

# TOWN OF WILMINGTON ZONING BYLAWS

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The following Town of Wilmington Inhabitant By-Laws are revised up to and including the Annual Town Meeting of April 27, 2002.

# TOWN OF WILMINGTON ZONING BYLAWS

## CHAPTER I GENERAL PROVISIONS

### TITLE OF BY-LAWS

SECTION 1. The adoption of these by-laws by the Town shall have the force and effect of repealing all presently existing by-laws and regulations heretofore adopted by the Town, except Board of Health rules and regulations, Zoning By-Laws, Massachusetts Building Code 780 CMR 1-22 inclusive, and traffic regulations duly adopted as most recently amended or as may be amended in the future; provided that the repeal shall not apply to or affect any by-law, order or article heretofore adopted accepting or adopting the provisions of any statute of the Commonwealth. These by-laws shall be known and referred to as "The Revised By-Laws of the Inhabitants of Wilmington."

### BY-LAWS ARE NOT RETROACTIVE

SECTION 2. These by-laws and the repeal of all by-laws or regulations heretofore in force shall not affect any act done, any right accrued, any penalty or liability incurred or any suit, prosecution or proceeding pending at the time when these by-laws take effect, nor shall the repeal of any by-law or regulation thereby have the effect of revising any by-law or regulation previously repealed or suspended.

### POWER TO LICENSE OR PERMIT

SECTION 3. When in a by-law anything is prohibited from being done without license or permission from a certain officer, board or commission, such officer, board or commission shall have the power to license or permit such thing to be done unless otherwise provided by law or by some by-law.

### WORDS DEFINED

SECTION 4. In all these by-laws, the following words and expressions shall unless inconsistent with the manifest intent be severally construed as follows:

- a) public way shall include any highway, town way, private way open for public use, road, bridge, street, avenue, boulevard, roadway, lane, sidewalk or square;
- (b) public building shall include all buildings belonging to or under control of the town or any of its departments;
- (c) public place shall include all commons, parks, playgrounds, beaches, and public lands belonging to or in charge of the town, or any of its departments; and those places to which the public is invited;
- (d) the words "owner or occupant" of a building or land shall include any sole owner or occupant, any joint tenant in common of the whole or any part of a building or lot of land;
- (e) the words purporting to give joint authority to three or more officers or other persons shall give such authority to a majority of such officers or persons;

## TOWN OF WILMINGTON ZONING BYLAWS

- (f) the word "person" shall include corporations, societies, associations and partnerships;
- (g) words importing the singular number may apply to the plural number, and words importing the masculine gender may apply to the feminine or neuter gender;
- (h) "appointing authority" as used in these by-laws, shall mean the Board of Selectmen, except that during the period that Chapter 592 of the Acts of 1950 is in effect it shall mean the Town Manager

### VIOLATION OF BY-LAWS: FINE NOT TO EXCEED \$200

SECTION 5. Whoever violates any of the provisions of these by-laws whereby any act or thing is enjoined or prohibited, shall unless other provisions are expressly made, forfeit and pay a fine not exceeding \$200 for each offense.

### REFUSAL TO OBEY: FINE NOT TO EXCEED \$200

SECTION 6. Whoever shall refuse or neglect to obey any lawful order of any town officer or board of town officers, issued under any of these by-laws, directed to him and properly served upon him, shall in cases not otherwise provided for, forfeit and pay for every offense a fine not exceeding \$200 for each offense.

### FINES, ETC. PAID TO TOWN TREASURER

SECTION 7. All fines, penalties and forfeitures for the violation of any by-law shall be paid into the Town Treasury and credited to the Excess and Deficiency Fund unless otherwise provided by law or by some by-law of the Town.

### BY-LAWS RELATE TO WHOM

SECTION 8. These revised by-laws relate only to persons, property and acts done within the limits of the Town of Wilmington and any prosecutions for the breach of any provisions of any of these by-laws shall be commenced within one year from such breach.

### REVIEW OF BY-LAWS

SECTION 9. The Revised By-Laws of the Inhabitants of the Town of Wilmington shall be reviewed by a committee appointed for that purpose every ten years.

### FEE SCHEDULE FOR VARIOUS SERVICES, LICENSES AND PERMITS

#### SECTION 10. Sealing of Weights and Measures Service (Rev.4/90)

Scale w/capacity over 10,000 lbs.	50.00
Scale w/capacity 5-10,000 lbs.	35.00
Scale w/capacity 1-5,000 lbs.	25.00
Scale w/capacity 100-1,000 lbs.	15.00
Scales/balances 10-100 lbs.	9.00
Scales/balances under 10 lbs.	7.00
Liquid capacity measures of capacity of more than one gallon and measure on pumps	3.00
Liquid measuring meter diameter - 1/2"-1"	8.00

## TOWN OF WILMINGTON ZONING BYLAWS

Liquid measuring meter diameter over 1"	9.00
Vehicle tank pump	20.00
Vehicle tank gravity	25.00
Bulk storage	45.00
Bulk storage/w cert. prover	25.00
Taximeter	8.00
Device to determine linear or area	5.00
Milk bottle or jars - per gross	8.00
Vehicle tanks used in sale of commodities by liquid measure per 100 gallon	5.00
Separate tanks - same vehicle (each)	5.00
All weights and other measures	.50
License for Automatic Amusement Devices	50.00
Permit for Raffles or Bazaars	50.00

SECTION 11. In addition to all other authority contained in Massachusetts General Laws Chapter 164, Section 58B through 58F inclusive, the Town shall charge an additional fee for the recordation of municipal gas and/or electric liens placed on real estate, and to be collected by the Town as reimbursements of the costs; such fees to be determined by the Town Manager after consultation with the Board of Selectmen. The fee shall take effect after having been published in a newspaper of local circulation not less than two weeks before the effective date.

### CHAPTER 2

#### TOWN MEETINGS

##### ANNUAL MEETING THIRD SATURDAY IN APRIL

SECTION 1. The Annual Town Meeting for the election of Town Officers shall be held on the 3rd Saturday in April of each year.

##### ELECTION AND TERM OF OFFICE FOR TOWN MODERATOR

SECTION 2. At the first town election following the adoption of this by-law, the moderator shall be elected for a term of three years, and each third year thereafter, the moderator shall be elected for a term of \*three years. If a vacancy in the office of moderator occurs during any term, it shall be filled by the electing of a moderator for the unexpired term at the next town election following said vacancy. If the moderator is absent at a town meeting, or if a town meeting is called after a vacancy occurs, in the office of the moderator, but before the next town election following said vacancy, a temporary moderator shall be elected for said town meeting by the voters as the first order of business of said town meeting. The town clerk shall preside over the meeting until the election of a temporary moderator. \*4/87

##### ADJOURNMENT OF ANNUAL TOWN MEETING TO FIRST SATURDAY FOLLOWING FIRST SATURDAY FOR BUSINESS SESSION

SECTION 3. All matters to be considered under the warrant for the Annual Town Meeting, except the election and determination of such matters as are required by law to be elected

## TOWN OF WILMINGTON ZONING BYLAWS

or determined by ballot, shall be considered at an adjournment of such meeting to be held at \*\* ten-thirty a.m. on the fourth Saturday of April in the year for which the warrant is drawn. The warrant for every Annual Town Meeting shall contain a statement by which the meeting is adjourned to such time for such purpose. \*\*4/91

### POLLING HOURS

SECTION 4. The polls for the Annual Town Meeting shall be opened at ten o'clock in the forenoon and shall remain open until eight o'clock in the evening.

### TOWN MEETING NOTICES: POSTING AND DISTRIBUTION OF ANNUAL AND SPECIAL TOWN MEETINGS

SECTION 5. Notice of every Town Meeting shall be given by posting copies of the warrant for such meeting in various conspicuous public places at least one in each precinct in the Town, not less than fourteen days before the time named in the warrant for holding said meeting.

### ADJOURNED TOWN MEETING: POST IN EACH PRECINCT

SECTION 6. Notice of every adjourned Town Meeting shall be posted by the Town Clerk in various conspicuous public places in Town, at least one in each precinct and in addition thereto, he shall if practicable publish the same in one or more newspapers published or circulated in Town, at least twenty-four hours, before the time of said adjourned meeting.

### SELECTMEN TO DELIVER WARRANT TO FINANCE COMMITTEE

SECTION 7. The Selectmen, after drawing a warrant for a Town Meeting, shall immediately deliver a copy of the same to each member of the Finance Committee.

### TOWN MEETINGS

SECTION 8. The Selectmen for any meeting shall forthwith transmit the original warrant to the Constable or to some other person for service; immediately after making service thereof and endorsing thereon the manner in which he served the same, the original of such warrant shall be transmitted to the Town Clerk.

### 20 DAYS PRIOR SELECTMEN TO PUBLISH NOTICE OF INTENTION TO CALL SPECIAL MEETING

SECTION 9. The Selectmen shall publish in one or more newspapers published or circulated in the Town a notice of their intention to call a special meeting at least twenty days prior to the date of the meeting.

### ORDER OF ARTICLES FOR TOWN MEETINGS

#### SECTION 10A. Annual Town Meetings

The Annual Town Meeting shall act upon the following matters as warrant articles in such order as shall be prescribed by the Board of Selectmen:

## TOWN OF WILMINGTON ZONING BYLAWS

1. Conduct of Town elections.
2. Committee reports and any action thereon.
3. For purpose of paying unpaid bills.
4. To authorize the Town Treasurer, with the approval of the Board of Selectmen, to enter into compensating balance agreements, under the provisions of M.G.L. Chapter 44, Section 53F.
5. To appropriate monies for expenses of the Town and salaries of Town officers and Departments and determine how same shall be raised.
6. To appropriate monies for capital expenditures.

### SECTION 10B. Random selection

All other articles in said warrant shall be enumerated by the Board of Selectmen, provided however, that at the Annual Town Meeting, the number of each such article shall be placed in a container and Town Moderator shall draw a number and as each number is drawn, that article shall be presented to the Town Meeting for action, and further provided, however, that certain articles which are in sequence and related to each other whereby the passage of the first article is dependent upon action of the next article may be taken as one drawing for action. Except as herein provided no article shall be acted upon out of the order as drawn by the Town Moderator.

### SECTION 10C. Special Town Meetings

All warrant articles for a Special Town Meeting shall be enumerated by the Board of Selectmen. The number of each article shall be placed in a container and the Town Moderator shall draw a number and as each number is drawn, that article shall be presented to the Special Town Meeting for action as provided in Section 10B of Chapter II above.

### MOTIONS DEALING WITH EXPENDITURE OF MONEY AND AMENDMENTS TO THE BY-LAWS IN WRITING AND SIGNED.

SECTION 11. Every motion having to do with expenditure of money or the amendment of any by-law shall be presented in writing and signed by the person presenting it; other motions shall be in writing if so directed by the Moderator.

### FINANCE COMMITTEE TO REPORT ON EXPENDITURES

SECTION 12. Before any action is taken on any motion carrying an expenditure or appropriation of money the Moderator shall call upon the Finance Committee for its report and recommendation thereon.

### MOTION SUSCEPTIBLE OF DIVISION MAY BE DIVIDED

SECTION 13. When a motion is readily susceptible of division it shall be divided and the vote upon each part taken separately, provided the Moderator deems this action best, or by majority vote of the Town Meeting.

### PRECEDENCE OF MOTIONS

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 14. When a question is before the meeting, the following motions, if seconded, shall be received and shall have precedence according to the foregoing order and provisions for debate, namely:

- A. Shall be decided without debate:
  - 1. To adjourn
  - 2. To lay on the table
  - 3. To move the previous question
- B. No person shall speak more than three (3) minutes and no person shall speak more than once. Debate shall be limited to ten (10) minutes:
  - 1. To close debate at a specific time
  - 2. To postpone to a certain time
  - 3. To commit, recommit or refer
- C. No person shall speak more than five (5) minutes; nor more than once. Debate shall be limited to twenty (20) minutes:
  - 1. To amend or substitute
- D. No person shall speak more than three (3) minutes and no person shall speak more than once. Debate shall be limited to ten (10) minutes:
  - 1. To postpone indefinitely
- E. When debate is closed by ordering the previous question or by vote to close debate at a specified time, the maker of the main motion under consideration shall be allowed to speak ten (10) minutes and may grant to any other voter a part or whole of his time, or give his time to the meeting.
- F. On proposed amendments involving amounts or dates, the largest amount and longest time shall be put first.

SECTION 15. No person shall speak for more than ten (10) minutes on any question prior to the closing of debate without first obtaining leave of the meeting, nor more than twice except to correct a mistake or make an explanation. The maker of the main motion may grant to any other person a part or whole of his time or give his time to the meeting. This ten (10) minute limit includes time used for showing charts, movies, slides, maps, etc. which may enhance a presentation.

### USE OF YES AND NO BALLOTS

SECTION 16. A motion that the vote upon any question be taken by the use of "Yes" and "No" ballots with the use of the check lists, shall be in order at any time, except on an immediate repetition of the same motion or pending verification of a vote, and such motions shall be decided without a debate.

### DETERMINATION OF VOTE

SECTION 17. When a motion is put, (applicable to a majority or two-thirds vote); the sense of the meeting shall be determined by the voices of the voters, and the Moderator shall declare the vote as it appears to him. If the Moderator is unable to decide the vote by the sound of voices, or if his decision is immediately questioned by seven or more voters rising in their places for that purpose, the Moderator shall without debate determine the vote by appointing tellers to make and return the count or he shall order a poll of the meeting by use of "yes" and "no" ballots with the use of the check lists if forty voters rising in their places for that purpose favor such motion.

### RECONSIDERATION

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 18. When a motion for reconsideration is decided, that decision shall be reconsidered, and no question shall be reconsidered more than once; nor shall any vote be reconsidered on a motion to adjourn, to lie on the table, or to move the previous question. No vote passed at any meeting shall be reconsidered at an adjournment thereof unless notice be given to the voters at the same session of the meeting that a motion to reconsider will be made at the adjournment.

### QUORUM

SECTION 19. One hundred and fifty voters at a Town Meeting shall be required to start the business of the Town including each adjourned session thereof and then no other quorum shall be required to conduct business.

### MEETING NOT TO DISSOLVE UNTIL EVERY ARTICLE IS ACTED UPON

SECTION 20. No motion, the effect of which would be to dissolve the meeting, shall be in order until every article in the warrant therefore, has been duly considered and acted upon, but this shall not preclude the postponement of consideration of any article to an adjournment of the meeting at a stated time and place.

### COMMITTEES REPORT AS DIRECTED; MUST BE WITHIN ONE YEAR UNLESS EXTENDED

SECTION 21. All committees shall report as directed by the Town. If no report is made within one year from the date of the meeting creating the committee, it shall be deemed discharged unless, in the meantime, the Town shall have granted an extension of time. If a vacancy occurs in any existing committee created by Town Meeting, such vacancy shall be filled by a vote of the remaining members of that committee and they shall give notice in writing forthwith to the Town Clerk of such action, the notice to state the name and address of the new member or members elected. A vote to accept a report of a committee shall not operate as an adoption of the recommendations of such report without an express vote duly passed to that effect.

### WARRANT AND FINANCE COMMITTEE REPORTS AVAILABLE AT OFFICE OF TOWN CLERK 7 DAYS PRIOR

SECTION 22. Copies of the warrant for any Town Meeting and copies of the report and recommendations of the Finance Committee on the articles contained therein shall be made available at the office of the Town Clerk of the Town at least seven days prior to the meeting.

### FAILURE TO COMPLY

SECTION 23. Failure to comply to any requirements contained in Section 6, Section 7, Section 8, Section 9, Section 11, Section 12 or Section 22 of this Chapter shall not invalidate any vote or action of the Town.

### PARLIAMENTARY AUTHORITY

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 24. The rules contained in "Robert's Rules of Order, Revised" shall govern the Annual Town Meeting and all other Town meetings in all cases where applicable and not inconsistent with these by-laws.

### CHAPTER 3 DUTIES OF TOWN OFFICERS CONTRACTS, FINANCE AND PROPERTY

#### BOARDS, ETC., SHALL HOLD REGULAR MEETING AT LEAST ONCE A MONTH

SECTION 1. All boards, committees, commissions or trustees, the members of which are elected by ballot or appointed under the provisions of "The Town Manager Act" Chapter 592, Section 2, Acts of 1950, whether the board, commission or authority is a state body politic or otherwise, shall hold a regular meeting at least once each month unless an approved request for a waiver from this schedule has been approved by the Appointing Authority and shall keep records exactly and in detail of all motions made, votes passed and business transacted at each such meeting. All such records shall be kept in a bound book or a loose-leaf book, suitable for permanent binding of standard form. One copy shall be forwarded monthly to the appointing authority. Said books shall, unless otherwise provided by law, be open to public inspection at any reasonable time, but shall remain during such inspection under supervision of the officer, board, committee, commission or trustee having custody thereof. The minutes of meetings for the calendar year just completed shall be turned over to the Town Clerk on or before January 15, for safe keeping and permanent record.

#### PUBLIC RECORDS OF THE TOWN AVAILABLE FOR INSPECTION

SECTION 2. All public records, as defined in G.L. Chapter 4, Section 7, shall be available for inspection at reasonable times and under the supervision of the person having custody, who shall furnish copies thereof on payment of a reasonable fee.

#### REPORTS FILED WITH SELECTMEN PRIOR TO JANUARY 16; COPY WITH TOWN CLERK

SECTION 3. On or before the 15th day of January in each year all elected or appointed officers of the Town and the boards, committees, commissions and trustees referred to in Section 1 shall make a report to the Town of work done and business transacted in their respective departments during the fiscal year of the Town last preceding. Such reports shall be made by filing the original thereof with the Appointing Authority prior to January 16th, except the Town Accountant and Town Manager who shall report on date designated by the Board of Selectmen in the year in which it is made and at the same time copies thereof, one with the Town Manager and one with the Town Clerk for a permanent record.

#### ANNUAL REPORTS

SECTION 4. The annual printed reports of the officers of the Town shall be made and published by the Selectmen. These shall include reports of all town officers and others,

## **TOWN OF WILMINGTON ZONING BYLAWS**

commissions, boards, and trustees, and the report of the Town Clerk shall contain a copy of his record of all Town meetings held during the fiscal year last preceding, and the Town Accountant report shall show in detail all monies received into and paid out of the Town treasury in the fiscal year last preceding and such matters as are required by law to be contained therein, or as may be inserted by the Selectmen under the discretion granted them by law. Such reports shall be completed and copies ready for distribution at the office of the Town Clerk and such other places as may be designated by the Selectmen, not later than the third Saturday in April.

In order to provide the maximum information necessary and useful to town voters in disposing of the warrants for town meetings, and except as otherwise prohibited by law, the Selectmen shall also publish in their annual report a reasonable summary of the findings and conclusions of all reports prepared during the prior year for or on behalf of town officers, boards, commissions, and committees, by experts or consultants for the preparation of which public funds were expended, and in addition, the Selectmen shall provide a listing of all currently uncompleted contracts with experts and other consultants, specifying the name of the consultant, the contract scope of services, the consideration to be paid therefore by the Town, and the completion date specified in each such contract.

It is the intention of this section that whenever in the judgment of the Selectmen, any such report of a consultant or expert, has general significance as to the conduct and management of town business or the future planning, development or improvement of the town, said report shall be reproduced in its entirety in the aforesaid annual report. Except as otherwise prohibited by law, at least seven copies of every such report prepared by an expert or other consultant shall be filed in the town public library, of which five copies shall be available for borrowing by town residents in accordance with the procedures established by the Board of Library Trustees for the borrowing of books available for a general circulation; and provided that at least two copies of any such report shall be retained and preserved for examination by residents on the premises of the Town public library.

### **SELECTMEN TO APPEAR AND DEFEND SUITS**

SECTION 5. The Selectmen shall have full authority as agents of the Town to institute and prosecute suits in the name of the Town or its officers in their official capacity and to appear and defend suits brought against it or its officers in their official capacity unless otherwise ordered by a vote of the Town or provided by law.

### **TOWN COUNSEL APPOINTED BY SELECTMEN**

SECTION 6. The Selectmen shall appoint annually, a Town Counsel who shall be a member in good standing of the Massachusetts Bar and whose duty it shall be to counsel and advise all Town officers, boards, and committees of the Town in all matters affecting the interest of the town whenever requested so to do and to represent the Town in all legal proceedings by or against it whenever so directed by the Selectmen. All opinions given by him on question of law to any Town officer, board or committee of the town must be in writing and signed by him. Whenever such opinion is given, he shall forthwith file a copy thereof with the Town Clerk for a permanent record.

### **TOWN COLLECTOR**

## **TOWN OF WILMINGTON ZONING BYLAWS**

SECTION 7. The Collector of Taxes shall collect, under the title of Town Collector, all accounts due the Town, and all bills for accounts due the Town shall state that all checks, drafts or money orders shall be payable to the order of the Town and not to the order of any officer, board or any officer, board or commission.

### **TOWN OFFICERS, BOARDS, COMMISSIONS AND DEPARTMENTS TO PAY FEES COLLECTED TO TOWN TREASURER**

SECTION 8. All town officers, boards, commissions and departments shall pay all fees received by virtue of office to the Town Treasurer except those expressly exempt by law.

### **DEEDS EXECUTED BY SELECTMEN UNLESS OTHERWISE VOTED**

SECTION 9. Whenever it is necessary to execute any deed conveying land or other instrument required to carry into effect any vote of the Town the same shall be executed by the Selectmen, or a majority thereof, on behalf of the Town, unless otherwise ordered by a vote of the Town.

### **SALE OF PERSONAL PROPERTY OF THE TOWN NOT OVER \$10,000**

SECTION 10. Any board or officer in charge of a department may, with the approval of the Selectmen, sell any personal property or material not required by said department in an aggregate amount not exceeding \$10,000 in value in any one fiscal year, except as provided by Chapter 592, Acts of 1950.

### **CONTRACTS IN EXCESS OF \$500 MUST BE IN WRITING**

SECTION 11. No contract involving an obligation of the Town in excess of \$500 shall be binding upon the Town unless it is in writing and is signed by at least a majority of the board or committee duly authorized or having control of the appropriation against which such obligation is incurred; and such board or committee shall file a record copy of every such contract with the Town Clerk and Town Accountant for permanent record.

### **CONTRACTS OF \$5,000 TO BE ACCOMPANIED BY BOND**

SECTION 12. Every contract for construction work whether for alteration, repairs or original construction, the estimated cost of which amounts to \$5,000 or more, shall be accompanied by a suitable bond for the performance of the same, or by deposit of money or security to the amount of the estimated cost.

### **SUM TO BE DEPOSITED IF PRIVATE CITIZEN IS TO CONTRIBUTE**

SECTION 13. No board, committee or officer having charge of any work, the payment for which is in any part to be contributed by private citizens, shall perform such work until a sum has been deposited with the Town Treasurer, upon estimates made by such board, committee or officer, sufficient to cover the payment of the portion of said work chargeable to such private citizen.

### **ACCEPTANCE OF LAND FOR ROUNDING STREET CORNERS**

## **TOWN OF WILMINGTON ZONING BYLAWS**

SECTION 14. The Selectmen may accept from time to time in behalf of the Town, gifts of land at the intersection of public ways with public or private ways, to be used for the purpose of rounding street corners provided such gift is made by a good and sufficient deed executed by the donor in proper form to be recorded in the Registry of Deeds.

### **EASEMENTS**

SECTION 15. The Selectmen may accept from time to time on behalf of the Town the right of easement for the purposes of storm drains, pedestrian walkways, streets, water and sewer systems and retaining walls, provided such right of easement is made by a good and sufficient instrument executed by the donor in proper form to be recorded in the Registry of Deeds.

In addition thereto, the Planning Board may accept conveyances of street easements and utilities and other appurtenances relative to sub-divisions.

### **SALE OF TOWN OWNED LAND**

SECTION 16. The Town may sell, transfer and convey parcels of Town-owned land, or any interest therein, with the approval of Town Meeting in accordance with General Laws Chapter 30B, known as the Uniform Procurement Act, and all other laws pertaining; for the purpose of effectuating compliance with General Laws 30B, the Town hereby authorizes the Town Manager to declare property surplus and available for disposition subject to specific restrictions, if any as shall be placed on the subsequent use of the property. 4/91 Article 21

SECTION 17. The Selectmen with advice, may institute, prosecute, defend, compromise and settle claims, actions, suits or other proceedings brought by, on behalf of, or against the Town, provided however, that in no case shall a settlement be so made by a payment of more than \$500 without a vote of authority from the Town. They may employ special counsel in suits by or against the Town whenever they deem it necessary.

### **TOWN OFFICER TO HAVE NO PECUNIARY INTEREST IN ANY CONTRACT**

SECTION 18. No Town officer or member of any board or committee chosen by the Town, or any agent of any such officer, board or committee, or any town employee, shall have any pecuniary interest in any contract, agreement, sale or bargain made or approved on behalf of the Town by himself or any board or committee of which he is a member or for which he may act as agent.

### **REGULATIONS OF BOARDS, ETC. TO BE FILED WITH TOWN CLERK, TOWN MANAGER AND TOWN PUBLIC LIBRARY**

SECTION 19. All boards, officers, commission, committees, boards of trustees or departments shall adopt or promulgate administrative rules or regulations and shall forthwith file a copy thereof with the Town Clerk, Town Manager and Town Public Library for a permanent record. Whenever there are additions to or amendments of any such rules and regulations, the board, officer, commissioner, committee, board of trustees or department responsible therefor shall file with the Town Clerk, Town Manager and Town Public Library a new and complete copy of such rules and regulations in substitution for the copy already on file.

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 20A. The Selectmen or the Board of Health may, after an appropriation is made, therefore make rules and regulations and establish regular periods for the collection of garbage, ashes, paper, refuse and waste from all dwellings and buildings in the Town free of charge to the owners or occupants thereof except that a charge established by the Selectmen per barrel or its equivalent may be made and established by the Selectmen or the Board of Health against the owner or occupant of any building used as a store, warehouse, restaurant, theatre, or as a factory or manufacturing establishment for the collection of any garbage, ashes, paper, refuse and waste from such premises or produce thereon.

### ACCUMULATION OF VEGETABLE MATTER, RUBBISH, ETC.

SECTION 20B. No person shall place or suffer to accumulate on his premises any refuse, animal or vegetable matter, rubbish or filth, whereby any offensive or noxious stench or effluvia shall be created so as to endanger the health or comfort of the neighborhood.

### TRUST FUNDS

SECTION 21. All funds left to the Town in trust for various purposes shall be deposited with the Town Treasurer. He shall give a receipt to the depositor for any sum so received, and shall then notify the Trustees or Trust Funds of the receipt of such funds, and hand to them the deed of trust. The Treasurer shall be the custodian of all funds and securities of such trust funds, and shall invest and reinvest them at the direction of the Trustees, and shall expend therefrom money as directed by the Trustees. Said Trustees of Trust Fund shall report in every annual Town report the names of all persons whose deposits the Treasurer has received, and the income therefor, and the balance then standing to the credit of all funds.

### ADDITIONAL DUTIES OF ALL OFFICERS, ETC.

SECTION 22. In addition to the duties fixed in these by-laws, all officers, boards, committees and commissions shall have the duties imposed upon them by law by virtue of their office.

### ELDERLY SERVICES COMMISSION

SECTION 23. There is hereby established, in accordance with Chapter 40, Section 8B of the M.G.L., an Elderly Services Commission for the purpose of coordinating and carrying out programs designed to meet the problems of the aging, in coordination with programs of the Department of Elder Affairs, consisting of seven (7) citizens of the town, appointed by the Town Manager for terms not to exceed three years for any member. Said terms shall be staggered so that not more than three appointments shall be made in any calendar year.

(1) Effective July 1, 1991 two commission members shall be appointed for a term of three years, two commission members shall be appointed for a term of two years and three commission members shall be appointed for a term of one year.

(2) The Town Manager shall appoint an Elderly Services administrator who shall serve as a full-time employee of the Town and shall be responsible for the daily administration of all elderly services programming. The administrator shall be responsible for such activities as

## TOWN OF WILMINGTON ZONING BYLAWS

supervision of elderly services personnel, budget recommendations, maintenance and preparation of payroll, review and payment of bills, preparation of an annual report and other responsibilities as may be assigned by the Town Manger.

(3) The Elderly Services Commission shall establish policy recommendations for the conduct of Elderly Services programming. Such policy recommendations, with the consent of the Town Manager, shall be implemented by the Elderly Services administrator.

### AIR POLLUTION CONTROL

SECTION 24. It shall be the duty of the Board of Health to develop Rules and Regulations in conformity with the State Air Pollution Regulations for the purpose of comparing the level of pollution in Wilmington with standards of air quality as established by the Commonwealth, Department of Public Health, Division of Environmental Health and/or Federal air quality control programs and Public Law.

### OFFICIAL MAP

SECTION 25. The Selectmen shall appoint the present Board of Appeals to be the Board of Appeals under the provision of Chapter 41, Section 81Z of the General Laws for the purpose of hearing and acting upon appeals under the provisions of Chapter 41, Section 31E through 81H, inclusive, Official Map.

### FEE SCHEDULE-TOWN CLERK

SECTION 26. The Selectmen and the Town Clerk shall adopt and set such fees of the Town Clerk, as they shall deem reasonable and appropriate. These fees shall take effect upon the posting at the office of the Town Clerk and publication once in a newspaper of local circulation of the fee schedule (Pursuant to G.L. Chapter 262, Section 34).

### CONNECTION - WATER, SEWER, DRAIN

SECTION 27. Any person connecting a sewer, drain or water connection laid in any land or way, public or private, opened or proposed to be opened for public travel, with the prior approval of the Water and Sewer Commissioners or their delegated agent, acknowledges and assents that said connection to be a common sewer, main drain and/or common water connection and shall become a part of said system without further action or payment by the Town.

## CHAPTER 4

### FINANCE COMMITTEE

#### APPOINTING COMMITTEE

SECTION 1. There shall be a committee called the Finance Committee, as provided by Section 16 of Chapter 39 of the General Laws, and such committee shall be chosen not later than thirty days subsequent to the selection of the chairman of the Board of Selectmen, by an appointing committee composed of the Moderator, the chairman of the Board of Selectmen and the chairman of the last Finance Committee.

## TOWN OF WILMINGTON ZONING BYLAWS

Such committee shall consist of nine registered voters, who shall serve without pay, none of whom during the term for which they were appointed shall hold any other regular, elective or appointive town office, and appointments shall be made so that the terms of three members shall expire annually on the final adjournment of each annual town meeting. Whenever a vacancy occurs in the membership of such committee, notice thereof shall at once be given by the Town Clerk to the appointing committee, who shall forthwith fill such vacancy.

### ORGANIZATION

SECTION 2. The Committee shall organize annually by the election from their membership of a chairman and secretary and they shall make such administrative rules and regulations, not inconsistent with law, for the conduct of their work.

### PUBLIC MEETING

SECTION 3. The Committee shall, prior to each Town meeting for the transaction of business, hold at least one public hearing. The notice of said public hearing must be published in a newspaper of general circulation in Town at least seven (7) days prior to the public hearing. Said public hearing shall be held not less than ten (10) days before the Town meeting. If there is no such newspaper in the Town, such notice shall be posted in the Town Hall for a period of not less than seven (7) days before the day of such hearing.

### REPORT AND RECOMMENDATIONS

SECTION 4. The committee shall, seven days prior to any Town Meeting at which Articles contained in the Warrant are to be acted upon, prepare, publish and distribute by leaving copies thereof in the Office of the Town Clerk, their report and recommendations on such Articles which involve the transfer, raising and appropriation of monies. For each Annual Town Meeting for the transaction of business, such reports and recommendations shall show in detail the anticipated income and expenditures of the Town for the then current year and copies thereof shall at least seven days prior to such meeting be mailed to the registered voters of the Town.

This report shall also contain recommendations of the Planning Board pertinent to Planning Board matters.

### FAILURE TO COMPLY

SECTION 5. Failure to comply with any requirement contained in either Section 3 or Section 4 of this chapter shall not invalidate any vote or action of the Town.

## CHAPTER 5

### PUBLIC REGULATIONS

#### PLACING OF ARTICLES UPON PUBLIC WAYS OR SIDEWALKS

SECTION 1. No person shall cause to be placed upon any public way or sidewalk any coal, lumber, wood, iron, truck, bale, box, crate, barrel, cask, package or any other article or thing, and allow the same to remain for more than thirty minutes at one time or for more

## TOWN OF WILMINGTON ZONING BYLAWS

than ten minutes at one time after being notified by a police officer; provided that the provisions of this section shall not apply to the placing of ashes, refuse or garbage in proper receptacles for collections under public authority and the same shall not be placed on the street or sidewalk for collection until the day or the day preceding the day specified by the Selectmen or the Board of Health for the regular collection of same.

### TRANSPORTATION OF REFUSE

SECTION 2. Every vehicle and/or receptacle used to transport solid waste disposal shall be securely covered.

SECTION 2A. Solid Waste Disposal (Recycling). In order to implement a program of recycling in conjunction with the regular solid waste collection, residents of every household are required to separate recyclable material from the solid waste stream and to deposit the material for collection as prescribed by rules and regulations as may be established by the Board of Selectmen. The Selectmen may establish regulations governing the location and method for collection of recycling material. Failure to separate recyclable material from the solid waste stream may result in failure of the solid waste collection contractor to collect solid waste from the residence which violates this by-law.

### LITTERING

SECTION 3. Except on land or in receptacles designated by the Town for the dumping or placing of trash, no person shall in any manner, whether from on foot or from any vehicle, throw or drop or discard upon any property, public or private (except that owned or leased by him), any trash or litter of any kind whatsoever.

### SIGNS

SECTION 4. Except as in accordance with the provisions of the Zoning By-Laws of the Town of Wilmington, no person shall in any manner affix posters or signs or advertisements, whether for political purposes or for other purposes, upon town property, real or personal, or upon the poles and other equipment of utilities located within the limits of Town ways.

Temporary political signs may be placed on private property, the size and location of which shall not serve to obstruct the sight of motorists and pedestrians using or occupying the public ways and/or the right of access thereto. Temporary signs may be mounted only upon properly registered and insured motor vehicles. Signs may NOT be exhibited more than 45 days prior to election and MUST be removed within 3 days after the election.

### PENALTY FOR SECTIONS 3 AND 4

SECTION 5. In addition to imposing such fines as may be permitted by law, the Town may through the Town Manager or his designee require persons in violations of Sections 3 and 4 to remove such trash or litter or such posters or signs or advertisements. Each day that the violation remains shall constitute a separate offense.

PERMITS TO OPEN, OCCUPY, OBSTRUCT AND USE STREETS; PROTECTION REQUIRED WHEN DIRT, GRAVEL AND OTHER MATERIAL DISTURBED.

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 6. Except as authorized in accordance with this section, no public street shall be excavated, opened, occupied, blocked, obstructed or used in such a manner as to deny full and unobstructed use and access without first obtaining a permit from the Town Manager or from a town officer or department head formally designated by the Town Manager to act in his behalf as granting authority. Such a permit shall specify the time, place, size and use of such opening, occupation, or obstruction and the time within which the street must be restored to good and safe condition and full and unobstructed use, and shall be issued only upon the following conditions:

- (a) (a) the recipient of the permit shall maintain from the beginning of twilight, through the whole of every night, over or near the place so excavated, occupied, opened, obstructed or used, and over or near any dirt, gravel or other material taken therefrom or to be used by him, a light or lights sufficient to protect travelers from injury of a number and type to be specified in said permit by the granting authority;
- (b) (b) the recipient of the permit shall place and maintain a safe and convenient way for the use of foot-travelers, and a safe and convenient passage for public and vehicular travel around or over such place and as may be further specified in said permit by the granting authority;
- (c) (c) the recipient of the permit shall procure at his expense, a sufficient police detail furnished by the Police Department as the granting authority may require in order to insure the reasonably unimpeded flow of pedestrian and vehicular traffic;
- (d) the recipient of the permit shall deliver up and surrender the permit to the granting authority on or before the expiration time specified in the permit for completion of the aforesaid restoration;
- (e) the granting authority shall specify in the permit, or, after the issuance thereof, in writing the kind of rail or fence reasonably required to enclose the place or area so excavated, opened, occupied, obstructed or used, and also the kind of way over or around such place or area and the manner that said way shall be constructed and maintained;
- (f) the permit shall require that the restored opening or excavation shall be repaved with a pavement of the same specifications as the original pavement by a contractor or paver approved by the granting authority, and that the work of repaving shall be done in a thoroughly workmanlike manner and shall be subject to the approval of the superintendent of streets;
- (g) the recipient of the permit shall pay to the town treasurer whatever sum the superintendent of streets shall expend for labor, materials, equipment, time and other contractual services to restore the street to good and safe condition and full and unobstructed use to the satisfaction of said superintendent, if the recipient fails to complete said restoration to the satisfaction of said superintendent within the time specified therefore in said permit.

In order to insure compliance with the aforesaid conditions the granting authority shall require a bond with sureties satisfactory to him as sufficient to secure the performance of these conditions.

The invalidity of any sub-section or provision of this section shall not invalidate any other sub-section or provision of this section.

## TOWN OF WILMINGTON ZONING BYLAWS

### USE OF WAY TO PLACE BUILDING MATERIALS THEREON

SECTION 7. Any person who intends to erect, repair, take down or do any work on or in connection with any building or structure on land abutting on any way which this Town is obliged to keep in repair, and desires to make use of any portion of said way, for the purpose of placing thereon building materials, equipment or rubbish shall give notice thereof to the Selectmen or the Town Manager. And thereupon the Selectmen or Town Manager shall grant a permit in writing to occupy such portion of said way to be used for such purpose as in their judgment the necessity of the case demands and the security of the public allows; such permit in no case to be in force longer than ninety days, and to be on such conditions as the Selectmen or Town Manager may require; and especially in every case, upon condition that during the whole of every night, from twilight in the evening until sunrise in the morning, lights shall be placed effectually to secure all travelers from liability to come in contact with such building materials or rubbish. If any person fails to comply with the conditions of this section, in addition to any penalty that he may be ordered to forfeit under these by-laws, he shall reimburse the Town for any and all expenses and damages which the Town may be compelled to pay by reason of such unauthorized use.

### PERMIT REQUIRED FOR MOVING BUILDING, ETC.

SECTION 8. No person shall move or assist in moving any building over any way, which the Town is obliged to keep in repair, without the written permit of the Selectmen or Town Manager being first obtained. Such permit shall state clearly the restrictions and provisions with which to be complied.

### COASTING ON PUBLIC WAY

SECTION 9. No person shall coast upon ice or snow upon any public way except one on which the Selectmen or Town Manager shall by public notice permit such coasting.

### SHALL NOT THROW ICE OR SNOW UPON PUBLIC WAY

SECTION 10. No person shall throw or place snow or cause to be thrown or placed any ice or snow into or upon any public way in such a manner as to obstruct traffic or endanger travel upon the way.

### BATHING

SECTION 11. No person shall bathe between the hours of 12:00 midnight and 6:00 a.m. in any waters of this town, or at any time in a state of nudity, in places exposed to public view, or in immediate sight of the occupants of any dwelling. A police officer shall have the right of arrest.

### POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES

#### SECTION 12.

1. Definitions - the following definitions shall apply in the interpretation and enforcement of this by-law.

## TOWN OF WILMINGTON ZONING BYLAWS

- (1) (1) PUBLIC WAY shall mean the entire width between the lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel and shall include the entire width of any sidewalk within the lines of such way. In the case of ways established by prescription or concerning which no official layouts exist, the edges of the surface of the traveled way shall be deemed to be the lines of such public ways.
  - (2) ALCOHOLIC BEVERAGES shall mean any beverage defined as an alcoholic beverage in Section 1 of Chapter 138 of the General Laws.
  - (3) PUBLIC PROPERTY shall mean and include all Town land, school grounds, municipal parking lots, municipal parks, municipal playgrounds and all real property, buildings, or offices owned by or leased to the Town or occupied or used by any board, department, committee, commission or office of the Town.
  - (4) PRIVATE PROPERTY shall mean any real property within the Town of Wilmington, which is not owned by the Town.
2. No person shall consume any alcoholic beverages on any public way or on any way to which the public has a right of access.
  3. No person shall bring any alcoholic beverages onto any public property or onto any private property or possess or consume any alcoholic beverages in or upon any public property or private property without the permission of the owner or person lawfully in charge or control of such public or private property.
  4. All alcoholic beverages possessed or consumed in violation of this by-law shall be seized and held until final adjudication of the charge against the person or persons arrested or summoned before the court. After final adjudication all alcoholic beverages seized shall be returned to the person or persons entitled to the lawful possession of them.
  5. Violations of this by-law are punishable by a fine of fifty (\$50.00) dollars for each offense.
  6. 6. This by-law shall be enforced on behalf of the Town by its Police Department, which shall have the right to arrest any and all persons in violation of said by-law.
  7. 7. If any part, section or provision of this by-law is found to be invalid, the remainder of this by-law shall not be affected thereby.

### RENTING BOATS

SECTION 13. No person shall engage in the business of renting boats or bathing suits in any waters of the town without first obtaining a license from the Board of Selectmen.

### BOATING

SECTION 13A. No person shall operate any motorboat on Silver Lake at a speed in excess of (6) miles per hour when within 150 feet of the shore, or any pier or float.

## TOWN OF WILMINGTON ZONING BYLAWS

No person shall operate any motorboat within 150 feet of the shore of any public or private bathing beach on Silver Lake except in case of an emergency or when within the public launching area.

Whoever violates any of the provisions of this Boating by-law shall be punished by a fine of not more than twenty (\$20.00) dollars for each violation.

### SALE OF SPRAY PAINT TO MINORS

#### SECTION 14.

- a. No person shall knowingly sell to any child under eighteen (18) years of age any aerosol container of paint capable of defacing property.
- b. For purposes herein, bona fide evidence of majority, identity of majority and identity of a person is a document issued by a federal, state, county or municipal government, or subdivision or agency thereof, including, but not limited to, a motor vehicle operators license, a registration certificate issued under the Federal Selective Service Act (50 App. U.S.C. \*451 et sec.), identification card issued to a member of the Armed Forces or a birth certificate. Proof that the defendant, or his employee or agent, demanded, was shown and acted in reliance upon such bona fide evidence in any sale transaction forbidden hereby, shall be a defense to any criminal prosecution therefor.
- c. Any person who owns, manages or operates a place of business wherein aerosol containers of paint capable of defacing property are sold shall conspicuously post notice of this law in such place of business in letters at least one inch (1") high.
- d. Any person violating the provisions of this by-law shall be fined not less than fifty dollars (\$50.00) nor more than two hundred (\$200.00) for each offense.

#### POSSESSION AND MANUFACTURE OF SPRAY PAINT BY MINORS:

- a. It shall be illegal for any person under eighteen (18) years of age to possess and manufacture any aerosol container of paint capable of defacing property, unless otherwise accompanied by a parent or legal guardian.
- b. Any person under the age of eighteen (18) found violating the provisions of this by-law shall be fined not less than fifty dollars (\$50.00) nor more than two hundred (\$200.00) for each offense.
- c. c. Possession shall be defined as having on or about a person, spray propellant type paint unless otherwise accompanied by a parent or legal guardian.
- d. d. Exemption – Nothing in this by-law shall prohibit the employment of a person under age 18, in or by a commercial business involving the manufacture, distribution, or sale of said spray paint

## TOWN OF WILMINGTON ZONING BYLAWS

devices.

### INJURY TO TREES AND SHRUBS PROHIBITED

SECTION 15. No person without proper authority to do so, shall climb any trees or injure any tree or shrubbery standing in any public way or public place, and no person shall permit or suffer any animal under his care to in any way injure any such tree or shrubbery. Whoever violates any provisions of this section shall forfeit and pay for each offense a fine not to exceed two hundred (\$200.00) dollars plus the cost of the destruction to the property.

### DOORS, ETC., NOT TO OBSTRUCT WAY

SECTION 16. No owner, tenant or other person having control of any building or premises shall permit a gate, door, blind or shutter thereof to swing open across any part of a street or sidewalk so as to obstruct or interfere with the use thereof.

### CLEARING OF ICE AND SNOW; BUSINESS PREMISES

SECTION 17. The owner or occupant of any place of business shall keep the sidewalk adjoining his premises clear of snow and protected when icy conditions prevail. Whoever fails to comply with this section within 24 hours following a snow or ice storm shall forfeit and pay for each offense a fine not exceeding fifty (\$50.00) dollars.

### WATER DISCHARGE

SECTION 18. No owner of a building abutting upon or adjacent to the line of any street shall cause, permit or suffer the water from such building to discharge or forcibly discharge upon or flow across the surface of the sidewalk or street adjacent to such building, or abutting properties.

### VEHICLES OBSTRUCTING SNOW & ICE REMOVAL/WINTER PARKING BAN

SECTION 19. No persons shall leave any vehicle parked upon a public way or a way to which the public has a right of access in such manner that will interfere with the plowing or removal of snow or the removal of ice therefrom.

No person having a vehicle under his care or control shall leave the same parked or unattended upon a public way or a way to which the public has a right of access between the hours of 1:00 a.m. and 6:00 a.m. from December 1st through April 1st in each year. Whoever violates any provision of this section shall forfeit and pay for each offense a fine not exceeding fifty (\$50.00) dollars. Each day shall be considered a separate offense.

The Department of Public Works Superintendent or the Police Chief is authorized to remove or cause to be removed, to some convenient place, including in such term a public garage any vehicle interfering with removing or plowing snow or removing ice, from any public way and the owner of such vehicle shall be liable for the cost of such removal and for the storage charges, if any, resulting therefrom.

### UNREGISTERED MOTOR VEHICLES

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 20. No person shall, except as otherwise provided by law, store, park or place or cause to be stored, parked or placed, unregistered motor vehicles which are unfit for use, permanently disabled or have been dismantled or are otherwise inoperative upon any land in the Town unless the same shall be within a building or in an area unexposed to the view of the public or abutters or upon premises maintained by license dealers. Whoever violates any provision of this section shall forfeit and pay for each offense a fine not exceeding fifty (\$50.00) dollars.

### SOLICITATION OF RIDES ON A PUBLIC WAY

SECTION 21. It shall be unlawful for any person to stand in a public roadway for the purpose of soliciting a ride from the operator of any private vehicle. Penalty: a fine of not more than five (\$5.00) dollars for each offense.

### HOUSE NUMBERS

SECTION 22. The Board of Assessors shall assign and order numbers to be displayed on buildings on all ways as herein provided. In all cases, odd numbers shall be on the right and even numbers shall be on the left, beginning from the point of origin. Upon being notified in writing by the Board of Assessors of the assignment of a house number, the owner of the property shall affix this number to the property within thirty (30) days of the date of said notice. Said number shall be affixed to a position, which is in close proximity to the entrance, but must be clearly visible from the curb. If the house or building is set back fifty (50) feet or more from the curb, said number shall be affixed to a substantial support at the entrance of the property, (such that the number is clearly visible from the curb at all times). Failure to comply shall be subject to a maximum fine of fifty (\$50.00) dollars.

### JUNK DEALERS SHOPS MAY BE EXAMINED BY SELECTMEN

SECTION 23. The Selectmen may license suitable persons to be dealers in and keepers of shops for the purchase, sale, or barter of junk, old metals, or second-hand articles in the Town. They may also license suitable persons as junk collectors, to collect, by purchase or otherwise, junk, old metals, and second-hand articles from place to place in the Town, and they may provide that such collectors shall display badges upon  
(Section 23 cont'd)

their persons or upon their vehicles, or upon both, when engaged in collecting, transporting, or dealing in junk, old metals, or second-hand articles and may prescribe the design thereof. They may also provide that such shops and all articles of merchandise therein, and any place, vehicle or receptacle used for the collection or keeping of the articles aforesaid, may be examined at all times by the Selectmen or by any person by them authorized so to do.

Applications for licenses for junk shops, junk dealers, junk collectors and dealers in second-hand motor vehicles, where a place of business is to be established as well as such businesses already established in the town under such licenses, shall be advertised in a local paper published in Wilmington, if any, or if no such paper is published, in some paper having general circulation in Wilmington, at least ten days before a public hearing is to be held by the Board having the authority to grant said license. Notice of such hearing shall be given to all parties owning real estate abutting on the proposed location. The aforesaid licenses may be revoked at pleasure, and shall be subject to the provisions of law.

## **TOWN OF WILMINGTON ZONING BYLAWS**

Whoever violates any provision of this section shall forfeit and pay for each offense a fine not exceeding twenty (\$20.00) dollars.

### **SHOP KEEPER SHALL KEEP A BOOK**

SECTION 24. Every keeper of a shop for the purchase, sale or barter of junk, old metals or second-hand articles, within the limits of the Town, shall keep a book in which shall be written, at the time of every purchase of any such articles, a description thereof, the name, age, and residence of the person from whom and the day and hour when such purchase was made; such book shall at all times be open to the inspection of the Selectmen and of any person by them authorized to make such inspection.

Every keeper of such shop shall put in a suitable and conspicuous place on his shop a sign having his name and occupation legibly inscribed thereon in large letters; such shop and all articles of merchandise therein may at all times be examined by the Selectmen or by any person by them authorized to make such examination; and no keeper of such shop and no junk collector shall, directly or indirectly, either purchase or receive by way of barter, or exchange any of the articles aforesaid of a minor or apprentice, knowing or having reason to believe him to be such.

### **DISCHARGE OF FIREARMS**

SECTION 25. Within the Town limits of Wilmington, Massachusetts no person or persons shall discharge any firearm, air or gas operated gun of any kind except members of the Police Department and other authorized law enforcement officers whether Federal, State or Municipal in performance of their lawful duties; also with the exception of a person protecting his life or property, also excepting the discharge of firearms using blank ammunition in fulfilling but not limited to the needs of historical, ceremonial, construction, competitive and sporting activities, and a person at an authorized target range. The Police Chief may issue permits for target ranges and shall inspect such places and establish safety requirements for their use. The permit shall be valid for one year and may be revoked for cause at any time by the Police Chief.

Responsible organizations observing historical events or traditional services by gravesides, using firearms with blank cartridges and contractors' powder-fired charge tools are specifically exempted from this by-law.

### **DEFACING PUBLIC PLAYGROUNDS**

SECTION 26. No person shall willfully deface or injure any public playground, planting space, flower bed, tree, shrub, grass border or drinking fountain.

### **RESTRAINT AND CONTROL-DOGS**

SECTION 27. It shall be unlawful for the owner or keeper of any dog to permit any such animal to run loose or to be at large within the corporate limits of the Town of Wilmington. All dogs found any place other than on the premises of the owner or keeper shall be deemed to be running loose or to be at large within the meaning of this section, except such dogs that may be under control by means of a chain or leash, not longer than six (6) feet or those that may be in any vehicle or boat, while so therein shall be deemed to be under personal control of owner or keeper thereof.

## TOWN OF WILMINGTON ZONING BYLAWS

### CONFINEMENT AND NOTICE

SECTION 28. Any dog found to be at large in violation of this Town by-law shall be apprehended and confined by the dog officer or any police officer who shall forthwith serve upon the owner or keeper of said dog, in hand or by leaving at the last and usual place of abode of said owner or keeper a citation that shall state (1) that such violation has been committed; (2) the time and place of such violation; (3) that such violation will be referred to the district court for prosecution in accordance with General Laws, Chapter 140, Section 173A; (4) that said dog shall be turned over to a Humane Society.

In no case shall a dog be sold or delivered to any person or organization intending to use said dog for vivisection purposes.

After a complaint has been made to the dog officer, the owner or keeper found in violation of this Section will be liable to a fine of ten (\$10.00) dollars for the first offense and twenty-five (\$25.00) for subsequent offenses as provided in the General Laws, Chapter 140, Section 136A-175. And, in addition to the above the owner shall be responsible for any related costs as a result of confinement of the owner's dog or dogs, said amount not to exceed the sum provided by General Law.

### DOG LICENSE - FEES

#### SECTION 29.

- A. License Period - The time between January 1 and the following December 31, both dates inclusive.
- B. Fees - The fee for every dog license shall be as follows:
  - Seven Dollars (\$7.00) for every neutered male dog
  - Seven Dollars (\$7.00) for every spayed female dog
  - Eleven Dollars (\$11.00) for every male and female dog
- C. Late Charge - An owner or keeper of a dog kept in the Town of Wilmington who has not licensed said dog by the **first day of April** in each year shall be required to pay an additional fee of ten (\$10.00) dollars which shall be paid to the town. Upon the issuance of a duplicate receipt the original shall be filed with the Treasurer and the copy with the dog owner.

### ERECTING BARRIERS ON EXCAVATION

SECTION 30. The owners of land which has been excavated are hereby required to erect barriers or take other suitable measures within five (5) days after such owners have been notified in writing by the Selectmen that in their opinion such excavation constitutes a hazard to public safety. The penalty for violation of this Section shall be fifty (\$50.00) dollars for each day such violation continues, shall not exceed two hundred (\$200.00) dollars.

### TRAFFIC VISIBILITY ACROSS CORNERS

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 31. In any district where a front yard is required, no structure, fence, planting or other structure shall be maintained at a height greater than two and one-half feet so as to interfere with traffic visibility across the corner within that part of the required front, side or rear yard which is within a triangle bounded by the street lot lines.

### EARTH REMOVAL

#### SECTION 32. DEFINITIONS

SECTION 32.1.A. For the purpose of this By-law "earth" shall include soil, loam, sand, gravel, stone, rock, ledge or other earth products however described.

SECTION 32.1.B. For the purpose of this By-law, "Board" shall mean the Board of Selectmen.

#### EARTH REMOVAL PROCEDURE

SECTION 32.2.A. Within 30 days after this Earth Removal by-law becomes effective, all active pits must be registered with the Board of Selectmen and Board of Assessors designating:

1. Their location.
2. Identification by Assessor's Map and lot number.
3. Perimeter plot plan indicating area being excavated in relation to boundary lines.

SECTION 32.2.B. No earth shall be removed from any parcel of land in the town without a written permit from the Board, except as hereinafter provided.

SECTION 32.2.C. The removal for sale, gift or delivery beyond the town limits of earth shall be allowed only under special permission of the Board, and under such conditions as the Board shall impose.

SECTION 32.2.D. Any person wishing to remove earth from property in the town shall file a written application with the Board, which application shall include the following specific information and supporting documentation:

1. The location of the proposed excavation.
2. The legal name and address of the owner of the property involved.
3. The legal name and address of the petitioner.
4. Names and addresses of all abutting property owners, including those across any abutting streets, as appearing on the records of the Board of Assessors.
5. A plan of the land prepared by a registered professional engineer, showing general topography within 100 feet of the proposed excavation or to the property line.
6. A plan of the land, prepared by a registered professional engineer, showing contours of the site indicating existing and proposed completion elevations at five (5) foot intervals.

## TOWN OF WILMINGTON ZONING BYLAWS

7. A proposed form of bond to be submitted to the Board.

SECTION 32.2.E. No permit for the removal of earth shall be issued by the Board until a public hearing has been held by the Board, notice of which shall have been given, at the applicant's expense, by publishing in a newspaper of general circulation in the town once in each of two successive weeks, the first publication being not less than fourteen (14) days before the day of such hearing and mailing a notice thereof, postage prepaid, to the owners of all property deemed by the Board to be affected thereby as they appear on the most recent local tax list.

SECTION 32.2.F Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at such other time as may be specified in said permit, but in no case for a period more than one year.

SECTION 32.2.G. Any modification or any renewal of a permit shall be considered by the Board, if the Board finds that all conditions have been complied with and that the work has been carried on continuously and in good faith, only after compliance with the provisions of Section 32.2.D. and 32.2.E. of this Chapter 5.

SECTION 32.2.H. A change of ownership of land (in entirety or in part) for which a valid permit is outstanding shall call for the registration and application for a new permit.

### EXEMPTIONS

SECTION 32.3.A. No permit shall be required for the removal of earth from an individual parcel where necessary in the construction of a building being built in accordance with a building permit issued by the proper Town authority and where the earth removal does not exceed 450 cubic yards.

### SPECIFIC LIMITATIONS

SECTION 32.4.A. No permit for the removal of earth shall be approved by the Board except upon condition that a cover of top soil of not less than six (6) inches in depth shall be replaced or allowed to remain, except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical.

SECTION 32.4.B. No permit shall be issued for the removal of earth in any location if such removal; (1) will endanger the public health or safety or constitute a nuisance; (2) will produce noise, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of adjacent property; (3) will result in the transportation of materials in such a manner as to cause traffic congestion or hazards, particularly on residential streets; (4) will result in the transportation over ways which will be unduly injured thereby; (5) will result in a change in topography and cover which will be disadvantageous to the most appropriate use of the land; and (6) will result in the violation of any zoning by-law, town by-law, rule or regulation adopted by the Town of Wilmington.

### GENERAL LIMITATIONS

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SECTION 32.5.A. No permit for the removal of earth shall be approved by the Board if the work extends within three hundred (300) feet of a way open to public use, whether public or private, or within two hundred fifty (250) feet of a building or structure unless the Board is satisfied that such removal will not undermine the way or structure.

SECTION 32.5.B. In approving the issuance of a permit, the Board shall impose reasonable conditions which shall accompany and shall constitute part of the permit, including but not limited to:

1. The finished levelling and grading.
  - a. Levelling and grading must be done annually.
2. The placing of top soil and planting necessary to restore the area to usable condition.
  - a. Seeding must be done annually no later than September 15th, of the operating year.
3. The duration of the removal operation.
4. The construction of necessary fencing and other protection against nuisances.
5. Method of removal.
6. Temporary structures.
7. Hours of operation.
8. Routes of transportation of material.
9. Control of temporary and permanent drainage.
  - a. All existing brooks, ponds and water ways shall remain free and clear from pollution and obstructions.
10. Disposition of boulders, tree stumps and felled trees.
11. Trees or other vegetation within one hundred (100) feet of the property line shall not be removed.

SECTION 32.5.C. The Board shall require a bond or other security to enforce performance of conditions imposed by this by-law.

### GENERAL ADMINISTRATION

SECTION 32.6.A. The Board or its duly authorized persons may enter upon the premises involved from time to time to inspect and ensure conduct of the work.

SECTION 32.6.B. Upon petition of the owner, permit holder or abutters, the Board may now hold a new hearing and reissue or modify the permit, subject to any regulations not in conflict with this by-law.

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 32.6.C. The Board may order the revocation of or suspension of a permit if the conditions established hereunder are not complied with; but the permit holder in such situation shall not be relieved of his obligations hereunder.

SECTION 32.6.D. The Board or its duly authorized persons shall make periodic inspections of all pits regulated by this By-law.

### VIOLATIONS

SECTION 32.7.A. The Board, if it concludes that there has been a violation of this by-law shall so notify the alleged offender, at the address stated on the initial application, and if applicable shall include a notice ordering cessation of the improper activities.

SECTION 32.7.B. Notwithstanding other available remedies, the Board reserves the power to revoke, without hearing, any permit issued by it in accordance with this by-law.

SECTION 32.7.C. The penalties for violations of this by-law shall be as follows:

- For the first offense, fifty (\$50.00) dollars;
- For the second offense, one hundred (\$100.00) dollars;
- For each subsequent offense, two hundred (\$200.00) dollars.

In addition, for each offense they shall replace any and all material removed in violation of the provisions of this by-law.

### FEES

SECTION 32.8.A. The Board may establish such fees for permits.

SECTION 32.8.B. Any fees received hereunder shall be transmitted to the Town Treasurer.

### PROSECUTIONS FOR VIOLATIONS OF BY-LAWS

SECTION 33. Except when otherwise provided by law, prosecutions for offenses under the by-laws of the Town may be made by any police officer of the Town.

### CERTAIN INVASION OF PRIVACY PROHIBITED

SECTION 34. No person, except an officer of the law in the performance of his duties, shall enter upon the premises of another with the intention of peeping into the windows of a house or spying upon in any manner any person or persons therein. Anyone found violating this by-law may be arrested without a warrant.

### PROHIBITED PARKING - FIRE LANES

SECTION 36.

## TOWN OF WILMINGTON ZONING BYLAWS

- A. A. Fire Regulations: It shall be unlawful to obstruct or block a private way with a vehicle or other means so as to prevent access by fire apparatus or equipment to any multiple family building, stores, shopping centers, schools and places of public assembly.
- B. B. It shall be unlawful to obstruct or park a vehicle in any fire lane, such fire lanes to be designated by the head of the Fire Department and posted as such. Said fire lanes to be a distance of twelve (12) feet from the curbing of a sidewalk in a shopping center, apartment complexes and similar locations. Where no sidewalk with curbing exists, the distance shall be twenty (20) feet from the front wall of the building or any other distance that the Fire Chief determines necessary for public safety.
- C. Any object or vehicle obstructing or blocking any fire lane or private way, may be removed or towed by a towing service under the direction of a Police Officer at the expense of the owner of said vehicle or object and without liability to the Town of Wilmington.
  - 1. Towing and/or storage fees are not to exceed that which is provided in or as authorized by Statute Law.
  - 2. Any person called to tow a vehicle, may at his discretion, if the owner appears before the towing is complete, charge the owner one-half the usual fee for towing.
- D. The owner of record of any building affected by these sections shall provide and install signs and road marking as provided in Paragraph B of this section. Said signs shall be no less than 12" x 18" and shall read "Fire Lane - No Parking - Tow Zone".
- E. Any person violating any of the foregoing sections shall for the first offense be punished by a fine of up to fifty (\$50.00) dollars. Each day that such violation continues, shall constitute a separate offense.
- F. Exceptions: Certain delivery vehicles may park in a fire lane for a reasonable length of time, if the nature of their business prohibits or restricts the use of other access points of the building, also emergency vehicles may park in the fire lane while responding to calls for service.

### UNDERGROUND STORAGE

#### SECTION 37.1.: Authority

This by-law is adopted by the Town of Wilmington under its home rule powers, its police powers to protect the public health, safety and welfare, and under powers authorized by Mass. Gen. Laws Ch. 40, Sec. 21-21D and Ch. 148, Sec. 9.

#### SECTION 37.2.: Purpose

The purposes of this by-law are, through regulations to specify and design, construction, installation, testing and maintenance of underground petroleum storage facilities, to protect public health from the contamination of public and private water supplies due to leakage from such facilities, to protect the public safety from the dangers of fire and explosion

## TOWN OF WILMINGTON ZONING BYLAWS

associated with such leakage, and to protect the general welfare by preserving water supplies for present and future use.

### SECTION 37.3. Definitions

37.3.1. - Underground tank shall mean any storage containment system (including pipes and fittings) in which any portion of the tank is below the ground.

37.3.2. - Fire Chief shall mean the Chief, or his designee, of the Fire Department in Wilmington.

37.3.3. - Noncorrosive soil is soil that, when tested by a qualified Professional, is shown to have a resistivity greater than 10,000 ohm-cm, and that does not exhibit corrosive characteristics in a soil-chemistry analysis.

37.3.4. - 100 year flood plain shall mean those areas as shown in the Flood Insurance Rate Maps for Wilmington under the Federal Emergency Management Agency's National Flood Insurance Program, or as defined in Section 6.2.1 of the zoning by-law.

37.3.5. - Observatory well: a dug or drilled cased well which can be used for detecting the presence of flammable or combustible liquids and which is drilled to a depth of approximately twenty-four (24) inches below the tank bottom.

37.3.6. - Concrete Vault: means a vault constructed in accordance with figure No. 1, Section A, B or B-Typical; or, in the alternative, an acceptable engineered approved equivalent as approved by the Fire Chief.

37.3.7. - Operator/Owner: means the lessee of a storage facility or the person or persons responsible for the daily operation of a storage facility.

37.3.8. - Abnormal gain of water: means a gain in the water level inside any tank of more than one (1) inch in a twenty-four hour period during which no product has been added.

37.3.9. - Inventory verification: includes procedures listed under section 6.1 of this by-law and CMR (Commonwealth of Massachusetts Regulations) 527, 5.05 (3A).

37.3.10. - Abandoned: means being out of service for a continuous period in excess of six months, in the case of a storage facility for which a license from the local licensing authority is required under the provisions of Mass. Gen. Laws Ch. 148, Sec. 13, as amended.

37.3.11. - Cathodic protection: means a system that inhibits the corrosion of a tank or components through either the sacrificial anode or the impressed current method of creating a corrosion-inhibiting electrical current.

37.3.12. 37.3.12. - MSDS - Material Safety Data Sheet: a document identifying a toxic or hazardous substance and its manufacturer, and containing certain information relating to the risks associated with the substance and procedures for eliminating or minimizing those risks; the basic information document required by the Law.

37.3.13. - Leakage or leak: means any uncontrolled movement, measurable by a final or precision test<sup>1</sup> that can accurately detect a leak of 0.05 gallons per hour or less, after

## TOWN OF WILMINGTON ZONING BYLAWS

adjustment for relevant variables such as temperature change and tank end deflection, of petroleum product out of a tank or its components; or any uncontrolled movement of water into a tank or its components.

### SECTION 37.4: Registration of tanks

37.4.1. - Tank Registration: Every operator/owner of an underground tank must file a permit application with the Town Clerk within 90 days of the enactment of this by-law.

37.4.2. - Notification of Fire Department: The Town Clerk must forthwith, give the Fire Chief a copy of the information filed for each tank that is registered according to section 37.4.1. The Fire Chief or his designee shall check this information against Fire Department records. He may require evidence of the date of purchase and installation if there is any question concerning the age of the tank or tanks.

37.4.3. - Tank Testing: Operators that are known to have underground storage tanks that did not register their tanks as required by section 37.4.1. of the by-law shall have such tanks tested in accordance with section 6.2 of this by-law.

37.4.4. - Any change in the information on the permit application must be reported to the Town Clerk within 30 days of the change.

37.4.5. - If no substantial evidence of the date of installation is supplied, than the tank shall be presumed to have been installed twenty years prior to the effective date of this by-law.

### SECTION 5: Standards Applicable to the Installation of New Tanks

#### 37.5.1. - Tank Design

- a. All tanks shall be constructed of fiberglass reinforced plastic FRP and vaulted in accordance with section 3.6 of this by-law or an acceptable engineered approved equivalent as approved by the Fire Chief.
- b. All piping shall be constructed of non-corrodible materials such as FRP or its equivalent in accordance with 527 CMR 9.06.
- c. c. All concrete vaults shall be sealed with a sealing material approved by the Fire Chief. All vaults shall be sealed both inside and outside.
- d. All tanks shall be equipped with a leak detection device approved by the Fire Chief.

The criteria for a final or precision test are described in NFPA 329, published by the National Fire Protection Association.

- e. All tanks must be equipped with striker plates below openings used for product measurement or filling.
- f. When more than one (1) tank is installed, observation wells a minimum of two (2) inches in diameter shall be installed at two corners within tank hole excavation. If only one tank is installed, an observation well shall be installed at each end of the tank.

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### 37.5.2. - Tank Installation

- a. The Fire Chief shall inspect and approve underground tanks prior to their burial, in accordance with  
527 CMR 9.06 (10).
- b. The Inspector of Buildings or his designee shall inspect and approve all concrete vaults.
- c. Tanks shall be installed in accordance with the manufacturer's installation techniques. Damage to  
protective coatings or to the FRP tank or surface shall be repaired prior to covering the tank.
- d. New underground tanks shall be tested for tightness, hydrostatically, or with air pressure at not less  
than three (3) pounds per square inch and not more than five (5) pounds per square inch, after  
installation, and backfill in accordance with 527 CMR 9.06 (20).
- e. Piping shall be tested in accordance with 527 CMR 9.06 (20) (a) before being covered, enclosed,  
or placed in use.
- f. Backfill material used to cover all new tank installations and repairs, shall be of the type and quality  
specified by the tank manufacturer's installation procedures, accepted engineering practices and the  
provisions of 527 CMR 9.06 (17) (b-d), as amended; provided that the backfill material for FRP tanks  
shall be pea gravel or crushed stone and that 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 to be compacted and contoured to the shape of the tank before the tank is installed, the  
balance to be thoroughly compacted.
- g. Underground tanks that are to be located in areas subject to flooding or below the maximum water  
table elevation shall be anchored according to manufacturer's instructions.

### 37.5.3. - Tank Location

Underground tanks that are to be installed within 1,000 feet of a public water supply well shall submit, for review by the Fire Chief, Board of Health or its agent, and the local Water Commissioners or their agent, a plan outlining the procedures or devices, such as product sensors and/or area monitoring devices, to be used to prevent water supply contamination. The plan shall be endorsed by representatives of the three departments noted above prior to tank installation. Tanks currently within 1,000 feet of a public water supply well shall be upgraded to meet the provisions of Section 5.1 and 5.2 within 5 years of the acceptance of this by-law.

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### SECTION 37.6.: Leak Detection for Existing and New Tanks

#### 37.6.1. - Inventory Verification

- a. All underground tanks, except fuel-oil tanks solely connected with heating equipment, shall be installed and monitored for the prevention and detection of leakage of flammable and combustible liquids in accordance with the provisions of 527 CMR 5.05 (3).
- b. The daily-inventory records shall be shown to the Fire Chief prior to issuance of a permit or license renewal. (Refer to section (a) above).
- c. c. The owner and operator shall participate in a program of regularly scheduled inventory verification, at least once every two years, in accordance with 527 CMR 5.05 (3) (g). The operator of tanks 20 years of age or older shall submit to the Fire Chief annually a report certifying that the inventory verification has been performed, stating the calculate gain/loss over the verification periods.
- d. The Fire Chief shall require the operator of an underground tank storage system to test the system for tightness, at the operator's expense, when accurate daily inventory records have not been maintained as specified in 37.6.1.
- e. If daily inventory records indicate a loss of product in excess of 0.5 percent of the volume of product used or sold, or an abnormal increase in the amount of water contained in the tank, steps shall be taken immediately in accordance with 527 CMR 5.05 (3) (e) to detect and stop the leak. The discrepancy shall be reported to the Fire Chief.

#### 37.6.2. - Tank Testing

- a. Unless the tank operator demonstrates to the Fire Chief and the Board of Health that his tank(s) are constructed of a material that will not corrode, has product sensors, or has been repaired or tested within the last year, underground tanks and piping shall be required, at the expense of the owner, to undergo one of the following tests within 60 days and annually thereafter: A Kent-Moore (Heath Petro-tite) test; or a Sun-Mark leak-locator test; or the equivalent as determined by the Fire Chief. The Fire Chief shall be given at least 48 hours notice of time, date, and place of testing. Test results shall be submitted to the local Fire Chief.
- b. The waiver from 6.2 (a) may not be granted for a tank that is located within any of the areas specified in section 5.3.
- c. If flammable fluids or their vapors have been detected in neighboring structures, sewers, or wells on or off the property locations, the Fire Chief may require that any nearby tank, including underground residential tanks less than 1,000 gallons, be tested at the expense of each tank's owner.
- d. Any tank abandoned shall be removed from the premises and disposed of in an appropriate manner.

## TOWN OF WILMINGTON ZONING BYLAWS

- e. Annual tank testing will not be required of tanks connected solely to heating systems unless deemed necessary by the Fire Chief. However, all tanks must be tested at the owner's expense during the 20th year after installation.
- f. Effective July 1, 1986 all tanks owned and operated by the Town of Wilmington must be tested annually in accordance with this by-law.

### SECTION 37.7.: Procedure in Case of Spill or Leak (also, see Appendix A)

#### 37.7.1. - Leak Reporting

Any owner/operator who is aware of a spill, abnormal loss of product stored underground, or abnormal gains of water in a tank, shall report such spill, loss or gain immediately to the Fire Chief. The Fire Chief shall be responsible for other notification, except as required by law and outlined in Appendix A.

#### 37.7.2. - Equipment Replacement/Removal

- a. After a leak is confirmed, underground tanks (fittings and piping) shall be emptied immediately, and removed or repaired forthwith, under the direction of the Fire Chief.
- b. A leaking tank that is twenty years old or older or that falls under 37.4.5. that does not comply with the design standards in section 37.5.1. (b) shall be removed and may not be repaired. A permit for its removal must be obtained in accordance with M.G.L. Ch. 148, s. 38A.
- c. A leaking tank that is proven to be, by the owner or operator, less than twenty years old shall be repaired or removed. If the tank operator can show to the satisfaction of the Fire Chief that (in the case of steel tanks) the leak was from internal corrosion, and that the tank can be repaired so as not to pose a continuing threat to the soils and waters of the Commonwealth, considering at a minimum the corrosivity of the soil; tank age and external condition; techniques to be used for the repair; and the location of the tank, then the tank may be repaired. Operators of leaking FRP tanks must demonstrate to the Fire Chief that the tank can be repaired according to manufacturer's instructions. Operators who do not meet these requirements shall remove the tank.

37.7.3. - 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, must be tested in accordance with section 37.6.2. of this by-law within 30 days of leak verification.

### SECTION 37.8: Administration

37.8.1. – Board of Selectmen is chief licensing authority.

37.8.2. – The provisions of this by-law shall be administered by the Fire Chief.

37.8.3. – Variances from the specific requirements of this by-law may be authorized by the chief licensing authority after notice and a public hearing.

37.8.4 – Licenses issued in accordance with M.G.L. Ch. 148 s. 13 for underground tanks shall be renewed annually. Tank owners shall submit to the Fire Chief and the licensing

## TOWN OF WILMINGTON ZONING BYLAWS

authority (Board of Selectmen) a statement certifying satisfactory leak-detection results over the period of the permit (in accordance with s. 6.2 of this by-law), and inventory verification, at least 30 days before the issuance of a permit renewal for the time periods specified herein. Test results shall accompany the permit renewal application.

37.8.5. - Fees necessary for the issuance and renewal of permits or licenses shall be set by the Board of Selectmen.

37.8.6. - The Fire Chief may, at all reasonable times, and upon reasonable notice to the occupant of the premises, enter any premises, public or private, for the purpose of investigating, sampling or inspecting any record, condition, equipment, practice, or property relating to activities subject to this by-law, and may at any time and upon reasonable notice to the occupant of the premises enter such premises for the purpose of protecting the public health or safety, or to prevent damage to the environment.

37.8.7. 37.8.7. - Any operator who violates any provision of this by-law shall be subject to a fine of three hundred dollars for each offense. Each day during which such violation continues shall constitute a separate offense. This By-law may be enforced pursuant to Mass. Gen. Laws Ch. 40, Sec. 21D, as amended, by a local police officer or any other officer having police powers. Upon request of the Board of Health and the Board of Selectmen, Town Counsel shall take such legal action as may be necessary to enforce this by-law.

### SECTION 37.9: Prohibited Uses

All materials, which require a Material Safety Data Sheet, with the exception of gasoline, diesel fuel and fuel oil, will be prohibited from underground storage in the Town of Wilmington except as otherwise approved by the Fire Chief.

### SECTION 37.10: Validity and Severability

The invalidity of one or more sections, subsections, sentences, clauses or provisions of this by-law shall not invalidate or impair this by-law as a whole or any other part or parts hereof.

## APPENDIX A

### FUEL-SPILL CONTINGENCY PLAN: FUEL LEAKAGE OR SPILLS

When fuel spills, it is important to follow proper procedures to ensure prompt and safe containment and cleanup of the material. Chapter 21 of the Mass. Gen. Laws, as amended by Chapter 705 of the Acts of 1979, give the Massachusetts Department of Environmental Quality Engineering (DEQE) sole authority to order or conduct spill containment and removal in or near any of the waters of the commonwealth. Groundwater is included in the definition of "Waters of the Commonwealth." Local officials, therefore, are not authorized to clean up the spilled substance but can take steps to contain it, provided that DEQE is promptly notified and concurs with the proposed actions. As long as this is done "any person who gratuitously renders assistance at the request of a duly authorized officer in removing oil or hazardous material from the waters of the commonwealth, or adjoining shorelines, shall not be held liable, notwithstanding any other provision of law, for civil damages as a result of any act of omission by him in removing such oil or hazardous material, except acts or omissions amounting to gross negligence or willful or wanton misconduct."

## TOWN OF WILMINGTON ZONING BYLAWS

### Prior to a Spill:

1. Develop a standard procedure for reporting spills, such as the attached form, and distribute it to all concerned town departments, including the Fire Department, Board of Health, Police Department, Town Manager, Board of Selectmen, Conservation Commission, and the Hazardous Waste Coordinator (Director of Public Health).
2. Equip one or more town departments with oil-absorbent booms to be used to contain the spill. Train employees to use the booms. Or, in the alternative, the Town will employ the services of a certified hazardous waste clean-up operator.
3. Measures should be taken to ensure the safe and clean operation of gas stations and other fuel dispensers, particularly those in groundwater recharge areas and watersheds of surface water supplies. Applications for construction of new fuel storage facilities should be carefully reviewed, and permits should be issued only when compliance with strict safety standards is assured.
4. Because a fuel spill may involve several communities, determine who should be notified in the event of a threat to another community (e.g., Fire Department, Town Manager, etc.).

### When a Spill Occurs:

5. Contact the local fire department, followed by all applicable town departments and the DEQE. Follow the latter's instructions.
6. Inspect the site of the spill and note the characteristics of the spilled substance. Do not come into contact with the substance or strike a match near the area.
7. If the spill can be contained, place a row of oil-absorbent boom around it.
8. Wait for the field representative from the DEQE to arrive, checking the spill periodically.

### ENFORCING PERSON:

SECTION 38: Any by-law of the Town of Wilmington, or rule or regulation of its departments, boards, commissions and committees, the violation of which is subject to a specific penalty, may, in the discretion of the Town Official who is the appropriate enforcing person, be enforced in the method provided in Section 21D of Chapter 40 of the Massachusetts General Laws "Non Criminal Disposition of Certain Violations". "Enforcing Person" as used in this by-law shall mean the Animal Control Officer, Conservation Administrator, Director of Public Health, Building Inspector, Plumbing and Gas Inspector, Electrical Inspector or any Police Officer, and such other officials as the Board of Selectmen may from time to time designate, each with respect to violation of by-laws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any such official may be an enforcing person with respect thereto.

### SUSPENSION OF LOCAL LICENSES AND PERMITS

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### SECTION 39:

- a. The Tax Collector or other municipal official responsible for records of all municipal taxes, assessments, betterments and other municipal charges, hereinafter referred to as the Tax Collector, shall annually furnish each department, board, commission or division, hereinafter referred to as the Licensing Authority, that issues licenses or permits including renewals and transfers, a list of any person, corporation, or business enterprise, hereinafter referred to as the Party, that has neglected or refused to pay any local taxes, fees, assessments, betterments or other municipal charges for not less than a twelve month period, and that such Party has not filed in good faith a pending application for an abatement of such tax or has a pending petition before the appellate tax board.
- b. The Licensing Authority shall deny, revoke or suspend any license or permit, including renewals and transfers of any party whose name appears on said list furnished to the licensing from the Tax Collector; provided, however, that written notice is given to the Party and the Tax Collector, as required by applicable provisions of law, and the Party is given a hearing, to be held not earlier than fourteen days after said notice. Said list shall be prima facie evidence for denial, revocation or suspension of said license or permit to any Party. The Tax Collector shall have the right to intervene in any hearing conducted with respect to such license denial, revocation or suspension. Any findings made by the Licensing Authority with respect to such license denial, revocation or suspension shall be made only for the purposes of such proceeding and shall not be relevant to or introduced in any other proceeding at law, except for any appeal from such license denial, revocation or suspension.

Any license or permit denied, suspended or revoked under this section shall not be issued or renewed until the Licensing Authority receives a certificate issued by the Tax Collector that the Party is in good standing with respect to any and all local taxes, fees, assessments, betterments or other municipal charges payable to the municipality as of the date of issuance of said certificate.

- c. Any Party shall be given an opportunity to enter into a payment agreement with the Tax Collector, thereby allowing the Licensing Authority to issue a certificate indicating said limitations to the license or permit and the validity of said license shall be conditioned upon the satisfactory compliance with said agreement. Failure to comply with said agreement shall be grounds for the suspension or revocation of said license or permit; provided, however, that the holder be given notice and a hearing as required by applicable provisions of law.
- d. The Board of Selectmen may waive such denial, suspension or revocation if it finds there is no direct or indirect business interest by the property owner, its officers or stockholders, if any, or members of his immediate family, as defined in section one of chapter two hundred and sixty-eight A in the business or activity conducted in or on said property.

This section shall not apply to the following licenses and permits granted under the General Laws of the Commonwealth of Massachusetts: open burning; section thirteen of chapter forty-eight; bicycle permits; section eleven A of Chapter eight-five; sales of articles for charitable purposes; section thirty-three of chapter one hundred and one; children work

## TOWN OF WILMINGTON ZONING BYLAWS

permits; section sixty-nine of chapter one hundred and forty-nine; clubs, associations dispensing food or beverage license; section twenty-one E of chapter one hundred and forty; dog licenses; section one hundred and thirty-seven of chapter one hundred and forty; fishing, hunting, trapping licenses; section twelve of chapter one hundred and thirty-one; marriage licenses; section twelve of chapter one hundred and thirty-one; marriage licenses; section twenty-eight of chapter two hundred and seven; and theatrical events, public exhibition permits; section one hundred and eighty-one of chapter one hundred and forty. This section adopted by the Annual Town Meeting of April 22, 1989.

### SOLICITORS OR CANVASSERS

#### SECTION 40:

Section 1: License required. It shall be unlawful for any solicitor or canvasser, as defined in Section 2 of this by-law to engage in such business in the Town of Wilmington without first obtaining a license in compliance with the provisions of this by-law. Any person who is not properly licensed under this by-law shall be ordered to immediately cease and desist all solicitation in the town until they attain a proper license. Whoever continues to solicit without a proper license after being notified to cease and desist by a police officer, may be summoned for court prosecution and fined up to \$200.00 for each violation.

Section 2: Definition. A canvasser or solicitor is defined as any individual, whether resident of the Town or not, traveling either by foot, motor vehicle, or any other type of conveyance, from place to place, house to house, taking or attempting to take orders for sale of goods, wares, merchandise, personal property of any nature for immediate or future delivery or for services to be furnished or performed immediately or in the future and whether or not he or she collects advance payments on such sales.

This definition shall include any person who, for him or herself, or for another person or firm or corporation hires, leases, uses, or occupies any building, structure, tent, rail car, boat, hotel room, lodging house, apartment, shop or any other place within the Town for the sole purpose of exhibiting samples and taking orders for future delivery.

Section 3: Application. An applicant for a license under this by-law shall file with the Chief of Police, or his designee, a sworn application in writing at least 10 working days prior to the requested starting date for solicitation, on a form provided by the Police Department. Said form shall include, but not be limited to the following information:

- a. Name and physical description, date of birth, social security number of the applicant;
- b. Permanent home address, and full local address of the applicant;
- c. A brief description of the nature of the business and/or goods to be sold;
- d. If employed, name and address of employer, including credentials which establish the exact relationship;
- e. The length of time for which the permit is desired;
- f. Names of manufacturer, of source of merchandise, proposed method of delivery;
- g. Two photographs of the applicant, taken within the past 60 days prior to filing of the application, showing only the head and shoulders of the applicant in a clear and distinguishing manner;
- h. Provide evidence of business responsibility or good character of the applicant;

## TOWN OF WILMINGTON ZONING BYLAWS

- i. A statement as to whether or not the applicant has been convicted of any crime, or violation of any municipal by-law, rule or regulation, the nature of the offense and the punishment or penalty assessed therefore.

At the time of filing the application, a fee of \$25.00 per individual applicant payable to the Town of Wilmington shall be submitted to the Police Department to cover the cost of investigation of the facts stated therein. This fee may be waived for individuals representing non-profit organizations.

### Section 4: Investigation and Issuance

- A. A. The Chief of Police shall direct an investigation of the facts contained in the license application to determine the following.
  1. 1. Whether or not fraud, misrepresentation, or false statements have been made on the application.
  2. 2. Whether or not the applicant has been convicted of any crime or misdemeanor involving moral turpitude.
- B. If after investigation the Chief or his designee determines either of the above paragraphs (A1-A2) were answered in the affirmative the application shall be denied, and the applicant so notified.
- C. If after investigation, the character and business responsibility of the applicant has been found to be satisfactory the application shall be approved. The applicant will then be issued a Solicitation Identification Card.

### Section 5: Solicitation Identification Card

The Police Department shall issue to each successful applicant an identification card which shall contain the words "Licensed Solicitor", the individual's picture, identification and expiration date of the license. Such Identification Card shall be worn in a conspicuous manner on the outer garment of the licensee during any and all times the licensee is engaged in soliciting. The above requirements may be waived by the Chief of Police for solicitors of non-profit organizations based in the Town of Wilmington.

Section 6: Solicitors and Canvassers are required to exhibit their licenses at the request of any resident.

Section 7: Duty of the Police to Enforce. It shall be the duty of any police officer of the Town to require any person seen soliciting or canvassing and who is not known by such officer to be duly licensed, to produce his or her solicitor's or canvasser's license and to enforce the provisions of this by-law against any person found to be violating the same.

Section 8: Trespass after notice, M.G.L. Chapter 266, Section 120. Notwithstanding the above licensing procedures, no licensee may enter private property after being forbidden to do so either directly by the person in charge of the property, or by a conspicuously posted notice of No Trespassing. Punishment for violations of this section are controlled by M.G.L.

## TOWN OF WILMINGTON ZONING BYLAWS

Chapter 266, Section 120. A person found committing such a trespass in the presence of a police officer may be arrested without a warrant.

Section 9: Solicitation hours. A properly licensed solicitor or canvasser may solicit between the following hours:

Monday through Friday	8 a.m. through 7 p.m.
Saturday	10 a.m. through 5 p.m.
Sunday	12 noon through 5 p.m.

Section 10: The Chief of Police shall maintain all pertinent records of licenses issued, and violations recorded.

Section 11: Revocation of license.

A. A. Licenses issued under the provisions of this by-law may be revoked by the Chief of Police or his designee after notice and hearing for any of the following causes:

1. Fraud, misrepresentation, or false statement contained in the license application;
2. Fraud, misrepresentation or false statements made in the course of carrying on the business of solicitation;
3. Any violation of this by-law;
4. Conviction of any crime or misdemeanor involving moral turpitude;
5. Conducting the business of soliciting or canvassing in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to health, safety, or the general welfare of the public;
6. High-pressure tactics, harassment, or a refusal to accept a refusal as an answer, when verified in writing.

B. Notice of hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and a time and place of the hearing. Such notice shall be forwarded by certified mail to the licensee at his or her last known address at least five days prior to the hearing date.

Section 12: Expiration of License. All licenses for soliciting in the town shall expire on December 31, each year, regardless of when the license is obtained.

Section 13: Severance Clause. The provisions of this by-law are declared to be severable, and if any section, sentence, clause or phrase of this by-law shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses and phrases of this by-law and they shall remain in effect, it

## TOWN OF WILMINGTON ZONING BYLAWS

being the legislative intent that this by-law shall stand, notwithstanding the invalidity of any part.

Section 14: This by-law shall take effect 90 days after its passage.

### REGULATION OF UTILITY POLES

SECTION 41. No public or private organization or utility company shall place or allow more than one utility pole to exist within five feet of another utility pole on any public or private way within the Town of Wilmington, without the prior written permission of the Selectmen, which permission may contain conditions.

Following a public hearing, the Selectmen may issue an order for the removal, relocation or alteration of any utility pole or poles in excess of one at any given location, upon the determination that more than one utility pole at any given location presents a nuisance, hazard or threat to the public safety, welfare or convenience to the inhabitants of the Town.

Any organization or utility company which owns or is responsible for a utility pole or poles subject to any order issued by the Selectmen shall fully comply with the terms and conditions of any such order within one hundred and eighty (180) days of the date of its issuance unless such period is extended by the Selectmen in its sole and absolute discretion. In the event of noncompliance with the terms of any order issued by the Selectmen, the Selectmen may take whatever enforcement action it deems appropriate, including, without limitation; the imposition of a fine of up to three hundred (\$300.00) dollars per day for each day of noncompliance; the application for an injunction restraining the continued existence of any such pole or poles subject to such order; and any other penalties, impositions or relief as the Selectmen may deem necessary.

SECTION 42. WATER FOWL No person shall feed any water fowl on public land in the Town of Wilmington. No person shall distribute any food or scatter any foodstuffs upon or around any park, recreation area, playing field, beach, or any public land. The fine for any violation of this section shall be \$10.00. The provisions of Chapter 40, Section 21-D of the General Laws of the Commonwealth shall apply and shall authorize the issuance of a citation for any such violation of this section by any police officer, animal control officer, health officer or agent.

### SECTION 43.

#### Municipal Water Supply Use Restriction

##### Section 1 Authority

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

##### Section 2 Purpose

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

## TOWN OF WILMINGTON ZONING BYLAWS

requirements, provisions or conditions imposed by the Town or by the Department of Environmental Protection.

### Section 3      Definitions

#### Person:

Shall mean any individual, corporation trust, partnership or association, or other entity.

#### State of Water Supply Emergency

Shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under M.G.L. C. 21G, §15-17.

#### State of Water Supply Conservation

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

#### Water Users or Water Consumers

Shall mean all public and private users of the Town's public water system, irrespective of any person's responsibility for billing purposes for water used at any particular facility.

### Section 4      Declaration of State of Water Supply Conservation

The Town, or its agent, through its Board of Water and Sewer Commissioners, may declare a State of Water Supply Conservation upon a determination by a majority vote of the Board that a shortage of water exists and conservation measures are appropriate to ensure an adequate supply of water to all water consumers. Public notice of a State of Water Conservation shall be given under section 5 of this by-law before it may be enforced.

### Section 5      Restricted Water Uses

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

- a) Odd/Even Day Outdoor Watering: Outdoor watering by water users with odd numbered addresses is restricted to odd numbered days. Outdoor watering by water users with even numbered addresses is restricted to even numbered days.
- b) Outdoor Watering Ban: Outdoor watering is prohibited.
- c) Outdoor Water Hours: Outdoor watering is permitted only during daily periods of low demand, to be specified in the declaration of a State of Water Supply Conservation and public notice thereof.
- d) Filling Swimming Pools: Filling of swimming pools is prohibited.
- e) Automatic Sprinkler Use: The use of automatic sprinkler systems is prohibited.

### Section 6      Public Notification of a State of Water Supply Conservation; Notification of DEP

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

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provided. Notification of the State of Water Supply Conservation shall also be simultaneously provided to the Massachusetts Department of Environmental Protection.

### Section 7      Termination of a State of Water Supply Conservation; Notice

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

### Section 8      State of Water Supply Emergency; Compliance with DEP Orders

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

### Section 9      Penalties

Any person violating this by-law shall be liable to the Town in the amount of \$50.00 for the first violation and \$100.00 for each subsequent violation. Fines shall be recovered by indictment, or on complaint before the District Court, or by non-criminal disposition in accordance with section 21D of Chapter 40 of the general laws. Each day of violation shall constitute a separate offense.

### Section 10     Severability

The invalidity of any portion of provision of this by-law shall not invalidate any other portion or provision thereof.

## REGULATION OF AUTOMATIC AMUSEMENT DEVICES

### Section 44:

Selectmen shall not grant a license for any automatic amusement device that presents a risk of misuse as a gaming device. An automatic amusement device that presents a risk of misuse as a gaming device is one that has one or more of the following features: 1) the device involves matching random numbers, patterns or cards; 2) the device accumulates more than twenty-six (26) plays; 3) the device is equipped with a "knock off" switch, button or similar device; 4) the device has a mechanism for adjusting the odds; 5) the device has a remote control feature that can reset the device from another location; 6) the device is capable of returning money to the player other than the change for the excess amount deposited; 7) the device permits a player to pay for more than one game at a time; 8) each game on the device does not cost exactly the same amount for each player, and a player may change any aspect of the game by paying a different amount than any other player before or during the game; and 9) there is a metering device that accounts for both money/points in and money/points out.

All licenses for automatic amusement devices granted by the Board of Selectmen shall be subject to inspection by the Wilmington Police Department to insure conformance with submitted application information and local by-law requirements. Any unlicensed automatic amusement device shall be subject to immediate seizure by the Wilmington Police Department.

## TOWN OF WILMINGTON ZONING BYLAWS

Any person found in violation of this by-law shall be punished by a fine of \$200.00 for each offense. If any sentence, clause or phrase of this by-law, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions.

### NO SMOKING RESTAURANTS AND FOOD ESTABLISHMENTS SECTION 45:

Effective September 5, 2000, smoking shall be prohibited in any restaurant or other such establishment open to the general public that sells food products. The operator of any food establishment shall conspicuously post such notice or signs indicating that smoking is prohibited therein. Any person who smokes in a food establishment shall be subject to a fine of \$50.00. Any operator of any food establishment who does not comply with this provision shall be subject to a fine of \$50.00.

### CHAPTER 6 INVALIDITY

The invalidity of any section or provision of these by-laws shall not invalidate any other section or provision.

The repeal of said existing by-laws and the adoption of the aforesaid by-laws not to take effect until approved by the Attorney General and posted.

### HOW TO AMEND THESE BY-LAWS

These by-laws may be amended or other by-laws may be adopted at any town meeting. One or more articles for such purposes may be inserted in the warrant for a town meeting by the Selectmen or by the procedures described in the following excerpts from the General Laws, Chapter 39, Section 10: "The Selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten percent of the total number of registered voters of the town whichever number is the lesser.

The written request of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence with street and number, if any the board of registrars of voters shall check and forthwith certify the number of signatures so checked.

These by-laws were updated and revised April 24, 1982 and approved by the Attorney General of Massachusetts July 26, 1982, and so posted.

Chapter 3, Section 16 was amended April 28, 1984 and approved by the Attorney General June 15, 1984 and so posted June 27, 1984 and through 1989.

Chapter 5, Section 37 was added December 2, 1985 and approved by the Attorney General January 2, 1986 and so posted January 8, 1986.

## **TOWN OF WILMINGTON ZONING BYLAWS**

Chapter 5, Section 19 was amended April 25, 1987 and approved by the Attorney General July 22, 1987 and so posted July 24, 1987.

Chapter 3, Section 16 was amended April 23, 1988 and approved by the Attorney General July 6, 1988 and so posted July 15, 1988.

Chapter 5, Section 32.1.A. and 32.4.B. was amended April 23, 1988 and approved by the Attorney General July 6, 1988 and so posted July 15, 1988.

Chapter 5, Section 38 was amended April 23, 1988 and approved by the Attorney General July 6, 1988 and so posted July 15, 1988.

Chapter 5, Section 39 added April 22, 1989 and approved by the Attorney General June 5, 1989 and so posted June 7, 1989.

Chapter 1, Section 10 was amended May 1, 1990 and approved by the Attorney General July 13, 1990 and so posted July 18, 1990.

Chapter 3, Sections 16 and 16A was amended May 1, 1990 and approved by the Attorney General July 13, 1990 and so posted July 18, 1990.

Chapter 2, Section 3; Chapter 3, Sections 16 and 23; Chapter 5 Sections 4 and 40 were amended April 27, 1991 approved by the Attorney General July 24, 1991 and so posted July 29, 1991.

Chapter 2, Section 19; Chapter 3, Sections 1 and 15; Chapter 4 Section 4; Chapter 5, Sections 4, 14 and 28; were amended April 23, 1994, and approved by the Attorney General on July 26, 1994 and so posted on July 28, 1994. Chapter 5 Section 35 was deleted.

Chapter 5, Section 2A added April 22, 1995 and approved by Attorney General on June 16, 1995 and so posted on June 20, 1995.

Chapter 2, Section 17, and Chapter 3, Section 10, amended and Chapter 5, Section 41 added April 26, 1997 and approved by Attorney General on July 18, 1997.

Chapter 3, Section 27, Chapter 5, Section 42 added and Chapter 5, Section 29 revised, April 25, 1998 and approved by Attorney General on August 4, 1998.

Chapter 5, Section 4 revised, and Chapter 5, Section 43 added April 24, 1999 and approved by Attorney General on June 24, 1999.

Chapter 5, Section 44 and Section 45 added April 22, 2000 and approved by Attorney General on July 26, 2000.

Chapter 2, Section 10A and Chapter 3, Section 15 revised April 27, 2002 and approved by Attorney General on July 1, 2002.

# TOWN OF WILMINGTON ZONING BYLAWS

## CHAPTER 592

### AN ACT ESTABLISHING A TOWN MANAGER FORM OF GOVERNMENT FOR THE TOWN OF WILMINGTON BE IT ENACTED, ETC., AS FOLLOWS:

SECTION 1. Scope of the Act. Whenever any board, commission, committee or office is provided for or referred to in this act, the term of office of the members or incumbents thereof, the number of members and the powers, duties and obligations appertaining thereto, shall be the same as may now or hereafter be fixed by general provisions of law with respect to town boards, commissions, committees or offices having corresponding powers or duties, or by the by-laws of the town, now or hereafter in force, except as expressly otherwise provided herein.

Nothing in this act shall be construed to affect in any manner any by-law of the town now in effect or which may be adopted hereafter, or the power of the town to amend, alter or adopt any by-law, or the operation or applicability to the Town of Wilmington of any general or special law now or hereafter in effect, except so far as may be expressly provided herein.

SECTION 2. Elective Officers. Beginning with the first town election following acceptance of this act, the only board, officers or committees to be elected by the voters shall be the Selectmen, the School Committee, the Moderator, and members of the Wilmington Housing Authority. Every other elective office, board or commission shall be terminated as herein provided, any other provision of law to the contrary notwithstanding. The term of office of any person elected to any office, board or commission existing at the time of such acceptance and terminated hereunder shall continue until such first town election and until the appointment and qualification of his successor, if any, and thereafter the said offices, boards or commissions shall be abolished, and all powers, duties and obligations conferred or imposed thereon by law shall be conferred and imposed upon the town manager, with the exception herein provided.

SECTION 2A. Recall of Elected Officers. Any person who holds an elected town office with more than six months remaining of the term of office may be recalled from the office by the voters in the manner as herein provided.

(a) One hundred and fifty or more voters may file with the Town Clerk an affidavit containing the name of the officer whose recall is sought and a statement of the grounds upon which the petition is based. The signatures on such petition shall contain the names of at least ten voters in each of the precincts into which the town is divided for the purpose of electing town officers. If the said petition is found to be valid the Town Clerk shall thereupon deliver to the ten persons first named on such petition, petition blanks demanding said recall, printed forms of which he shall keep available. The blanks may be completed by printing or typewriting; they shall be addressed to the Board of Selectmen; they shall contain the names of the ten persons to whom they are issued and the grounds for recall as stated in the affidavit; they shall demand the election of a successor to the office; they shall be dated and signed by the Town Clerk. The recall petition shall be returned to the Town Clerk within twenty days following the date they are issued, signed by at least ten percent of the total number of persons registered to vote as of the date of the most recent town election. The Town Clerk shall within four (4) working days, commencing the day after submission with him/her submit the petitions to the Board of Registrars which

## TOWN OF WILMINGTON ZONING BYLAWS

shall within seven (7) working days, certify thereon the number of signatures which are names of voters.

- (b) If the petitions shall be certified by the Registrars of Voters to be sufficient, the Town Clerk shall within five (5) working days, or at the next meeting of the Board of Selectmen submit the same with his/her certification. Upon its receipt of the certified petition the Board of Selectmen shall within two (2) working days, give notice, in writing, of said petition to the officer whose recall is sought. If said officer does not resign his office within five (5) working days following delivery of said notice, the Board of Selectmen shall order a special election to be held not less than Sixty-five nor more than ninety days after the date of the certification of the Town Clerk that the petition is sufficient.
- (c) The nomination of candidates, the publication of the warrant for the recall election and the conduct of the recall election shall be in accordance with the charter and General Laws regulating elections.
- d) Ballots used at the recall election shall state the proposition in the order indicated:
  - For the recall of (name of officer)
  - Against the recall of (name of officer)Adjacent to each proposition shall be a place to vote for either of said propositions. After the said proposition shall appear the word "candidates" and the name of the candidates arranged as determined by a drawing by lot conducted by the Town Clerk which shall be open to the public, unless another arrangement is required by a general law. If a majority of the votes cast on the proposition is against the recall, the votes for candidates need not be counted. If the majority of the vote's cast is in favor of recall, the votes for candidates shall be counted and the candidates receiving the highest number of votes shall be declared elected.
- (e) The incumbent shall continue to hold his office and to perform his duties until the recall election. If he is not then recalled, he shall continue in office for the remainder of his unexpired term. If the officer is recalled, he shall be deemed removed upon the certification of the election results. The candidate who receives the highest number of votes shall serve for the balance of the unexpired term.
- (f) No recall shall be filed against an officer within six months after he takes office, or in the case of an officer subjected to recall and not recalled thereby, during the remainder of his unexpired term.
- (g) The validation and the call for election certifies only compliance with the procedural requirements of this Act.

SECTION 3. Election of Selectmen. At the first town election following acceptance of this act, there shall be elected two selectmen for three years, two selectmen for two years, and one selectman for one year. Upon the qualification of the selectmen so elected, the term of office of the Board of Selectmen then existing shall terminate. At each annual town election thereafter, the voters shall elect selectmen for the three-year terms to replace those whose terms are about to expire. When a vacancy occurs among the selectmen by reason of death, resignation, change of residence from the town, or other disability, the remaining selectmen shall have the power to fill the vacancy until the next town election, at which the voters shall elect a selectman for the remainder of the unexpired term.

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 4. Appointments by Selectmen. In addition to the Town Manager, whose appointment and removal is hereinafter provided for, the selectmen shall appoint, and may remove, a Board of Appeals under the provisions of Section Eighty-one R of Chapter Forty-one of the General Laws, which board shall also act as the Board of Appeals under the by-laws, election officers, Registrars of Voters except the Town Clerk, constables, Town Counsel and Town Accountant.

SECTION 5. Multiple Officers. A member of the Board of Selectmen, or of the School Committee, or of the Finance Committee, shall, during the term for which he was elected or appointed, be ineligible either by election or appointment to hold any other town office. Any person elected or appointed to any other office, board, commission, or committee under the provisions of this act or of any general or special law shall be eligible during the term of such office to election or appointment to any other town office, board, commission or committee, except that the Town Accountant shall not be eligible to hold the position of Town Treasurer or Town Collector. The Town Manager, subject to any applicable provision of law relating thereto, may assume the duties of any office which he is authorized to fill by appointment, except that he shall not appoint himself as a member of any board or committee.

SECTION 6. Investigations or Surveys. For the purpose of making investigations or surveys, the Town Manager, with the approval of the Selectmen, may expend such sums for the employment of experts, counsel and other assistants, and for the other expenses in connection therewith, as the town may appropriate for such purposes.

SECTION 7. Appointment of Town Manager. The selectmen elected as provided herein shall appoint, as soon as practicable, for a term of three years, a Town Manager who shall be a person especially fitted by education, training and by previous full time paid experience as a town or city manager or assistant manager, to perform the duties of the office. The Town Manager shall be appointed without regard to his political beliefs. He need not be a resident of the town or of this commonwealth when appointed, and shall not during the twelve months prior to his appointment have held any elective office in the Town of Wilmington, but shall be a resident of the town during his term of office. He may be appointed for successive terms of office. Before entering upon the duties of his office, the Town Manager shall be sworn to the faithful and impartial performance thereof by the Town Clerk, or a Justice of the Peace. He shall execute a bond in favor of the town for the faithful performance of his duties in such sum and with such surety or sureties as may be fixed or approved by the selectmen.

SECTION 8. Appointment of a Temporary Manager. Any vacancy in the office of Town Manager shall be filled as soon as possible by the selectmen. Pending the appointment of Town Manager or the filling of any vacancy, the selectmen may appoint a suitable person to perform the duties of the office.

SECTION 9. Acting Manager. The Town Manager may designate, by letter filed with the Town Clerk, a qualified officer of the town to perform his duties during his temporary absence or disability. In the event of failure of the manager to make such designation, the selectmen may, by resolution, designate an officer of the town to perform the duties of the manager until he shall return or his disability shall cease.

## TOWN OF WILMINGTON ZONING BYLAWS

SECTION 10. Removal of Manager. The selectmen, by a majority vote of the full membership of the board, may remove the Town Manager. At least thirty days before such proposed removal shall become effective, the selectmen shall file a preliminary written resolution with the Town Clerk setting forth in detail the specific reasons for his proposed removal, a copy of which resolution shall be delivered to the Town Manager.

The Manager may reply in writing to the resolution and may request a public hearing. If the manager so requests, the Board of Selectmen shall hold a public hearing not earlier than twenty days nor later than thirty days after the filing of such request. After such public hearing, if any, otherwise at the expiration of thirty days following the filing of the preliminary resolution, and after full consideration, the selectmen by a majority vote of the full membership of the board may adopt a final resolution of removal. In the preliminary resolution, the selectmen may suspend the Manager from duty, but in any case his salary shall continue to be paid until the expiration of one month from the date of adoption of the final resolution of removal.

SECTION 11. Compensation of Manager. The Town Manager shall receive such compensation for his services as the selectmen shall determine, but it shall not exceed the amount appropriated therefor by the town.

SECTION 12. Powers and Duties of Manager. In addition to any other powers and duties expressly provided for in this act, the Town Manager shall have the following powers and duties:

(a) He shall supervise and direct the administration of all departments, commissions, boards and offices except those mentioned in section two, three and four, and shall appoint and may, subject to the provisions of Chapter thirty-one of the General Laws where applicable, remove the Cemetery Commissioners, Water Commissioners, Board of Health, Board of Public Welfare, Planning Board, Library Trustees, Trustees of Trust Funds, a Town Collector, a Town Clerk, a Town Treasurer who may also act as Town Collector, a Board of Assessors of three members as here-in-after provided, a Superintendent of Streets, the Chief of Police and police officers, the Chief and members of the Fire Department, and such other officers and employees including school janitors, as may be necessary to carry out the powers and duties imposed upon him or upon the town either by this act, or by other provisions of law. Officers and employees not subject to Chapter Thirty-one of the General Laws shall not be removed by the Town Manager except on ten days' notice in writing, setting forth the cause of such removal.

(b) Subject to any applicable provisions of Chapter Thirty-one and of Section One Hundred and Eight A of Chapter Forty-one of the General Laws, the Town Manager shall fix the compensation of all town officers and employees appointed by him, within the limits of the amounts appropriated therefor by the town.

(c) The Town Manager shall attend all regular meetings of the Board of Selectmen except meetings at which his removal is being considered.

(d) The Town Manager shall keep full and complete records of his office, and shall render as often as may be required by the selectmen a full report of all operations during the period reported on.

## TOWN OF WILMINGTON ZONING BYLAWS

(e) The Town Manager shall keep the selectmen fully advised as to the needs of the town and shall recommend to the selectmen for adoption such measures requiring action by them or by the town as he may deem necessary or expedient.

(f) The Town Manager shall have jurisdiction over the rental and use of all town property, except schools. He shall be responsible for the maintenance and repair of all town property, including school buildings and grounds. Except as otherwise voted by the town he shall be responsible for the preparation of plans and the supervision of work on all construction, reconstruction, alterations, improvements and other undertakings authorized by the town, subject however, to the approval of the School Committee with respect to plans for the construction or improvement of school buildings or property.

(g) The Town Manager shall purchase all supplies, materials and equipment, and shall award all contracts for all departments and activities of the town under his supervision; and he shall make all purchases for departments or activities not under his supervision but only upon and in accordance with a requisition duly signed by the head of any such department.

(h) The Town Manager shall administer either directly or through a person or persons appointed by him in accordance with this act all provisions of general and special laws applicable to said town, all by-laws and all regulations established by the selectmen.

(i) The Town Manager shall, with the approval of the selectmen, have authority to prosecute, defend or compromise all litigation to which the town is a party.

(j) The Town Manager shall perform such other duties, consistent with his office, as may be required of him by the by-laws or vote of the town or by vote of the selectmen.

(k) The Town Manager shall have access to all town books and papers for information necessary for the proper performance of his duties, and may without notice cause the affairs of any department or activity under his control or the conduct of any officer or employee thereof to be examined.

(l) (l) The Town Manager may, with the approval of the Selectmen, and with the written approval of the Finance Committee, transfer the appropriation of one department, commission, board or office, in whole or in part, to any other.

SECTION 13. Appointment of Assessors. The Town Manager shall appoint a Principal Assessor, who shall devote his full time and attention to the duties of his office and shall serve as chairman of the board, and two additional assessors.

SECTION 14. Approval of Warrants. The Town Manager shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the Town Accountant in accordance with applicable provisions of law shall be submitted to the Town Manager. The approval of any such warrant by the Town Manager when countersigned by a majority of the selectmen, shall be sufficient authority to authorize payment by the Town Treasurer, but

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the selectmen alone shall approve all warrants in the event of the absence of the Town Manager or a vacancy in the office of Town Manager.

SECTION 15. Investigations of Claims. Whenever any payroll, bill or other claim against the town is presented to the Town Manager, he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the interests of the town, refer it to the selectmen, who shall immediately investigate the facts and determine what, if any, payment should be made. Pending such investigation and determination by the selectmen, payment shall be withheld.

SECTION 16. Certain Officers not to make Contracts with the Town. It shall be unlawful for any selectman, the Town Manager, or any other elective or appointive official of the town, directly or indirectly, to make a contract with the town, or to receive any commission, discount, bonus, gift, contribution or reward from, or any share in the profits of, any person or corporation making or performing such a contract, unless the official concerned immediately upon learning of the existence of such contract, or that such a contract is proposed, shall notify the selectmen in writing of the contract and of the nature of his interest therein and shall abstain from doing any official act on behalf of the town in reference thereto. In case such interest exists on the part of an officer whose duty it is to make such a contract on behalf of the town, the contract may be made by another officer of the town duly authorized thereto by vote of the selectmen. Violation of any provision of this section shall render the contract in respect to which such violation occurs voidable at the option of the town. Any person violating any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 17. Estimates of Expenditures. All boards, officers and committees of the town shall annually, at the request of the Town Manager, submit to him in writing a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments and offices during the next fiscal year. On or before 90 days prior to the Annual Town Meeting of each year, the Town Manager shall submit to each member of the Finance Committee and of the Board of Selectmen a copy of his annual budget, which shall contain a careful, detailed estimate of the probable expenditures of the town for the ensuing fiscal year, including a statement of the amounts required to meet the interest and maturing bonds and notes or other indebtedness of the town, and showing specifically the amount necessary to be provided for each office, department and activity, together with a statement of the expenditures for the same purposes in the two preceding years and an estimate of the expenditures for the current year. He shall also submit a statement showing all revenues received by the town in the two preceding years, together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year. He shall also report to said committee and to the selectmen the probable amount required to be raised by taxation to defray all of the proposed expenditures of the town, together with an estimate of the tax rate necessary therefor.

SECTION 18. No contract existing and no action at law or suit in equity or other proceeding pending at the time this act is accepted or at the time of revocation of such acceptance shall be affected by such acceptance or revocation.

SECTION 19. This act shall be submitted for acceptance to the qualified voters of the Town of Wilmington at the first state election after the date of approval of this act. The vote

## TOWN OF WILMINGTON ZONING BYLAWS

shall be taken by ballot in accordance with the provisions of the General Laws, so far as the same shall be applicable, in answer to the question, which shall be placed upon the official ballot to be used at said election: - "Shall an act passed by the General Court in the year nineteen hundred and fifty, entitled 'An Act establishing a Town Manager form of government for the Town of Wilmington', be accepted by this town?" If a majority of the voters voting on this question shall vote in the affirmative, said act shall take effect immediately for the purposes of the next following town election, and for all things pertaining thereto, and shall take full effect upon the qualification of a majority of the selectmen first elected as provided in Section three. If this act is rejected by the qualified voters of the town when first submitted under this section, it shall be further submitted to the said voters at the second next following annual town election, and if accepted by a majority of the voters voting thereon it shall take effect as herein before provided. If a majority of the voters voting on this question when so further submitted shall vote in the negative, this act shall thereupon become void.

SECTION 20. Duties of Certain Town Officials relative to Election. It shall be the duty of the selectmen and Town Clerk in office and any other town official upon whom by reason of his office a duty devolves under the provisions of this act, when this act is accepted by the registered voters as herein provided, to comply with all the requirements of law relating to elections, to the end that all things may be done necessary for the nomination and election of the officers first to be elected under this act.

SECTION 21. At any time after the expiration of three years from the date of acceptance of this act, and not less than sixty days before the date of an annual meeting, a petition signed by not less than ten percent of the registered voters of the town may be filed with the selectmen, requesting that the question of revoking the acceptance of this act be submitted to the voters. The selectmen shall thereupon direct the Town Clerk to cause the said question to be printed on the official ballot to be used at the next annual town election in the following form: "Shall the acceptance by the Town of Wilmington of an act passed by the General Court in the year nineteen hundred and fifty, entitled 'An Act establishing a Town Manager form of government for the Town of Wilmington' be revoked?" If such revocation is favored by a majority of the voters voting thereon, this act shall cease to be operative on and after the annual meeting next following such vote. All general laws respecting town administration and town officers, and any special laws relative to said town, the operation of which has been suspended or superseded by acceptance of this act, shall be revived by such revocation and shall continue to be in full force and effect. By-laws in force when such revocation takes effect, so far as they are consistent with general laws respecting town administration and town officers and with special laws relating to said town, shall not be affected thereby, but any other by-laws inconsistent with such general or special laws shall be annulled. If such revocation is not favored by a majority of the voters voting thereon, no further petition therefor shall be filed under this section oftener than once in every three years thereafter.

APPROVED JULY 5, 1950