. If either the Board of Health or the Fire Chief or their Designee determines that the tank is not product tight, it shall be removed.
 - (iii) All steel tanks shall be subject to one (1) of the following tests fifteen (15) years after installation and annually thereafter if evidence of the date of installation is not available. A Petro-Tite (Kent-Moore) test, or any other testing system providing equivalent safety and effectiveness shall be used. Certification of testing shall be submitted to the Fire Rescue Department. Any tanks failing the test shall be neutralized or disposed of under the direction of the Fire Chief or his or her Designee.
 - (iv) At such time the exhumed tank shall be examined for leaks. If a leak is found, an investigation of the amount and location of the spilled substance shall be undertaken at the expense of the owner. If, in the opinion of the agent of the Fire Rescue Department and/or the Board of Health, the spilled substance poses a significant threat to health and safety, it shall be removed at the owner's expense.
 - (v) All leaking tanks must be emptied within twenty-four (24) hours of leak detection and removed in a time period to be determined by the Fire Chief or his or her Designee.
 - (vi) If it is necessary to replace an underground steel tank that has developed a corrosion-induced leak, all other steel tanks at the facility of the same age or older, whether they are leaking or not, shall be replaced with tanks that meet the requirements of this By-law.
 - (vii) If a tank is taken out of service temporarily or permanently, the Fire Rescue Department and/or the Board of Health shall be notified as necessary. The final disposition of the tank and product shall be in accordance with Massachusetts Comprehensive Fire

Safety Code, 527 CMR 1.00 et seq., and as approved by the Fire Rescue Department and the Board of Health.

- (14) Inventory Control for All Tanks with Capacities Greater Than Five Hundred (500) Gallons
- (A) The following provision applies to all underground toxic or hazardous material storage systems with capacities greater than five hundred (500) gallons:
- (i) Every underground storage system shall have a method of accurately gauging the volume contained in the tank and a method of accurately metering the quantity of product removed during service. The metering device shall be maintained in accurate calibration. Storage systems in service at the time of passage of this regulation shall be in compliance within one hundred eight (108) days of the effective date of this regulation.
 - (ii) As required by the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00, all commercial or industrial establishments (including home occupations, agricultural and horticultural operations) shall create accurate daily inventory records. Those records shall be based on actual daily measurement and recording of tank product and water levels and the daily recording of actual sales, use, and receipts. The inventory records shall include a daily computation of gain or loss. The mere recording of pump meter reading and product delivery receipts shall not constitute adequate inventory records.
 - (iii) The owner or operator of a commercial or industrial establishment shall participate in a program of regularly scheduled inventory verification. Frequency of inventory verification shall be as follows:
 - (a) Annually for systems from which less than twenty-five thousand (25,000) gallons/month is used or sold.
 - (b) Semi-annually for systems from which twenty-five thousand (25,000) to one hundred thousand (100,000) gallons/month of product is used or sold.
 - (c) Quarterly for systems from which more than one hundred thousand (100,000) gallons/month is used or sold.

- (iv) Owners shall submit annually to the Fire Rescue Department a certified statement that inventory records have been maintained and, upon request shall be made available to the Fire Rescue Department and/or the Department of Inspectional Services.
- (v) Where the storage tanks are owned by the operators, inventory verification shall be performed by a certified auditor or other independent qualified person approved by the Fire Rescue Department and/or the Department of Inspectional Services.

(15) Variances

- (A) The Board of Health may grant a variance from the provisions of this By-law and such variance shall be consistent with and in accordance with the requirements of the Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00 et seq.
- (B) In granting a variance, the Board of Health may take into consideration the direction of the groundwater flow, soil conditions, depth to groundwater, size, shape, and slope of the lot, and existing and known future water supplies.
- (C) In considering said variance, the Board of Health may hire, at the expense of the applicant, a qualified Hydro geologist or Professional Engineer (PE) with proven experience to review information supplied by the applicant.
- (D) At a public hearing the applicant shall establish that the proposed location of an underground storage tank will not threaten or adversely affect public or private water sources.
- (E) At least fourteen (14) days before any public hearing, notice of any public hearing shall be given by placing notification in a local newspaper regularly circulated within the Town.

(16) Enforcement

- (A) The provisions of this By-law shall be enforced by the Fire Rescue Department and the Division of Inspectional Services. Agents of the Fire Rescue Department and the Division of Inspectional Services may, according to law, enter upon any premises at any reasonable time to inspect for compliance.
- (B) Upon request of an agent of the Fire Rescue Department or the Division of Inspectional Services, the owner or operator of any premises at which toxic or hazardous materials are used or stored shall furnish all information required to enforce and monitor compliance with this By-law, including a complete list of all chemicals, pesticides, fuels, and other toxic

or hazardous materials used or stored on the premises, a description of measures taken to protect storage containers from vandalism, corrosion, and spillage, and the means of disposal of all toxic or hazardous materials produced on the site. A sample of wastewater disposed to on-site septic systems, drywells, or sewage treatment systems may be required by the agent of the Division of Inspectional Services.

- (C) All records pertaining to the storage, removal and disposal of toxic or hazardous materials shall be retained by the owner or operator for no less than three (3) years, and shall be made available for review upon the request of the Fire Rescue Department or the Division of Inspectional Services.
- (D) Certification of conformance with the requirements of this By-law, shall be obtained from the Fire Rescue Department and/or the Division of Inspectional Services prior to issuance of construction and occupancy permits for any residential use.

(17) Reporting of a Discharge

- (A) Any person having knowledge of a discharge of hazardous material shall immediately report the discharge to the Fire Rescue Department and/or the Division of Inspectional Services.
- (B) Service companies shall report to tank owners, the Fire Rescue Department, and the Division of Inspectional Services any unaccounted for significant increase in heating fuel consumption which may indicate a leak. Any violation of this By-law shall be given to the owner and/or operator by the Fire Rescue Department and/or the Division of Inspectional Services, specifying the nature of the violation and the corrective measures that must be undertaken, including containment and cleanup of discharged materials; any preventive measures required for avoiding future violation; and a schedule of compliance. Requirements specified in such a notice shall be reasonable in relation to the public health hazard. The cost of containment and cleanup shall be borne by the owner and operator of the premises.

(18) Penalty

- (A) Any person who violates any provision of this By-law shall be punished by a fine for each day, or portion thereof, during which a violation continues. The fee shall be set by the Board of Selectmen. Each condition violated shall constitute a separate offense.

(19) Fees

- (A) Any person registering storage of hazardous materials pursuant to this By-law shall pay to the Town Clerk an annual Registration Fee for every one thousand (1,000) gallons or fraction thereof of storage capacity. Such fee shall be due on the same date as the annual registration.
 - (B) Failure to pay shall constitute a violation and shall subject the violator to the penalties of Section 16.06(18) of this By-law.
 - (C) The Fire Rescue Department and/or Department of Development & Inspectional Services may charge for expenses incurred in the enforcement of this By-law.
 - (D) In every case the operator shall assume responsibility for costs incurred necessary to comply with this regulation.
- (20) Severability
- (A) The invalidity of any portion of this By-law shall not affect the validity of the remainder.

16.07: Cisterns & Dry Hydrants

- (1) Location and Construction
 - (A) Fire protection cisterns and/or pre-existing, historically stable natural water supplies shall be provided in subdivisions of eight (8) or more lots, business enterprise parks, and industry general developments where there is insufficient public and/or private water supply to meet the minimum fire flows required by NFPA 1141, 1142 and reference standards of those publications.
 - (B) Fire protection cisterns and/or natural water supplies shall be arranged so that dry hydrants will be located not more than one thousand four hundred (1,400) feet from ninety (90) percent of the center line of lots in the subdivision, business enterprise park, or industry general developments.
 - (C) Cisterns and their appurtenance shall be buried and/or protected to prevent the water within them from freezing.
 - (D) Cisterns shall contain a minimum of twenty thousand (20,000) usable gallons, but not less than the minimum as determined by NFPA 1141, 1142 and reference standards of those publications.
 - (E) A cistern and/or dry-hydrant required by this regulation shall be installed and operational prior to the issuance of an occupancy permit for the first (1st) structure in any non-residential project.

- (F) A cistern and/or dry-hydrant required by this regulation shall be installed and operational in a residential project prior to the issuance of the occupancy permit for the third (3rd) structure in any residential project. If multiple cisterns are required, a minimum of one (1) additional cistern shall be installed and operational for each additional phase of the project as determined by the phasing plan approved by the Planning Board, prior to the Planning Board releasing covenants for that phase.
- (G) Cisterns shall be fiberglass, concrete with liner, or other non-permeable materials.
- (H) Unlined concrete tanks are permitted if the applicant can show a through registered professional engineer's calculations that a natural and continuous source or a well or other automatic fill device will provide a supply of make-up water that will be available to the tank, at a rate that is equivalent to the leakage and weeping rate of the tank.
- (I) Cisterns constructed of lightweight material and/or subject to uplift and displacement due to the buoyancy effects of the surrounding soil or ground water shall be anchored with corrosion-resistant holddown straps and deadman anchors.
- (J) All penetrations into the cistern shall be sealed and restrained to prevent infiltration of soils, silt, other contaminates, and damage by movement of the penetrating object.
- (K) A manway with a minimum of twenty-two (22) inch clear diameter shall provide access in to the top of the tank.
- (L) Containment collars with a minimum of forty-two (42) inches shall be used to extend the manway opening to grade and be covered with a minimum of a thirty-six (36) inch cast iron manhole and cover.
- (M) Pre-existing, historically stable, natural water supplies with an equivalence of twenty thousand gallons (20,000) and a flow rate of seven hundred fifty (750) gallons per minute are acceptable. The applicant shall provide certification from a registered professional engineer, registered hydrologist, soils conservationist, or equal. Manmade retention ponds for use with a dry-hydrant are not permitted.
- (N) All fire protection water supplies shall be arraigned so the maximum lift is not over fifteen (15) feet.

(2) Ventilation and Level Indication

- (A) Buried cisterns shall be provided with a vent to atmosphere that is a minimum of twenty-four (24) inches above grade. This vent shall have the capability of discharging the air that is displaced by the inflow of one thousand (1000) gallons per minute of fill flow water.
 - (B) A mechanical water-level indicator shall be provided for each cistern. This indicator shall plainly show the level of the cistern as full, empty, $\frac{1}{4}$ full, $\frac{1}{2}$ full and $\frac{3}{4}$ full.
 - (C) The water-level indicator shall be no more than thirty (30) feet from the paved surface and not less than thirty-six (36) inches above grade.
 - (D) The vent and water-level indicator shall be constructed with a minimum of schedule 40 PVC piping.
 - (E) If the vent and water-level indicator is constructed using PVC piping, it shall be protected from mechanical damage that may be caused by motor vehicles, mowing equipment, or any other impact with it. The protection may be in the form of bollards or landscaping boulders.
- (3) Self-Filling and Refilling
- (A) Sediment and filtration traps shall be provided with a manhole or cover to facilitate the cleaning and inspection of such devices. The covers will meet the Massachusetts Department of Transportation standard for size and construction.
 - (B) Cisterns shall be provided with a Fire Rescue Department refill/recirculating connection. The Fire Rescue Department refill/recirculating connection shall be located at a minimum of five (5) feet but not more than thirty (30) feet off the paved surface adjacent to the dry-hydrant connection.
 - (C) The Fire Rescue Department refill/recirculating connection shall be through a two and one half ($2\frac{1}{2}$) inch male National Standard Thread (NST) clapper-wye connection. Each inlet shall be provided with screens and a threaded cap attached by chains to the wye.
 - (D) The Fire Rescue Department refill/recirculating connection shall be thirty-six (36) inches above grade and constructed of a minimum of four (4) inch of schedule 40 steel piping.
 - (E) Piping for the refill/recirculating shall be constructed using welded connections. All welds shall be cleaned and painted.
 - (F) The Fire Rescue Department refill/recirculating connection shall be capable of withstanding the forces applied by dual four (4) inch hoses and

adaptors flowing one thousand (1000) gallons per minute without damage to the piping, tank, or other system appurtenances.

- (G) The Fire Rescue Department refill/recirculating connection shall be baffled or diverted as necessary to prevent simultaneous suction and refill operations and causing cavitation to the Fire Rescue Departments pumping apparatus.

(4) Dry-Hydrant Connections

- (A) The dry-hydrant connection shall be constructed of a minimum of six (6) inch schedule 40 welded steel piping with either 90-degree long sweeps or 45-degree elbows. All welds shall be cleaned and painted.
- (B) The dry-hydrant connection and piping shall be capable of withstanding the forces applied by six (6) inch suction hose and adaptors flowing one thousand (1000) gallons per minute without damage to the piping, tank, or other system appurtenances.
- (C) The fire department connection (FDC) shall be four and one half (4 ½) inch NPT male threads with cover and screen assembly. The cover shall be connected to the piping with a chain; the screen shall be commercially manufactured and field replaceable.
- (D) The center of the drafting port shall be twenty (20) to twenty-four (24) inches above grade level where the apparatus will park.
- (E) The dry-hydrant shall be located between five (5) and eight (8) feet from the edge of the pavement.
- (F) The inlet of the suction piping shall be provided with an anti-vortex plate assembly.
- (G) Dry hydrants installed in pre-existing, historically stable natural water sources shall have a Mainstream Dry Hydrants, Inc., part number HS62 or HS82, PVC screen assembly or equal.
- (H) Hydrants subject to head pressure shall be dry-barrel hydrants manufactured and installed in accordance with the National Water Works Association guidelines for pressure hydrants.
- (I) Pressure hydrants shall be equipped with one (1) steamer port with four and one half (4 ½) inch NPT male threads and two (2) ports with two and one half (2 ½) inch NPT male threads with cover & screen assembly. The

covers shall be connected to the piping with a chain; the screen shall be commercially manufactured and field replaceable.

(J) For pressure hydrants the operating stem shall turn counter clockwise.

(5) Piping

(A) Horizontal piping at or below the base of the tank or natural water level is permitted to be schedule 40 PVC with glued joints. Any transition to steel will be made at or below the base of the tank or natural water level.

(B) Horizontal piping for drafting shall be a minimum of six (6) inch diameter for a distance of up to one hundred (100) feet from the water source to the base of the hydrant riser.

(C) Horizontal piping for drafting shall be a minimum of eight (8) inch diameter for a distance over one hundred (100) feet from the water source to the base of the hydrant riser.

(D) Horizontal piping for filling/refill may be constructed with schedule 40 PVC if prior approval is granted by the Fire Rescue Department.

(6) Protection

(A) Two (2) bollards or other protection device approved by the Fire Rescue Department shall be installed in locations to prevent mechanical damage to the dry-hydrant assembly and to allow sufficient working room to make or break connection to the dry hydrant.

(B) Two (2) bollards or other protection device approved by the Fire Rescue Department shall be installed in locations to prevent mechanical damage to the refill/recirculating connection if that connection may be subject to mechanical damage. There shall be sufficient working room to make or break a connection to the refill/recirculating connection.

(C) Bollards shall be a minimum of six (6) inch diameter, concrete filled steel tubes, eight (8) feet in length; a minimum of forty-two (42) inches above grade.

(D) The bollards shall be set in a concrete base that is a minimum of twelve (12) inch diameter concrete base.

(7) Signage and painting

(A) A permanent, weatherproof sign stating: "Auburn Fire Rescue Department Cistern, No Parking, (and list gallons of water held)" shall be installed six (6) feet above grade adjacent to the dry-hydrant connection. Lettering on

the sign shall be reflective, a minimum of two (2) inches in height and of contrasting colors to the back ground.

- (B) A permanent, weatherproof sign shall be posted on the level-indicating gauge or within thirty (30) feet of the water level-indicator stating: "If this gauge indicates $\frac{3}{4}$ or less, contact the Fire Rescue Department (and list the department phone number)". The sign shall have a minimum of two (2) inch high letters.
 - (C) All steel piping above grade shall be primed and painted bright red.
 - (D) Reflective tape shall be applied to the top eight (8) inches of all bollards and near the top of the water level-indicator.
- (8) Inspections
- (A) The Fire Rescue Department or its authorized representative shall make inspections of the system prior to backfill and acceptance of the system. The inspections will consist of viewing all underground piping and tanks as well an operational test. The Fire Rescue Department shall produce an inspection report within five (5) days of the testing of the system.
 - (B) No additional building permits or occupancy certificates shall be issued unless the cistern is installed, tested, and accepted by the Fire Rescue Department in accordance with Section 1(F) of this By-law.
- (9) Surety
- (A) In order to ensure that the installed system is functional, and without defect, and to ensure continued maintenance, the Planning Board shall require, separate from the roadway surety, that the developer post cash surety for the Fire Protection System. This surety shall meet the following criteria:
 - (i) The amount shall be equal to Five Thousand Dollars (\$5,000) per ten thousand (10,000) gallons or any portion thereof.
 - (ii) The surety shall be kept in a passbook account in the name of the Treasurer/Collector of the Town of Auburn (who shall maintain custody of the passbook) and the developer.
 - (iii) The surety shall be remitted to the Town within thirty (30) days of the completion and inspection of the fire protection system's installation.

- (iv) After the final day of the twelfth (12th) month following the completion of the fire protection system, the developer may request that half the surety be released. The remaining half will be kept in an account for the purpose of future maintenance and repair of dry hydrants and cisterns.

Chapter XVII: Traffic Orders, Rules and Regulations

17.01: Purpose

- (1) The purpose of this By-law is to protect the public welfare of the community by enacting the following order, rules, and regulations which shall regulate traffic upon the streets and highways of the Town of Auburn.
- (2) Police Officers shall be the enforcing authority for the provisions of this Chapter.
- (3) Any motor vehicle found violating any provision of this By-law or statute parked, abandoned, or otherwise, shall be “prima facie” evidence that the owner of said vehicle, whose name is registered with the Massachusetts Department of Transportation, RMV Division, is responsible for all said violations involving that vehicle and may be cited for the same.

17.02: Definitions

- (1) “Street or Highway”: The entire width between property lines of every way open to the use of the public for the purposes of travel.
- (2) “Roadway”: That portion of a street or highway between the regularly established curb lines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.
- (3) “Lane”: A longitudinal division of a roadway into a strip of sufficient width to accommodate the passage of a single line of vehicles.
- (4) “Vehicles”: Every device in, upon or by which any person or property is or may be transported or drawn upon a street or highway except devices moved by human power or used exclusively upon stationary rails or tracks.
- (5) “Emergency Vehicle”: Vehicles of the Fire Department, police vehicles, ambulances and emergency vehicles of the state and municipal departments or public service corporations when the latter are responding to an emergency.
- (6) “Parking”: The standing of a vehicle, whether occupied or not, otherwise that temporarily for the purpose of and while actually engaged in loading or unloading, or in obedience to an officer or traffic signs or signals, or while making emergency repairs or, if disabled while arrangements are being made to move such vehicle.

- (7) “Pedestrian”: Any person afoot or riding on a conveyance moved by human power, except bicycles or tricycles.
- (8) “Sidewalk”: That portion of a street or highway set aside for pedestrian travel.
- (9) “Crosswalk”: That portion of a roadway ordinarily included within the prolongation or connection of curb lines and property lines at intersection or at any portion of a roadway clearly indicated or pedestrian crossing by lines on a road surface or by other markings or signs.
- (10) “Railroad Crossing”: Any intersection of ways with a railroad right-of-way.
- (11) “Traffic Island”: Any area or space set aside within a roadway, which is not intended for use by vehicular traffic.
- (12) “Traffic”: Pedestrians, ridden or herded animals, vehicles or other conveyances either single or together while using any street or highway for the purpose of travel.
- (13) “Official Traffic Signs”: All signs, markings and devices, other than signals, not inconsistent with these rules and orders, and which conform to the standards prescribed by the Department of Public Works of the Commonwealth of Massachusetts and placed or erected by authority of a public body or official having jurisdiction, for the purpose or guiding, directing, warning, or regulating traffic.
- (14) “Officer”: For the purpose of this ordinance an officer shall be construed to mean any officer, any investigator, examiner or inspector of the Registry of Motor Vehicles, any constable or special officer, provided he has his badge of office displayed over his left breast and upon his outer garment.
- (15) “Bus Stop”: An area in the roadway set aside for the boarding of or alighting from and the parking of busses.
- (16) “Funeral”: Any procession of mourners properly identified as such accompanying the remains of a human body.
- (17) “Official Curb Marking”: That portion of a curbing, the painting of which has been authorized by the Board of Selectmen, and which complies with the standards of the Department of Public Works of the Commonwealth of Massachusetts and has written approval of said Department.
- (18) “Official Street Marking”: Any painted line, marking or marker placed in or upon the way by authority of the Board of Selectmen, and which complies with the standards of the Department of Public Works and has the written approval of said Department.

- (19) “Rotary Traffic”: The counter-clockwise operation of a vehicle around an object or structure.
- (20) “Intersection”: The area embraced within the extensions of the lateral curb lines or, if none, then the lateral boundary lines of intersecting ways as defined in Section 1 of Chapter 90 of the General Laws, including divided ways. The rules and regulations herein contained governing and restricting the movement of vehicles at and near intersecting ways shall apply at any place along any way at which drivers are to be controlled by traffic control signals whether or not such place is an intersection as herein defined.
- (21) “Traffic Signs, Official” - all signals, conforming to the standards as prescribed by the Department of Public Works of the Commonwealth of Massachusetts not inconsistent with these rules and orders, placed or erected by authority of a public body or official having jurisdiction, for the purpose of directing or warning traffic.
- (22) “Vehicle, Commercial”: Any vehicle being used in the transportation of goods, wares, or any merchandise for commercial purposes.
- (23) “Vehicle, Heavy Commercial”: Any commercial vehicle of two and one half (2 1/2) tons capacity or over.

17.03: Parking

- (1) No person shall park a vehicle in any of the following places:
 - (A) Within an intersection
 - (B) Upon a sidewalk.
 - (C) Upon any crosswalk.
 - (D) Upon a roadway in rural or sparsely settled district.
 - (E) Upon a roadway where parking is permitted unless both wheels on the right side of the vehicle are within twelve (12) inches of the curb or edge of the roadway, except upon those streets which are designated as one-way streets. On such one-way streets, vehicles shall be parked in the direction in which said vehicle is moving and with both wheels within twelve inches of the curb. This shall not apply to streets or parts of streets where single parking is required by these regulations.

- (F) Upon a roadway where the parking of a vehicle will not leave a clear and unobstructed lane at least ten feet wide for passing traffic.
 - (G) Upon any street or highway within ten (10) feet of a fire hydrant.
 - (H) Upon or within five (5) feet of any private road or driveway.
 - (I) Upon any street or highway within twenty (20) feet of an intersecting way except alleys.
 - (J) Within fifteen (15) feet of a wall of a fire station or directly across the street from such station, provided signs are erected acquainting the driver of such restrictions.
 - (K) Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.
 - (L) Upon any way in such manner as to impede the removal or plowing of snow or ice except vehicles parked in accordance with approved regulations governing All Night Parking.
 - (M) On the roadway side of any vehicle stopped or parked at the edge or curb of the way, so called "double parking".
- (2) In accordance with the provisions of Massachusetts General Laws, Chapter 40, Section 22D, the Board of Selectmen of the Town of Auburn hereby enact these regulations authorizing the removal of vehicles parked or standing in such manner, or in such areas as are hereinafter described on any way under the control of the Town of Auburn.
 - (3) The moving or towing of any vehicle under the provisions of this section shall be by and at the direction of the Chief of Police or such other officers of the rank of Sergeant or higher as he may from time to time designate.
 - (4) Vehicles found in violation of the provisions of this section except those specifically exempt by law, shall be removed to a convenient place under the direction of an officer of the Police Department and the owner of the vehicle so removed, or towed away, shall be liable to the cost of such removal and storage.
 - (5) The owner of any vehicle removed or towed away under the provisions of this section shall also be subject to the penalties provided in Massachusetts General Laws, Chapter 90, Section 20C, as amended.
 - (6) Vehicles specifically exempt by Massachusetts General Laws, Chapter 40, Section 22D, shall not be subject to removal.

- (7) Any towing contractor for the Town of Auburn shall be liable to the owner for any damage arising out of negligence caused by such contractor to a vehicle in the course of removal and storage.
- (8) Parking upon the following streets or highways, or parts thereof, is prohibited:
- (A) **Appleton Road:** On both sides from Washington Street (Route 20) to Southbridge Street (Route 12) from 8:00 A.M. to 6:00 P.M. on Saturdays and Sundays.
 - (B) **Auburn Street:** Both sides from Perry Street to Central Square, with the exception of the north side of Auburn Street from the west side of the driveway entrance immediately east of the Post Office Building, to the bridge abutment on the east bank of Dunn's Brook, a distance of approximately two hundred (200) feet, where parking is allowed twenty-four (24) hours each day for a period not to exceed fifteen (15) minutes.
 - (C) **Bancroft Street:** East side from Pakachoag Street to Millbury Street. West side from Pakachoag Street to north end of Massachusetts Turnpike bridge.
 - (D) **Briarcliff Drive:** Both sides from Bryn Mawr Avenue to a point fifty (50) feet west.
 - (E) **Bryn Mawr Avenue:** Both sides from Oxford Street to a point one hundred (100) feet north. East side from Briarcliff Drive to a point one hundred (100) feet south.
 - (F) **Central Street:** Both sides from Meadow Street to Dartmouth Drive.
 - (G) **Church Street:** Both sides from Lancaster Street to Garden Street from 7:00 A.M. to 7:00 P.M.
 - (H) **Church Street:** Both sides from Arrowhead Avenue to Central Street on Monday through Friday from 7:00 A.M. To 4:00 P.M. during the school year.
 - (I) **Millbury Street:** Both sides from a point two hundred (200) feet west of Washington Street to a point two hundred (200) feet east of Washington Street.
 - (J) **Oxford Street:** East side from Auburn Street to Beverly Road. Both sides from a point one hundred (100) feet north of Vinal Street to a point three hundred (300) feet south of Vinal Street. West side from Berlin Street to a

point one hundred (100) feet north of Berlin Street. Both sides from a point one hundred (100) feet south of Bryn Mawr Avenue to a point one hundred (100) feet north of Bryn Mawr Avenue. Both sides five hundred (500) feet north and south of a point opposite the entrance to the Daniel S. Horgan Skating Rink.

- (K) **Oxford Street:** On the West side from Auburn Street southerly to William Street.
- (L) **Oxford Street South:** Both sides of the street for a distance of one thousand one hundred (1,100) feet from the intersection of Washington Street (Route 20).
- (M) **Pinehurst Avenue:** West side from Oxford Street to a point one hundred (100) feet north. East side from Oxford Street to a point twenty-five (25) feet north.
- (N) **Rochdale Street:** Both sides from two hundred fifty (250) feet east of Bridge Street and from seventy-five (75) feet east of Ashworth Drive to the Oxford town line.
- (O) **Sharon Avenue:** Both sides from Central Street to Meadow Street.
- (P) **South Street:** Both sides from a point one hundred (100) feet north of Washington Street to a point one hundred (100) feet south of Washington Street.
- (Q) **Sumner Street:** North side from Oxford Street to Alden Street.
- (R) **Swanson Road:** Both sides from a point one hundred (100) feet west of Vine Street to Southbridge Street.
- (S) **Swanson Road:** Both sides from Southbridge Street to Auburn Street.
- (T) **Vine Street:** Both sides from Auburn Street to Swanson Road.
- (U) **Walsh Avenue:** Both sides of the street from Auburn Street to the end.
- (V) **West Street:** Both sides from Southbridge Street to a point one thousand two hundred (1,200) feet west.
- (W) **Woodside Terrace:** On both sides from Southbridge Street (Route 12) to dead end from 8:00 A.M. to 6:00 P.M. on Saturdays and Sundays. Residents of the road shall be exempted from the restriction.
- (X) **Central Street:** Both sides from Meadow Street to Dartmouth Drive.

(Y) **Sharon Avenue:** Both sides from Central Street to Meadow Street.

(9) Bus Stops

(A) No person shall park a vehicle other than a bus at a bus stop.

(B) No person shall park a bus upon any street within a business district at any other place other than a bus stop, when a nearby bus stop is available for use.

(10) Angle Parking

(A) The Chief of Police shall determine upon what streets angle parking shall be permitted and shall sign such streets or cause the same to be signed.

(B) Vehicles shall be parked within twelve inches of the curb or wall indicated by such official signs. The vehicle shall be parked so that all four (4) wheels of the vehicle shall be placed wholly within any painted lines provided.

(11) Proceedings for Outstanding Parking Tickets

(A) The provisions of General Law, Chapter 90, Section 20C have been accepted and shall be enforced by the Town of Auburn.

(12) Parking Prohibited in Certain Areas

(A) No person shall stop, stand, or park a vehicle upon any roadway, or in a fire lane established by the authority of the Fire Department or within a private way or alley open to public use or furnishing means of access for fire apparatus or other emergency equipment to any dwelling, building, or any other place that might require services of such fire apparatus or other emergency equipment, in such a manner as to leave available less than fourteen (14) feet clear and unobstructed to vehicular traffic.

(13) Handicapped Parking

(A) The leaving of unauthorized vehicles within parking spaces designated for use by disabled veterans or handicapped persons as authorized by Section 15.12 or in such a manner as to obstruct a curb ramp designed for use by handicapped persons as a means of egress to a street or public way is prohibited. The penalty for violation of this By-law shall be established by the Board of Selectmen.

(14) Enforcement

- (A) Sections 17.03(8), (9), (10), and (12) shall be effective only during such time as sufficient number or official signs are erected so that at least one (1) sign is clearly visible for at least seventy-five (75) feet to approaching drivers.

(15) Parking Violation Appeals

- (A) The Police Chief or his or her Designee shall hear any parking violation appeal and render a decision; the decision or order so rendered shall be final. Further relief shall be to a court of competent jurisdiction.

(16) Police To Keep Record of Towed Vehicles

- (A) 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 the following information:
 - (i) The registration of the vehicle;
 - (ii) The location, from which the vehicle was towed, and time and date of tow order;
 - (iii) The location to which the vehicle was moved;
 - (iv) The fee charged for towing;
 - (v) The name of towing contractor, if any; and
 - (vi) The name and rank of officer who authorized the towing of the vehicle.

17.04: Signs

- (1) No person shall erect or cause to be erected upon or above any sidewalk, street or highway, any advertising sign or device which projects into or over the sidewalk, street or highway more than six (6) inches, unless a license authorizing the erection of such sign or device has been issued by the DPW and is in effect.

- (2) After five (5) days' notice, illegal advertising signs or devices may be removed by or under the direction of a police officer and at the expense of the owner.
- (3) Any person violating the provisions of this section shall be subject to a fine not exceeding Five Dollars (\$5.00) for each day such sign or device has remained after the expiration of the five (5) days of notice.

17.05: Operation of Vehicles

- (1) Drive Within Marked Lanes

When any roadway has been divided into lanes, a driver of a vehicle shall drive so as to be entirely within a single lane and shall not move from the lane in which he is driving until he has first ascertained if such movement can be made with safety.

- (2) Use Right Lane

Upon all roadways the driver of a vehicle shall drive in the lane nearest the right side of the roadway when said lane is available for travel except when overtaking another vehicle or when preparing for a left turn.

- (3) Overtake Only When There is a Space Ahead

The driver of a vehicle shall not overtake and pass a vehicle proceeding in the same direction unless there is sufficient clear space ahead on the right side of the roadway to permit the overtaking to be completed without impeding the safe operation of any vehicle ahead.

- (4) Driver Giving Way to Overtaking Vehicle

The driver of a vehicle being approached from the rear shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle.

- (5) Obstructing Traffic

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

- (B) No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk and on the right half of the roadway to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(6) Following Too Closely

The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the street and highway.

(7) Slow Vehicles to Stay Two Hundred (200) Feet Apart

Upon roadways less than twenty-seven (27) feet wide and upon which vehicular traffic is permitted to operate in both directions the driver of any slow moving vehicle when traveling outside of a business or residential district shall not follow another slow moving vehicle within two hundred (200) feet, but this shall not be construed to prevent such slow moving vehicles from over-taking and passing another slow moving vehicle. This section shall not apply to funerals or other lawful processions.

(8) Obedience to Traffic Control Signals.

Colors and arrow indications in traffic control signals shall have the commands ascribed to them in this section, and no other meanings, and every driver of a vehicle, railway car or other conveyance shall comply therewith, except when otherwise directed by an officer or by a lawful traffic regulating sign (other than a "stop" sign), signal or device or except as provided in Section 17.05(17) of these rules. In no case shall a driver enter or proceed through an intersection without due regard to the safety of other persons within the intersection, regardless of what indications may be given by traffic control signals.

(9) Green traffic control signal indications shall have the following meanings:

(A) Drivers facing a CIRCULAR GREEN may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But drivers turning right or left, shall yield the right-of-way to other vehicles, and to pedestrians lawfully within an adjacent crosswalk at the time such signal is exhibited.

(B) Drivers facing a GREEN ARROW, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movements as is permitted by other indications shown at the same time. Such drivers shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(10) Steady yellow traffic control signal indications shall have the following meanings:

- (A) Drivers facing a steady CIRCULAR YELLOW OR YELLOW ARROW signal are thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when drivers shall not enter the intersection.
- (11) Steady red traffic signal indications shall have the following meanings:
- (A) RED - Traffic facing a steady CIRCULAR RED signal alone shall stop at a clearly marked stop line, or if none before entering the crosswalk on the near side of the intersection or if none then before entering the intersection and shall remain standing until an indication to proceed is shown except as allowed by Massachusetts General Laws, Chapter 89, Section 8.
 - (B) No driver of a vehicle facing a CIRCULAR RED signal indication shall make a right turn where official traffic signs are installed and maintained prohibiting such turn.
 - (C) Drivers facing a steady RED ARROW indication may not enter the intersection to make the movement indicated by such arrow, and unless entering the intersection to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then before entering the intersection and shall remain standing until an identification to make the movement indicated by such arrow is shown.
- (12) RED AND YELLOW traffic signal indications shall have the following meaning:
- (A) While the red and yellow lenses are illuminated together, drivers shall not enter the intersection, and during such time the intersection shall be reserved for the exclusive use of pedestrians.
- (13) Flashing traffic signal indications shall have the following meanings:
- (A) Flashing red (stop signal): When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the provisions of Chapter 89, Section 8 of the General Laws.

- (B) Flashing Yellow (caution signal): When a yellow lens is illuminated with rapid Intermittent flashes, drivers of vehicles may proceed through the intersection or pass such signal only with caution.

(14) Obedience to Isolated Stop Signs

- (A) Every driver of a vehicle or other conveyance, approaching an intersection of ways where there exists facing him an official sign bearing the word “stop” and authorized by this section, said sign having apart from this regulation the written approval of the Department of Public Works, Commonwealth of Massachusetts, and such approval being in effect, shall before preceding through the intersection bring such vehicle or other conveyance to a complete stop at such point as may be clearly marked by a sign or line, or if a point is not so marked, then at a place between the said “stop” sign and the nearer line of the street intersection. After stopping the driver must yield to oncoming traffic in the intersection. This section shall not apply when the traffic is otherwise directed by an officer or by a lawful traffic regulating sign, signal or device, or as provided in 17.05(17)(C).

- (B) In accordance with the provisions of Massachusetts General Laws, Chapter 85, Section 2 and the provisions of Massachusetts General Laws, Chapter 89, Section 9, the erection and maintenance of any official stop sign within the Town of Auburn shall be authorized by the Board of Selectmen of the Town of Auburn. Each authorized stop sign currently in existence, and each stop sign hereafter authorized and erected, shall be itemized in a list maintained by the Board of Selectmen of the Town of Auburn. **(10/24/2017)**

(15) Keep to the Right of Roadway Division

- (A) Upon such roadways as are divided by as parkway, grass plot, reservation or by structure or area, drivers shall keep to the right of such a division except when otherwise directed by an officer, signs, signals or markings.

(16) Driving on Road Surfaces Under Construction or Repair

- (A) No operator shall enter upon the road surface of any street or highway or section thereof when, by reasons of construction, surface treatment, maintenance or the like or because some unprotected hazard, such road surface is closed to travel and one (1) or more signs, lights or signals have been erected to indicate that all or part of the road surface of the street or highway is not to be used, or when so advised by an officer, watchman, member of a street or highway crew or employee of the town, either audibly or by signals.

- (17) Rights and Duties of Drivers in Funerals or Other Processions.
- (A) It shall be the duty of each driver in a funeral or other procession to keep as near to the right edge of the roadway as is feasible and to follow the vehicle ahead as closely as is practicable and safe.
 - (B) At an intersection where a traffic control signal is operating the driver of the first vehicle in a funeral or other procession shall be the only one required to stop for a red or a red and yellow indication.
 - (C) At an intersection where a lawful “stop” sign exists, the driver of the first vehicle in a funeral or other procession shall be the only one required to stop before proceeding through the intersection.
- (18) Dropping or Leaking Loads
- (A) No vehicle shall be driven or moved on any street or highway nor shall any owner of any vehicle knowingly permit such vehicle to be driven or moved on any street or highway unless such vehicle is so constructed or so loaded as to prevent its contents from spilling, dropping, sifting, leaking or otherwise escaping there from.
 - (B) Vehicles loaded with any material which may be blown about by the wind shall be suitably covered to prevent contents from being blown upon the streets or highways.
- (19) Unlawful Riding
- (A) It shall be unlawful for any reason to ride on any portion of a vehicle not designated or intended for the use of passengers when the vehicle is in motion.
 - (B) This provision shall not apply to any employee engaged in the necessary discharge of a duty or within truck bodies in space intended for merchandise.
- (20) Operation of Heavy Commercial Vehicles
- (A) The use and operation of heavy commercial vehicles having a carrying capacity of more than two and one half (2 ½) tons are hereby prohibited on the following named streets or parts thereof:
 - (i) Faith Avenue, beginning at Washington Street to the intersection with Southbridge Street.

- (B) The use and operation of heavy commercial vehicles having a carrying capacity of more than five (5) tons are hereby prohibited on the following named streets or parts thereof:
 - (i) Heard Street: beginning at North Oxford Street to the Worcester City Line.
 - (ii) Bryn Mawr Avenue: beginning at 178 North Oxford Street to Warren Road.
 - (iii) Warren Road: from Bryn Mawr Ave. to Southbridge Street.
 - (iv) Waterman Road: from Warren Road to Southbridge Street.
- (C) Exemptions: Sections 17.05(20)(A) and (B) shall not apply to heavy commercial vehicles going to or coming from places upon said streets for the purpose of making deliveries of goods, materials, or merchandise to or similar collections from abutting land or buildings or adjoining streets or ways to which access cannot otherwise be gained; or to vehicles used in connection with the construction, maintenance and repair of said streets or public utilities therein; or to Federal, State, Municipal or public service corporation owned vehicles.
- (D) Enforcement: Sections 17.05(20)(A) and (B) shall be effective only during such time as sufficient number of official signs are erected so that at least one (1) sign will be clearly visible for at least seventy-five (75) feet to drivers approaching each exit.

(21) Obedience to Traffic Signs and Signals

- (A) No driver of any vehicle shall disobey the instructions of any official traffic control signal, sign, marker, markings or legend unless otherwise directed by a police officer.

(22) Care in Starting, Stopping, Turning, or Backing

- (A) The operator of any vehicle, before starting, stopping, turning from a direct line, or backing, shall first see that such movement can be made in safety. If the operation of another vehicle should be affected by a stopping or turning movement, the operator of such vehicle shall be given a plainly visible signal.

(23) Emerging from Alley, Private Driveway, or Building

- (A) The operator of a vehicle emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving upon the sidewalk extending across such alley or driveway, and shall yield the right of way to any pedestrian as may be necessary to avoid collision, and, upon entering the roadway, shall yield the right of way to all vehicles approaching upon the roadway.

(24) Obedience to Yield Signs

- (A) Every operator of a vehicle approaching an intersection of ways where there exists facing him or her an official yield sign shall surrender to oncoming traffic his or her right to enter the intersection until such time as he or she has brought his or her vehicle to a complete stop at a point between the said yield sign and the nearer line of the street intersection, provided, however, that this requirement to stop before entering the intersection shall not apply when an operator approaching a yield sign can enter the intersection in safety without causing interference to approaching traffic.
- (B) This section shall not apply when the traffic is otherwise directed by a police officer or traffic control signal, or as provided in Section 17.05(25).

(25) Obedience to Police

- (A) No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer in regard to the direction, control or regulation of traffic. Any person acting in conformity with any such order or direction shall be relieved from the observance of any provisions of these By-laws with which the order or direction conflicts.

(26) Driving on Sidewalks

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

17.06: One-Way Street

- (1) Traffic on Zabelle Avenue shall be one-way east to west from Oxford Street to Rochdale Street provided that official traffic signs are erected so that at least one (1) sign will be clearly visible for at least seventy-five (75) feet to drivers on such way.
- (2) Traffic shall be west to east on Upland Street between Curtis Street and Pakachoag Street.

- (3) The fine for violation of this By-law shall be established by the Board of Selectmen.

17.07: Accident Reports, Responsibility, Penalties and Repeals

- (1) Drivers Must Report Accidents
 - (A) The driver of any vehicle involved in an accident resulting in the injury or death of any person or property damage to an apparent total extent of two hundred dollars (\$200.00) or more shall within twenty-four (24) hours make a full and complete report in writing of such accident to police headquarters in this town.
 - (B) A driver who has been incapacitated as a result of an accident, and to such extent as to make reporting impossible or unfavorable to his or her recovery, shall not be required to report such accident until he or she recovered sufficiently to be able to do so.
 - (C) The report shall be in a form furnished by the Commonwealth of Massachusetts, copies of which shall be available at the police headquarters. Compliance with this section, however, shall not relieve such driver from the additional responsibility of reporting to the Registrar of Motor Vehicles any accident in which a person is killed or injured.
- (2) Any person convicted of a violation of any rule, regulation or order made hereunder, except as otherwise provided, shall be punished by a fine set by the Board of Selectmen.

17.08: Pedestrian Control Regulations

- (1) Pedestrians Crossing Ways or Roadways
 - (A) Pedestrians shall obey the direction of police officers directing traffic and whenever there is an officer directing traffic, a traffic control signal or a marked crosswalk within three hundred (300) feet of a pedestrian, no such pedestrian shall cross a way or roadway except within the limits of a marked crosswalk and as hereinafter provided in these regulations.
 - (B) For the purpose of these regulations, a marked crosswalk shall only be construed to be that area of a roadway reserved for pedestrian crossing located between two (2) solid white reflectorized twelve (12) inch pavement markings in rural areas or marking not less than six (6) inches wide in urban areas, said marking or lines being no less than six (6) feet apart.
- (2) Pedestrian Actuation

- (A) At a traffic control signal location where pedestrian indications are provided but which are shown only upon actuation by means of a pedestrian control signal push button, no pedestrian shall cross a roadway unless or until the pedestrian control signal push button has been actuated and then cross only on the proper pedestrian signal indication.
- (B) At traffic control signal locations where no pedestrian indication is provided, pedestrians shall cross only on the green indication. If necessary, the green indication shall be actuated by the pedestrian by means of a push button.
- (C) At a traffic control signal location, pedestrians shall yield the right of way to vehicles of a funeral or other procession or authorized emergency vehicle while in performance or emergency duties regardless of the signal indication given, and they shall not attempt to cross the roadway until such vehicles or procession has passed at which time pedestrians shall then cross the roadway only as provided in these regulations.

(3) Pedestrian Obedience to Traffic Control Signals

- (A) Traffic control signals color indications and legends shall have the commands ascribed to them in this section and no other meanings, and every pedestrian shall comply therewith, except when otherwise directed by an officer.
- (B) Red and Yellow or the Word “Walk”: Whenever the red and yellow lenses are illuminated together or the single word “Walk” is illuminated, pedestrians facing such indication may proceed across the roadway and in the direction of such signal only.
- (C) Red Alone or “Don’t Walk”: Whenever the words “Don’t Walk” or any indication other than red and yellow shown together are illuminated in a traffic control signal where pedestrian indications are provided, pedestrians approaching or facing such indication shall wait on the

sidewalk, edge of roadway in the pedestrian refuge area of a traffic island and shall not enter upon or cross a roadway until the proper indication is illuminated in the traffic control signal, but any pedestrian who has partially completed his crossing on the walk indication shall proceed or return to the nearest sidewalk or safety island on the yellow indication, the red indication or when the words “Don’t Walk” are illuminated by rapid intermittent flashes.

- (D) Green Alone: At traffic control signal locations where no pedestrian indication is given or provided, pedestrians facing the signal may proceed

across the roadway within any marked crosswalk in the direction of the green indicated.

- (E) Yellow Alone, Red Alone, or Flashing “Don’t Walk”: Pedestrians approaching or facing a yellow, red or flashing “Don’t Walk” illuminated indication shall not start to cross a roadway.
- (F) Flashing Red, Yellow or Green: At any traffic control signal location where a flashing red, flashing yellow or flashing green indication is being given facing a crosswalk, pedestrians shall actuate, where provided, the pedestrian signal indication and cross the roadway only on the red-yellow or “Walk” indication when such indication is in operation. If no pedestrian signal is provided, pedestrians shall cross within crosswalks with due care.

(4) Pedestrian Crossings and Use of Roadways.

- (A) No pedestrian shall suddenly leave a sidewalk or safety island and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield the right-of-way.
- (B) Pedestrians shall at all times attempt to cross a roadway using the right half of crosswalks.
- (C) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway whenever the sidewalk is open to pedestrian use.
- (D) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway on its unfinished shoulder facing traffic which may approach from the opposite direction.
- (E) Persons alighting from the roadway side of any vehicle parked at the curb or edge of roadway shall proceed immediately to the sidewalk or edge of roadway adjacent to vehicle, and shall cross the roadway only as authorized by these regulations.
- (F) It shall be unlawful for any person to actuate a pedestrian control signal or to enter a marked crosswalk unless crossing of the roadway is intended.
- (G) Crossing at Non-Signalized Locations, every pedestrian crossing a roadway at any point other than within a marked crosswalk shall yield the right of way to all vehicles upon the roadway. At a point where a pedestrian tunnel or over pass has been provided pedestrians shall cross the roadway only by the proper use of the tunnel or overpass.

(5) Operators to Exercise Due Care.

- (A) The provisions of these regulations shall in no way abrogate the provisions of Massachusetts General Laws, Chapter 90, Section 14 and 14A, which provide: “Precautions for Safety of Other Travelers” and for the “Protection of Blind Persons Crossing Ways”.
 - (B) Notwithstanding the provisions of these regulations every operator of a vehicle shall exercise due care to avoid colliding with any pedestrian upon the roadway and shall give warning by sounding the horn when necessary and shall exercise proper precautions which may become necessary for safe operation.
- (6) Pedestrians Soliciting Rides or Business
- (A) No person shall stand in a roadway for the purpose of soliciting a ride, employment or business from the operator or occupant of any vehicle without the written permission of the board or officer having control of such roadway or highway.
- (7) Officers to Enforce Pedestrian Regulations
- (A) These pedestrian control regulations shall be enforced by all officers of the Town of Auburn.
- (8) Exemptions
- (A) The provisions of these rules and regulations governing the use of ways by pedestrians shall not apply to pedestrians actually engaged in work upon a roadway closed to travel or under construction or repair, municipal, state, federal or public service corporation employees while in the performance of their duties, to officers engaged in the performance of their public duties or to pedestrians acting in an emergency when such emergency necessitates departure from any part of these rules and regulations.

17.09: Miscellaneous Traffic Controls

- (1) In General. All information, regulatory or warning signs, or other traffic control devices, and all pavement or other markings shall be erected and designed in conformance with the provisions and recommendations of the Manual of Uniform Traffic Control Devices for Streets and Highways, published by the Department of Transportation, Federal Highway Administration, 1988 edition, or as otherwise amended.

- (2) Traffic signs shall be so erected to require that “Right Lane Must Turn Right” at Southbound Oxford Street North at Southbridge Street.
- (3) Traffic signs shall be erected to require that “No Left Turn” will be allowed by traffic exiting into the intersection at Northbound Oxford Street cut off at Southbound Oxford Street.
- (4) Traffic signs shall be so erected to require that all traffic turning Northbound onto Oxford Street North from Southbridge Street west will “yield” to other traffic traveling Northbound onto Oxford Street North.

17.10: Exemptions

- (1) The provisions of these By-laws shall not apply to operators actually engaged in work upon a street or highway closed to travel or under construction or repair, to police officers when engaged in the performance of public duties, nor to drivers of emergency vehicles while operating in an emergency and in performance of public duties when the nature of the work of any of these necessitates a departure from any part of these rules or orders. These exemptions shall not, however, protect the driver of any vehicle from the consequences of a reckless disregard of the safety of others.
- (2) The provisions of these By-laws shall apply unless otherwise directed by a Police Officer acting in his or her official capacity.

17.11: Enforcement

- (1) The Board of Selectmen set forth all penalties for violations contained in this By-law as recommended by the Police Chief.
- (2) Law enforcement officers shall be the enforcing authority for the provisions of this By-law, as amended.
- (3) Any motor vehicle found violating any provision of this By-law or statute parked, abandoned, or otherwise, shall be “prima facia” evidence that the owner of said vehicle, whose name is registered with the Massachusetts Department of Transportation, RMV Division, is responsible for all said violations involving that vehicle and may be cited for the same.

17.12: Town of Auburn – Special Speed Regulation No. 6085

Highway Location: Auburn

Authority in Control: Town of Auburn

Name of Highway: Southbridge Street Court

In accordance with the provisions of Chapter 90, Section 18, of the General Laws (Ter. Ed.) as amended, the following Special Speed Regulation is

hereby Adopted

by the Board of Selectmen

of the Town of Auburn

That the following speed limits are established at which motor vehicles may be operated in the areas described:

SOUTHBRIDGE STREET COURT-NORTHBOUND

Beginning at Route 12

Thence northerly on Southbridge Street Court:

0.17 miles at 20 miles per hour ending at the end of Southbridge Street Court;
the total distance being 0.17 miles.

SOUTHBRIDGE STREET COURT-SOUTHBOUND

Beginning at the beginning of Southbridge Street Court:

Thence southerly 9.17 miles at 20 miles per hour ending at Route 12;
the total distance being 9.17 miles.

Operation of a motor vehicle at a rate of speed in excess of these limits shall be prima facie evidence that such speed is greater than is reasonable and proper.

The provisions of this regulation shall not, however, abrogate in any sense Chapter 90, Section 14 of the General Laws (Ter. Ed.)

Date of Passage 8/25/80

17.13: Town of Auburn – Special Speed Regulation No. 7021

Highway location: Auburn
Authority in Control: Town of Auburn
Name of Highway: Pinehurst Avenue
Pakachoag Street

In accordance with the provisions of Chapter 90, Section 18, of the General Laws (Ter. Ed.) as amended the following Special Speed Regulation is

hereby Adopted
by the Board of Selectmen
of the Town of Auburn

That the following speed limits are established at which motor vehicles may be operated in the areas described:

PINEHURST AVENUE-NORTHBOUND

Beginning at a point 300 feet north of Oxford Street
Thence northerly on Pinehurst Avenue:
0.55 miles at 40 miles per hour ending at the Worcester City Line;
the total distance being 0.55 miles.

PINEHURST AVENUE-SOUTHBOUND

Beginning at the Worcester City Line
Thence southerly on Pinehurst Avenue:
0.55 miles at 40 miles per hour
0.06 miles at 25 miles per hour ending at Oxford Street;
the total distance being 0.61 miles.

PAKACHOAG STREET-NORTHBOUND

Beginning at a point 100 feet north of Central Square
Thence northerly on Pakachoag Street:
0.24 miles at 30 miles per hour
1.36 miles at 35 miles per hour
0.70 miles at 30 miles per hour ending at the Worcester City Line;
the total distance being 2.30 miles.

PAKACHOAG STREET-SOUTHBOUND

Beginning at the Worcester City Line
Thence southerly on Pakachoag Street:
0.70 miles at 30 miles per hour
1.36 miles at 35 miles per hour
0.26 miles at 30 miles per hour ending at Central Square;
the total distance being 2.32 miles.

Operation of a motor vehicle at a rate of speed in excess of these limits shall be prima facie evidence that such speed is greater than is reasonable and proper.

The provisions of this regulation shall not, however, abrogate in any sense Chapter 90 Section 14, of the General Laws (Ter. Ed.)

Date of Passage December 1, 1980

17.14: Town of Auburn – Special Speed Regulation No. 7021

Highway location: Auburn
Authority in Control: Town of Auburn
Name of Highway: Central St.

In accordance with the provisions of Chapter 90, Section 18, of the General Laws (Ter. Ed.) as amended the following Special Speed Regulation is hereby Adopted by the Board of Selectmen of the Town of Auburn

That the following speed limits are established at which motor vehicles may be operated in the areas described:

CENTRAL STREET – NORTHBOUND

Beginning at Dartmouth Dr.
Thence northerly on Central St.
0.21 miles at 20 miles per hour
0.92 miles at 25 miles per hour
0.49 miles at 30 miles per hour ending at the junction of Auburn and Millbury Sts.
total distace being 1.62 miles.

CENTRAL STREET - NORTHBOUND

Beginning at a point 150 feet south of the junction of Auburn and Millbury Sts.
Thence southerly on Central St.
0.46 miles at 30 miles per hour
0.92 miles at 25 miles per hour
0.21 miles at 20 miles per hour ending at Dartmouth Dr.
total distance being 1.59 miles.

Operation of a motor vehicle at a rate of speed in excess of these limits shall be prima facie evidence that such speed is greater than is reasonable and proper.

The provisions of this regulation shall not, however, abrogate in any sense Chapter 90 Section 14, of the General Laws (Ter. Ed.)

Date of Passage August 20, 1979